THE SEVENTY-FOURTH DAY

CARSON CITY (Thursday), April 16, 2009

Assembly called to order at 11:24 a.m.

Madam Speaker presiding.

Roll called.

All present except Assemblyman Hardy, who was excused.

Prayer by the Chaplain, Pastor Albert Tilstra.

O Lord, we in this place are weighed down by the problems of our state, nation, and world. Convict us of our share of personal responsibility for the situation in which we find ourselves. May we confess our part in creating our dilemmas, lest we feel no obligation to solve them. Help us to quit waiting for the other person to change his or her attitude and ways, lest we never give You the chance for which You have been waiting, to change us. This we ask in the lovely name of Him who came to change us all.

AMEN.

Pledge of allegiance to the Flag.

Assemblyman Conklin moved that further reading of the Journal be dispensed with, and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

REPORTS OF COMMITTEES

Madam Speaker:

Your Committee on Commerce and Labor, to which were referred Assembly Bills Nos. 202, 454, 472, 486, 513, 515, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MARCUS CONKLIN, *Chairman*

Madam Speaker:

Your Committee on Corrections, Parole, and Probation, to which was referred Assembly Bill No. 502, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

WILLIAM C. HORNE, *Chairman*

-Madam Speaker:

Your Committee on Government Affairs, to which were referred Assembly Bills Nos. 48, 229, 304, 508, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MARILYN K. KIRKPATRICK, *Chair*

Madam Speaker:

Your Committee on Health and Human Services, to which was referred Senate Bill No. 65, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Health and Human Services, to which were referred Assembly Bills Nos. 80, 111, 112, 206, 326, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

DEBBIE SMITH, *Chair*

Madam Speaker:

Your Committee on Judiciary, to which were referred Assembly Bills Nos. 46, 102, 271, 309, 491, 497, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

BERNIE ANDERSON, *Chairman*

Madam Speaker:

Your Committee on Taxation, to which was referred Assembly Bill No. 432, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

KATHY MCCLAIN, *Chair*

Madam Speaker:

Your Committee on Transportation, to which were referred Assembly Bill No. 482, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

KELVIN ATKINSON, *Chairman*

MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, April 15, 2009

To the Honorable the Assembly:

I have the honor to inform your honorable body that the Senate on this day passed Senate Bills Nos. 12, 61, 156, 193, 228, 254, 348, 391.

Also, I have the honor to inform your honorable body that the Senate on this day passed, as amended, Senate Bills Nos. 14, 18, 26, 31, 40, 42, 58, 66, 121, 124, 130, 168, 173, 176, 209, 216, 218, 219, 246, 248, 253, 256, 262, 298, 304, 314, 327, 337, 339, 352, 354; Senate Joint Resolutions Nos. 2, 7.

SHERRY L. RODRIGUEZ
Assistant Secretary of the Senate

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Oceguera moved that Assembly Bills Nos. 46, 48, 80, 102, 111, 112, 202, 206, 229, 271, 304, 309, 326, 432, 454, 472, 482, 486, 491, 497, 502, 508, 513, 515; Senate Bill No. 65 just reported out of committee, be placed on the appropriate reading file.

Motion carried.

Assemblyman Oceguera moved that the reading of the histories on all bills and resolutions be dispensed with for this legislative day.

Motion carried.

NOTICE OF EXEMPTION

April 15, 2009

The Fiscal Analysis Division, pursuant to Joint Standing Rule 14.6, has determined the eligibility for exemption of: Senate Bills Nos. 60, 78, 177 and 306.

GARY GHIGGERI
Fiscal Analysis Division

NOTICE OF WAIVER

A Waiver requested by Assemblywoman Smith.

For: Assembly Bill No. 463.

To Waive:

Subsection 1 of Joint Standing Rule No. 14.3 (out of final committee of house of origin by 68th day).

Subsection 2 of Joint Standing Rule No. 14.3 (out of house of origin by 79th day).
With the following conditions:
May only be passed out of house of origin on or before Thursday, April 30, 2009.
Has been granted effective: Wednesday, April 15, 2009.

STEVEN A. HORSFORD
Senate Majority Leader

BARBARA BUCKLEY
Speaker of the Assembly

Senate Joint Resolution No. 2.

Assemblyman Oceguera moved that the resolution be referred to the Committee on Elections, Procedures, Ethics, and Constitutional Amendments.

Motion carried.

Senate Joint Resolution No. 7.

Assemblyman Oceguera moved that the resolution be referred to the Committee on Elections, Procedures, Ethics, and Constitutional Amendments.

Motion carried.

INTRODUCTION, FIRST READING AND REFERENCE

By the Committee on Ways and Means:

Assembly Bill No. 536—AN ACT relating to state financial administration; requiring the transfer of a certain sum of money from the Amateur Boxing Program Reserve of the Nevada Athletic Commission to the State General Fund; and providing other matters properly relating thereto.

Assemblyman Oceguera moved that the bill be referred to the Committee on Ways and Means.

Motion carried.

By the Committee on Ways and Means:

Assembly Bill No. 537—AN ACT relating to state government; transferring the powers and duties of the Division of Mortgage Lending of the Department of Business and Industry to the Division of Financial Institutions of the Department; transferring the powers and duties of the Commissioner of Mortgage Lending to the Commissioner of Financial Institutions; and providing other matters properly relating thereto.

Assemblyman Oceguera moved that the bill be referred to the Committee on Commerce and Labor.

Motion carried.

By the Committee on Ways and Means:

Assembly Bill No. 538—AN ACT relating to controlled substances; transferring the program for the medical use of marijuana from the State Department of Agriculture to the Health Division of the Department of Health and Human Services; and providing other matters properly relating thereto.

Assemblyman Oceguera moved that the bill be referred to the Committee on Health and Human Services.

Motion carried.

By the Committee on Ways and Means:

Assembly Bill No. 539—AN ACT relating to state government; transferring the powers and duties of the Manufactured Housing Division of the Department of Business and Industry to the Housing Division of the Department; transferring the powers and duties of the Administrator of the Manufactured Housing Division to the Administrator of the Housing Division; and providing other matters properly relating thereto.

Assemblyman Oceguera moved that the bill be referred to the Committee on Commerce and Labor.

Motion carried.

By the Committee on Ways and Means:

Assembly Bill No. 540—AN ACT relating to local government employers; requiring the Local Government Employee-Management Relations Board to charge and collect a fee from local government employers; and providing other matters properly relating thereto.

Assemblyman Oceguera moved that the bill be referred to the Committee on Government Affairs.

Motion carried.

Senate Bill No. 12.

Assemblyman Oceguera moved that the bill be referred to the Committee on Education.

Motion carried.

Senate Bill No. 14.

Assemblyman Oceguera moved that the bill be referred to the Committee on Judiciary.

Motion carried.

Senate Bill No. 18.

Assemblyman Oceguera moved that the bill be referred to the Committee on Transportation.

Motion carried.

Senate Bill No. 26.

Assemblyman Oceguera moved that the bill be referred to the Committee on Commerce and Labor.

Motion carried.

Senate Bill No. 31.

Assemblyman Oceguera moved that the bill be referred to the Committee on Government Affairs.

Motion carried.

Senate Bill No. 40.

Assemblyman Oceguera moved that the bill be referred to the Committee on Commerce and Labor.

Motion carried.

Senate Bill No. 42.

Assemblyman Oceguera moved that the bill be referred to the Committee on Government Affairs.

Motion carried.

Senate Bill No. 58.

Assemblyman Oceguera moved that the bill be referred to the Committee on Commerce and Labor.

Motion carried.

Senate Bill No. 61.

Assemblyman Oceguera moved that the bill be referred to the Committee on Taxation.

Motion carried.

Senate Bill No. 66.

Assemblyman Oceguera moved that the bill be referred to the Committee on Government Affairs.

Motion carried.

Senate Bill No. 121.

Assemblyman Oceguera moved that the bill be referred to the Committee on Commerce and Labor.

Motion carried.

Senate Bill No. 124.

Assemblyman Oceguera moved that the bill be referred to the Committee on Government Affairs.

Motion carried.

Senate Bill No. 130.

Assemblyman Oceguera moved that the bill be referred to the Committee on Judiciary.

Motion carried.

Senate Bill No. 156.

Assemblyman Oceguera moved that the bill be referred to the Committee on Elections, Procedures, Ethics, and Constitutional Amendments.

Motion carried.

Senate Bill No. 168.

Assemblyman Oceguera moved that the bill be referred to the Committee on Commerce and Labor.

Motion carried.

Senate Bill No. 173.

Assemblyman Oceguera moved that the bill be referred to the Committee on Government Affairs.

Motion carried.

Senate Bill No. 176.

Assemblyman Oceguera moved that the bill be referred to the Committee on Commerce and Labor.

Motion carried.

Senate Bill No. 193.

Assemblyman Oceguera moved that the bill be referred to the Committee on Commerce and Labor.

Motion carried.

Senate Bill No. 209.

Assemblyman Oceguera moved that the bill be referred to the Concurrent Committees on Education and Ways and Means.

Motion carried.

Senate Bill No. 216.

Assemblyman Oceguera moved that the bill be referred to the Committee on Judiciary.

Motion carried.

Senate Bill No. 218.

Assemblyman Oceguera moved that the bill be referred to the Committee on Government Affairs.

Motion carried.

Senate Bill No. 219.

Assemblyman Oceguera moved that the bill be referred to the Committee on Natural Resources, Agriculture, and Mining.

Motion carried.

Senate Bill No. 228.

Assemblyman Oceguera moved that the bill be referred to the Committee on Commerce and Labor.

Motion carried.

Senate Bill No. 246.

Assemblyman Oceguera moved that the bill be referred to the Committee on Transportation.

Motion carried.

Senate Bill No. 248.

Assemblyman Oceguera moved that the bill be referred to the Committee on Government Affairs.

Motion carried.

Senate Bill No. 253.

Assemblyman Oceguera moved that the bill be referred to the Committee on Judiciary.

Motion carried.

Senate Bill No. 254.

Assemblyman Oceguera moved that the bill be referred to the Committee on Judiciary.

Motion carried.

Senate Bill No. 256.

Assemblyman Oceguera moved that the bill be referred to the Committee on Health and Human Services.

Motion carried.

Senate Bill No. 262.

Assemblyman Oceguera moved that the bill be referred to the Committee on Judiciary.

Motion carried.

Senate Bill No. 298.

Assemblyman Oceguera moved that the bill be referred to the Committee on Education.

Motion carried.

Senate Bill No. 304.

Assemblyman Oceguera moved that the bill be referred to the Committee on Health and Human Services.

Motion carried.

Senate Bill No. 314.

Assemblyman Oceguera moved that the bill be referred to the Committee on Judiciary.

Motion carried.

Senate Bill No. 327.

Assemblyman Oceguera moved that the bill be referred to the Committee on Commerce and Labor.

Motion carried.

Senate Bill No. 337.

Assemblyman Oceguera moved that the bill be referred to the Committee on Judiciary.

Motion carried.

Senate Bill No. 339.

Assemblyman Oceguera moved that the bill be referred to the Committee on Commerce and Labor.

Motion carried.

Senate Bill No. 348.

Assemblyman Oceguera moved that the bill be referred to the Committee on Judiciary.

Motion carried.

Senate Bill No. 352.

Assemblyman Oceguera moved that the bill be referred to the Committee on Judiciary.

Motion carried.

Senate Bill No. 354.

Assemblyman Oceguera moved that the bill be referred to the Committee on Government Affairs.

Motion carried.

Senate Bill No. 391.

Assemblyman Oceguera moved that the bill be referred to the Committee on Education.

Motion carried.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Atkinson moved that Assembly Bill No. 372 be taken from the Chief Clerk's desk and placed on the General File.

Motion carried.

Assemblyman Anderson moved that Assembly Bill No. 88 be taken from the Chief Clerk's desk and placed at the top of the General File.

Motion carried.

Assemblyman Atkinson moved that Assembly Bill No. 218 be taken from the Chief Clerk's desk and placed on the General File.

Motion carried.

Assemblyman Aizley moved that Assembly Bill No. 293 be taken from the General File and placed on the Chief Clerk's desk.

Motion carried.

Assemblywoman Smith moved that Assembly Bill No. 364 be taken from the General File and placed on the Chief Clerk's desk.

Motion carried.

Assemblyman Horne moved that Assembly Bill No. 385 be taken from the General File and rereferred to the Committee on Ways and Means.

Motion carried.

Assemblyman Arberry moved that Assembly Bills Nos. 148, 238, 239, 283, 505 be taken from the General File and rereferred to the Committee on Ways and Means.

Motion carried.

Assemblyman Settelmeyer moved that Assembly Bill No. 311 be taken from its position on the General File and placed at the top of the General File.

Motion carried.

Madam Speaker appointed Assemblymen Bobzien and Christensen as a committee to invite the Senate to meet in Joint Session with the Assembly to hear an address by United States Senator John Ensign.

Assemblyman Oceguera moved that the action whereby Senate Bill No. 218 was referred to the Committee on Government Affairs be rescinded.

Motion carried.

Assemblyman Oceguera moved that Senate Bill No. 218 be referred to the Committee on Transportation.

Motion carried.

Assemblyman Oceguera moved that Assembly Bill No. 73 be taken from the Chief Clerk's desk and placed at the top of the General File.

Motion carried.

The President of the Senate and members of the Senate appeared before the Bar of the Assembly.

Madam Speaker invited the President of the Senate to the Speaker’s rostrum.

Madam Speaker invited the members of the Senate to chairs in the Assembly.

IN JOINT SESSION

At 12:03 p.m.

President of the Senate presiding.

The Secretary of the Senate called the Senate roll.

All present.

The Chief Clerk of the Assembly called the Assembly roll.

All present except Assemblyman Hardy, who was excused.

The President of the Senate appointed a Committee on Escort consisting of Senator Nolan and Assemblyman Hogan to wait upon Senator Ensign and escort him to the Assembly Chamber.

The Committee on Escort in company with the Honorable John Ensign, United States Senator from Nevada, appeared before the Bar of the Assembly.

The Committee on Escort escorted the Senator to the rostrum.

Madam Speaker welcomed Senator Ensign and invited him to deliver his message.

John Ensign, United States Senator, delivered his message as follows:

MESSAGE TO THE LEGISLATURE OF NEVADA
SEVENTY-FIFTH SESSION, 2009

Thank you Madam Speaker and distinguished leaders, fellow legislators, and honored guests. It is wonderful to be back here. This is a great tradition that we have in the State of Nevada, being a smaller state and having all of our federal legislators being able to come before our State Legislature and be able to address you once every two years. I stand before you as a fourth generation Nevadan, and I am mindful of the chapter being written in our state's history. I am optimistic that the lesson of this challenging time will ultimately be one of resilience. It will be a story of how we launched a new era of opportunity in our great State of Nevada.

In nearly 145 years, our state has witnessed times of unprecedented growth and times of great challenge. Today, we are facing difficult times that require really tough choices and strong leadership. But we know from history that more plentiful times are as close as our vision allows. The thread that has always pulled us out of the difficult times has been a spirit of innovation that seems to breed in our state. Mining has been a bedrock of our country from the early days of Dayton and the Comstock and is still doing extremely well today. The construction of Hoover Dam in 1931 pumped millions of dollars into the local economy. That year we also ended the ban on gambling, which was a major boost to the economy and still exists today. Large-scale federal efforts also seem to flock to Nevada, like the Army Air Corp Gunnery School that became Nellis Air Force Base, which was created in 1941; Stead Air Force Base in Reno, created in 1942; and the Naval Air Station in Fallon. And in 1950, construction started on what would become the Nevada Test Site. With these projects came thousands of civilian and military workers. Their benefits continue to pay off today. Nellis Air Force Base is an example. It has pumped hundreds of millions of dollars into the economy of southern Nevada.

With the resources that we have available in our community colleges, our universities, and our facilities such as the Desert Research Institute and the Nevada Test Site, we should be opening new doors of opportunity and leading the way in renewable energy growth and development. It is time to take Nevada and make it the epicenter of scientific and technological advancement.

I was excited this week to host a renewable energy grant workshop in Reno. We had nearly 400 Nevadans who participated to learn about the grant and loan opportunities and the new changes in the tax laws that are available for renewable energy. This is a significant sign that the people of this state are embracing our new role in the future of renewable energy and are excited about its possibilities. We are definitely witnessing a change in our landscape. The era of Yucca Mountain is, by most accounts, over. For years we chipped away at the funding, and we screamed and shouted when the Department of Energy ignored science and was less than forthright. We used the justice system to keep the process open and accountable. We worked together, Republicans and Democrats, to ensure that we wouldn't be the dumping ground for the rest of the country's nuclear waste. I am looking forward to a time in the very near future when we come together, not for a ribbon-cutting ceremony at Yucca Mountain, but to put the final nail in the coffin of Yucca Mountain.

Yucca Mountain is part of our past, and a bright new future is on the horizon. More and more solar panels are popping up across our deserts. Windmills are proposed across several parts of our state, and geothermal is surging in places like Reno, Fallon, and the Dixie Valley. Several years ago, we changed the way the proceeds from geothermal energy leasing were distributed. I think that was your bill, Governor Gibbons. They were modeled after the onshore oil and gas leasing system which has so greatly benefited states like Alaska. Right now, Nevada gets about 75 percent of the proceeds derived from the sale of geothermal electricity. There is no reason why we shouldn't benefit from solar and wind projects, as well. So that is why, next week, I

will be introducing in the U.S. Senate the Renewable Energy Permitting Act. States like Nevada, with tremendous renewable energy resources and an abundance of federal land, should be able to share in the proceeds from solar and wind development. With the formula that we will utilize, the State of Nevada and local governments will be able to collect millions of dollars in revenue. I think that should be good news to bodies like this in the future.

My greatest concerns as we lay the groundwork for this new era of opportunity in Nevada are whether we will we have the scientists, the engineers, the inventors, to sustain the kind of innovation that we want to be capable of. The time has come to make waves in Nevada education. We need to shake the system to its core and to rebuild the fundamentals of the classrooms in schools. We have to do this so our students have the tools that they need to take this state beyond just words of ambition. The defeatist attitude that says that we can't change is not acceptable. And no longer can we put special interests in front of educating our children. It is time to put the students first in more than just rhetoric.

We have some tremendous examples of what happens when we give first-class educators ownership of their schools. In Las Vegas, the writing was on the chalkboard for West Middle School just a few years ago. This school was persistently dangerous and consistently the lowest performing middle school in all of southern Nevada. One hundred percent of the students came from low income households, and 92 percent of the students were either black or Hispanic. These children had not just been left behind, their futures were sort of swept under the rug for someone else to deal with. Fortunately, there are educators who will never settle for that. Associate Superintendent Dr. Edward Goldman asked to take the school under his belt. He hired a young, hungry principal named Dr. Mike Barton and made sure that the school had empowerment-level funding. He also gave Dr. Barton tremendous reign over the school. That was in April of 2006. Today, the campus known as West Prep is a study in education innovation. They extended the school day by an hour and provided a third semester of voluntary summer school, which 40 percent of the kids voluntarily signed up for. The students wear uniforms. There is a newcomer track for students who are new to the United States and aren't proficient in English. Science and math classes are divided by gender. There is a law enforcement class that collaborates with the FBI, and a men-mentoring-men program. Both are keeping kids out of the dean's office, and students feel safe to go to school. Most importantly, they are finally learning.

When I visited the school, there was a chemistry lab. There was a young, African American girl there who looked really excited to get into her experiment. I walked up to her and said, "Can I interrupt you just for a moment?" She was there before the changes were made in the school. I asked, "What is the difference between now and what it was like before?" She responded, almost shockingly, to me. "The difference is, today, we get to learn." The test results in this school reflect that learning. The school has seen phenomenal test score growth, but there is still a lot of work to do. But there is a "can do" feeling in that school that has spread throughout the whole community. The school has expanded to the eleventh grade and will graduate its first senior class next year. Dr. Barton was given the freedom to lead the school. He isn't tied down by bureaucracy. He spends most of his time in the school as opposed to going to school district meetings, which, if you have talked to school principals, they go to almost every single day.

By the way, he can get rid of teachers that are bad. As a matter of fact, when he took over the school, out of the 65-plus teachers they had at the school—before he would take over the school, it was one of the things he asked for—he wanted the teachers that actually wanted to teach. He kept about eight of them. The rest of them he recruited from around the rest of the valley, and they want to be there, helping in this education innovation. Now he has a team in place that he knows will motivate his students and help them reach their potential.

We are fortunate to have many talented educators leading our schools and in our classrooms, such as Carrie Larson of C.T. Sewell Elementary School in Las Vegas and Gayle Magee of Empire Elementary School right here in Carson City. They were both recognized last year with the prestigious Milken Educator Award. Unfortunately, not enough of them are given the freedom to make a real difference, though, in our children's lives. Some of the most proven methods of improving education are to give schools more freedom, give parents more choice, and inspire students to learn. The one way to do that is to encourage competition in our

educational system. Less than a decade ago in New York City, two out of three public schools were underperforming and graduation rates were unmoved. Under a mayor-controlled system, charter schools have expanded now from 20 to 100. With increased competition, test scores have improved, and 10,000 additional students are now graduating. In addition, the gap between African Americans and Hispanics and whites and Asians is decreasing. Arnie Duncan, our new Secretary of Education under President Obama, recently visited New York City. Based on data on charter schools, he said, "Graduation rates are up. Test scores are up. Teacher salaries are up. Social promotion was eliminated. Dramatically increasing parental choice—that's real progress."

New York City is just one of the many communities that is shaking up education, in order to improve opportunities for their students. Washington, D.C. was another one. I led an effort last month to reinstate funding for the District of Columbia Opportunity Scholarship Program, which has provided vouchers for 1,700 poor children in Washington, D.C. It is a five-year-old program. The average income of recipients' families is $23,000 a year. The overwhelming majority of them are minorities. For these students, the program is a lifeline. I had the privilege of meeting many of these students, and they are incredible kids. They are able to escape the dangers of failing schools and start planning for a future that they otherwise could not even dream of. Unfortunately, special interest politics have derailed those dreams. An effort to extend the program was killed in the U.S. Senate. Those 1,700 kids who dared to think beyond their situation now may be forced to return to their failing schools. But the lessons of that program and the children and their experiences will prevail. We cannot afford to let politics or our egos or special interests dictate our children's futures.

There is not just one good answer, one silver bullet, to the problems facing education in our state and in our country. We need a comprehensive reform that takes into account teacher merit pay, vouchers, public school choice, and charter schools. There is not one model that is right for every student. We know that. That is why we have to make different models available so that our children and our students can excel.

My son Michael is currently enrolled in a private school in LasVegas for special needs kids. We are fortunate to be able to send him to that school. While there are public schools that serve the student population, they may not be right for every student with special needs or a learning disability. That is why I will soon introduce legislation to provide scholarships for students enrolled in special education to attend private or public schools of their parent's choice. They would be federally funded scholarships, available to all students with disabilities. Each voucher would be paid entirely from a portion of federal pooled IDEA (Individuals With Disabilities Education Act) money that is provided to each state. Parents could supplement the voucher if they wish. This could be especially helpful for those students with autism spectrum disorders who often struggle to find the right educational situation. A voucher program for disabled students in Florida has proven incredibly successful.

Just as we need new models for students with disabilities, we also need a new focus on the gifted kids in our schools. Most of you are aware of the fabulous work that the Davidsons are doing at the Davidson Academy and all the special people who are there on the campus of UNR. They bring together some of the very brightest young people, and they give them the tools to learn at whatever pace they can handle. They and many others believe that it makes no sense to keep a ten-year-old in a basic math classroom when that ten-year-old can learn college calculus. Unfortunately, too many of our gifted students aren't challenged and end up being made fun of. Twenty percent of high school dropouts are gifted students. These kids are often teased and called names, instead of encouraged to reach their potential. It is often assumed that because they are gifted, they are resourceful enough to get by. Is that what we really want? For them to just get by? Instead, imagine a school system where children are allowed to learn at the pace their brain can handle. Imagine more Davidson-type academies. Imagine Nevada, our state, becoming the state that is known for encouraging gifted kids to reach their potential. By the way, it wouldn't take more money to achieve this. But we will have to rethink how we treat gifted kids. A few states have programs that are working, but no state has a comprehensive program to deal with the gifted. You have the opportunity to do that. I hope you will consider it for the future of our children and the future of our state.

The ultimate goal for all of our children needs to be focused on teaching and preparing them to be productive and contributing members of our society. And that means we also need to ramp

up efforts so that our students can compete with their peers around the world in math, science, and technology and engineering. There is no question that these are the fields of the future. As we look to make Nevada the epicenter of renewable energy and technology and medicine, we will desperately need people to fill these roles. There have been some wonderful efforts across the state and most often taken on by teachers who have inspired their students. Programs like the Nevada Regional Science Bowl and the First Robotics Competition are also igniting a passion for science and engineering that we need to continue to fan. These all seem like lofty ambitions at a time of such economic uncertainty, but we can look for innovative ways to make changes that do not deplete already desperate budgets.

There is no getting around the fact that this Legislature is facing excruciating decisions. And I know that some of you are frustrated by my opposition to the recent stimulus bill. I believe that the stimulus bill was riddled with problems. First of all, the housing crisis is at the heart of the economic downturn. I think that everyone understands that, especially here in our state. I believe that the stimulus bill should have addressed the housing problem first, and that is why I offered a bill called Fix Housing First. It would have allowed most Nevadans to refinance or buy a home at around what today would be less than a 4 percent interest rate, fixed for 30 years. The average Nevada family would have had extra income of over $400 per month for 30 years. That is money they could have counted on spending to help the economy. That would have happened, by the way, across the country. As the economy goes for the country, the economy of Nevada also goes. We would have also given a $15,000 tax credit to buy a home. It seems to make sense. Housing is hurting, and we need to stimulate home buying in the United States. Just imagine if we had 4 percent or less interest rates today and a $15,000 tax credit to buy homes. Imagine the help that would be to our state's economy as well as the economy of the United States. Instead we have the stimulus bill that passed and the spending bills that are lining up after it; these will cost future generations of Nevadans. They will provide some help. They will provide some stimulus. But I believe—and the reason I voted against it is because the long-term debt that is added on to our children and our grandchildren was not worth the price that was being paid.

You see, in Washington, D.C., we are spending money we do not have. I actually respect the job that you have. You have to balance your budget. It is a constitutional requirement. Your job is much more challenging than ours in Washington, D.C. You see, we get to print money. It's money we don't have, but we get to print it. So your job is much, much more difficult. The reality is, though, that Nevadans are hurting. They are struggling. Foreclosures, bankruptcies, unemployment—they are the buzzwords of a deep and painful recession. But they do not have to be the defining words. Instead, we can turn to the innovation that has always been our answer in difficult times. During the Fourth of July celebration of 1915, Nevada pioneer judge C.C. Goodwin made this observation about Nevada's founders: "They found some obstacles in their way, which it seemed impossible to surmount. But they surmounted them. They found some problems that it seemed impossible to solve. But they solved them."

I look forward to working with all of you to solve what seem like impossible problems of today and to overcome the obstacles which seem insurmountable. I am going to leave you with a challenge. Just as the pioneers throughout Nevada's history turned adversity into opportunity, let's see this day of hardship and difficulty as the greatest opportunity of all. We can all agree on the importance of coming together—Republicans, Democrats, Independents alike—for the future of this state and blazing a new trail forward. Nevadans deserve nothing less.

Thank you. God bless you. God bless our state and our country. Thank you.

Senator Copening moved that the Senate and Assembly in Joint Session extend a vote of thanks to Senator Ensign for his timely, able, and constructive message.

Seconded by Assemblywoman Parnell.

Motion carried unanimously.

The Committee on Escort escorted Senator Ensign to the Bar of the Assembly.

Senator Cegavske moved that the Joint Session be dissolved.
Seconded by Assemblyman Cobb.
Motion carried.

Joint Session dissolved at 12:30 p.m.

ASSEMBLY IN SESSION

At 12:40 p.m.
Madam Speaker presiding.
Quorum present.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblywoman McClain moved that Assembly Bill No. 267 be taken from the General File and placed on the Chief Clerk's desk.
Motion carried.

SECOND READING AND AMENDMENT

Assembly Bill No. 46.
Bill read second time.
The following amendment was proposed by the Committee on Judiciary:
Amendment No. 213.

AN ACT relating to firearms; requiring a court to transmit certain records of adjudication concerning a person's mental health to the Central Repository for Nevada Records of Criminal History for certain purposes relating to the purchase or possession of a firearm; establishing procedures for those persons to petition a court to regain certain rights relating to the purchase or possession of a firearm; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Federal law requires states to transmit to the National Instant Criminal Background Check System records of adjudication of mental illness or incompetence, involuntary admission to mental health facilities and other records which indicate a person is prohibited from purchasing a firearm. Federal law also requires states to implement a program by which a person who was previously adjudicated mentally ill or involuntarily committed can apply to have his right to possess a firearm restored and ties this requirement to certain federal funding for states under the NICS Improvement Amendments Act of 2007. (Public Law 110-180) Nevada law prohibits a person from owning or possessing a firearm if he has been adjudicated as mentally ill or has been committed to any mental health facility. (NRS 202.360)

Sections 1-4 ~~[, 11]~~ and 13 of this bill require a court to transmit to the Central Repository for Nevada Records of Criminal History a record of any court order, judgment, plea or verdict concerning the involuntary admission of a person to a mental health facility, the appointment of a guardian for a person who has a mental defect, a finding that a person is incompetent to

stand trial, a verdict acquitting a person by reason of insanity or a plea of guilty but mentally ill, along with a statement that the record is being transmitted for inclusion in all appropriate databases of the National Instant Criminal Background Check System. (NRS 159.055, 174.035, 175.533, 175.539, 178.425, 433A.310)

Section 7 of this bill requires the Central Repository to take reasonable steps to ensure that the records transmitted to it by the court are included in each appropriate database of the National Instant Criminal Background Check System. In accordance with federal law, this section also provides a procedure for a person who is the subject of such a record to petition a court to have the record removed from the National Instant Criminal Background Check System and to have his right to possess or purchase a firearm restored.

Section 8 of this bill provides that the records transmitted by the court to the Central Repository are confidential, may not be used for any purpose other than for inclusion in each appropriate database of the National Instant Criminal Background Check System, and no cause of action **for damages** may be brought for transmission, failure to transmit, delay in transmitting or inaccuracies within such records.

Section 8.5 of this bill authorizes a person who is or believes he is the subject of a record of mental health held by the Central Repository to inspect and correct such records. This section, which is modeled after NRS 179A.150, also requires the Central Repository and the Director of the Department of Public Safety to adopt certain regulations relating to the inspection and correction of such records.

Section ~~[10]~~ 11.5 of this bill **~~[amends existing law to authorize]~~ requires** a court **, when appointing a general guardian,** to **~~[find that]~~ determine whether** a proposed ward is a person with a mental defect who is prohibited from possessing a firearm pursuant to federal law. **~~[(NRS 159.044, 159.055)]~~**

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

Section 1. NRS 174.035 is hereby amended to read as follows:

174.035 1. A defendant may plead not guilty, guilty, guilty but mentally ill or, with the consent of the court, nolo contendere. The court may refuse to accept a plea of guilty or guilty but mentally ill.

2. If a plea of guilty or guilty but mentally ill is made in a written plea agreement, the agreement must be in substantially the form prescribed in NRS 174.063. If a plea of guilty or guilty but mentally ill is made orally, the court shall not accept such a plea or a plea of nolo contendere without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and consequences of the plea.

3. With the consent of the court and the district attorney, a defendant may enter a conditional plea of guilty, guilty but mentally ill or nolo contendere, reserving in writing the right, on appeal from the judgment, to a

review of the adverse determination of any specified pretrial motion. A defendant who prevails on appeal must be allowed to withdraw the plea.

4. A plea of guilty but mentally ill must be entered not less than 21 days before the date set for trial. A defendant who has entered a plea of guilty but mentally ill has the burden of establishing his mental illness by a preponderance of the evidence. Except as otherwise provided by specific statute, a defendant who enters such a plea is subject to the same criminal, civil and administrative penalties and procedures as a defendant who pleads guilty.

5. The defendant may, in the alternative or in addition to any one of the pleas permitted by subsection 1, plead not guilty by reason of insanity. A plea of not guilty by reason of insanity must be entered not less than 21 days before the date set for trial. A defendant who has not so pleaded may offer the defense of insanity during trial upon good cause shown. Under such a plea or defense, the burden of proof is upon the defendant to establish by a preponderance of the evidence that:

(a) Due to a disease or defect of the mind, he was in a delusional state at the time of the alleged offense; and

(b) Due to the delusional state, he either did not:

(1) Know or understand the nature and capacity of his act; or

(2) Appreciate that his conduct was wrong, meaning not authorized by law.

6. If a defendant refuses to plead or if the court refuses to accept a plea of guilty or guilty but mentally ill or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

7. A defendant may not enter a plea of guilty or guilty but mentally ill pursuant to a plea bargain for an offense punishable as a felony for which:

(a) Probation is not allowed; or

(b) The maximum prison sentence is more than 10 years,

➥ unless the plea bargain is set forth in writing and signed by the defendant, the defendant's attorney, if he is represented by counsel, and the prosecuting attorney.

8. ***If the court accepts a plea of guilty but mentally ill pursuant to this section, the court shall cause*** ***, on a form prescribed by the Department of Public Safety,*** ***a record of that plea to be transmitted to the Central Repository for Nevada Records of Criminal History along with a statement indicating that the record is being transmitted for inclusion in each appropriate database of the National Instant Criminal Background Check System.***

9. As used in this section ~~[, a "disease]~~ ***:***

(a) "Disease or defect of the mind" does not include a disease or defect which is caused solely by voluntary intoxication.

(b) "National Instant Criminal Background Check System" has the meaning ascribed to it in section 6 of this act.

Sec. 2. NRS 175.533 is hereby amended to read as follows:

175.533 1. During a trial, upon a plea of not guilty by reason of insanity, the trier of fact may find the defendant guilty but mentally ill if the trier of fact finds all of the following:

(a) The defendant is guilty beyond a reasonable doubt of an offense;

(b) The defendant has established by a preponderance of the evidence that due to a disease or defect of the mind, he was mentally ill at the time of the commission of the offense; and

(c) The defendant has not established by a preponderance of the evidence that he is not guilty by reason of insanity pursuant to subsection 5 of NRS 174.035.

2. Except as otherwise provided by specific statute, a defendant who is found guilty but mentally ill is subject to the same criminal, civil and administrative penalties and procedures as a defendant who is found guilty.

3. ***If the trier of fact finds a defendant guilty but mentally ill pursuant to subsection 1, the court shall cause , on a form prescribed by the Department of Public Safety, a record of the finding to be transmitted to the Central Repository for Nevada Records of Criminal History, along with a statement indicating that the record is being transmitted for inclusion in each appropriate database of the National Instant Criminal Background Check System.***

4. As used in this section ~~[, a "disease]~~ ***:***

(a) "Disease or defect of the mind" does not include a disease or defect which is caused solely by voluntary intoxication.

(b) "National Instant Criminal Background Check System" has the meaning ascribed to it in section 6 of this act.

Sec. 3. NRS 175.539 is hereby amended to read as follows:

175.539 1. Where on a trial a defense of insanity is interposed by the defendant and he is acquitted by reason of that defense, the finding of the jury pending the judicial determination pursuant to subsection 2 has the same effect as if he were regularly adjudged insane, and the judge must:

(a) Order a peace officer to take the person into protective custody and transport him to a forensic facility for detention pending a hearing to determine his mental health;

(b) Order the examination of the person by two psychiatrists, two psychologists, or one psychiatrist and one psychologist who are employed by a division facility; and

(c) At a hearing in open court, receive the report of the examining advisers and allow counsel for the State and for the person to examine the advisers, introduce other evidence and cross-examine witnesses.

2. If the court finds, after the hearing:

(a) That there is not clear and convincing evidence that the person is a person with mental illness, the court must order his discharge; or

(b) That there is clear and convincing evidence that the person is a person with mental illness, the court must order that he be committed to the custody of the Administrator of the Division of Mental Health and Developmental

Services of the Department of Health and Human Services until he is discharged or conditionally released therefrom in accordance with NRS 178.467 to 178.471, inclusive.

➥ The court shall issue its finding within 90 days after the defendant is acquitted.

3. The Administrator shall make the reports and the court shall proceed in the manner provided in NRS 178.467 to 178.471, inclusive.

4. ***If the court accepts a verdict acquitting a defendant by reason of insanity pursuant to this section, the court shall cause , on a form prescribed by the Department of Public Safety, a record of that verdict to be transmitted to the Central Repository for Nevada Records of Criminal History, along with a statement indicating that the record is being transmitted for inclusion in each appropriate database of the National Instant Criminal Background Check System.***

5. As used in this section, unless the context otherwise requires:

(a) "Division facility" has the meaning ascribed to it in NRS 433.094.

(b) "Forensic facility" means a secure facility of the Division of Mental Health and Developmental Services of the Department of Health and Human Services for offenders and defendants with mental disorders. The term includes, without limitation, Lakes Crossing Center.

(c) ***"National Instant Criminal Background Check System" has the meaning ascribed to it in section 6 of this act.***

(d) "Person with mental illness" has the meaning ascribed to it in NRS 178.3986.

Sec. 4. NRS 178.425 is hereby amended to read as follows:

178.425 1. If the court finds the defendant incompetent, and that he is dangerous to himself or to society and that commitment is required for a determination of his ability to receive treatment to competency and to attain competence, the judge shall order the sheriff to convey the defendant forthwith, together with a copy of the complaint, the commitment and the physicians' certificate, if any, into the custody of the Administrator or his designee for detention and treatment at a division facility that is secure. The order may include the involuntary administration of medication if appropriate for treatment to competency.

2. The defendant must be held in such custody until a court orders his release or until he is returned for trial or judgment as provided in NRS 178.450, 178.455 and 178.460.

3. If the court finds the defendant incompetent but not dangerous to himself or to society, and finds that commitment is not required for a determination of the defendant's ability to receive treatment to competency and to attain competence, the judge shall order the defendant to report to the Administrator or his designee as an outpatient for treatment, if it might be beneficial, and for a determination of his ability to receive treatment to competency and to attain competence. The court may require the defendant

to give bail for his periodic appearances before the Administrator or his designee.

4. Except as otherwise provided in subsection 5, proceedings against the defendant must be suspended until the Administrator or his designee or, if the defendant is charged with a misdemeanor, the judge finds him capable of standing trial or opposing pronouncement of judgment as provided in NRS 178.400.

5. Whenever the defendant has been found incompetent, with no substantial probability of attaining competency in the foreseeable future, and released from custody or from obligations as an outpatient pursuant to paragraph (d) of subsection 4 of NRS 178.460, the proceedings against the defendant which were suspended must be dismissed. No new charge arising out of the same circumstances may be brought after a period, equal to the maximum time allowed by law for commencing a criminal action for the crime with which the defendant was charged, has lapsed since the date of the alleged offense.

6. If a defendant is found incompetent pursuant to this section, the court shall cause , on a form prescribed by the Department of Public Safety, a record of that finding to be transmitted to the Central Repository for Nevada Records of Criminal History, along with a statement indicating that the record is being transmitted for inclusion in each appropriate database of the National Instant Criminal Background Check System.

7. As used in this section, "National Instant Criminal Background Check System" has the meaning ascribed to it in section 6 of this act.

Sec. 5. Chapter 179A of NRS is hereby amended by adding thereto the provisions set forth as sections 6 ~~[, 7 and 8]~~ to 8.5, inclusive, of this act.

Sec. 6. ***"National Instant Criminal Background Check System" means the national system created by the federal Brady Handgun Violence Prevention Act, Public Law 103-159.***

Sec. 7. ***1. Upon receiving a record transmitted pursuant to NRS ~~[159.055,]~~ 174.035, 175.533, 175.539, 178.425 or 433A.310 ~~[,]~~ or section 11.5 of this act, the Central Repository shall take reasonable steps to ensure that the information reported in the record is included in each appropriate database of the National Instant Criminal Background Check System.***

2. ~~[If]~~ Except as otherwise provided in subsection 3, if the Central Repository receives a record described in subsection 1, the person who is the subject of the record may petition the court for an order declaring that:

(a) The basis for the adjudication reported in the record no longer exists;

(b) The adjudication reported in the record is deemed not to have occurred for purposes of 18 U.S.C. § 922(d)(4) and (g)(4) and NRS 202.360; and

(c) The information reported in the record must be removed from the National Instant Criminal Background Check System.

3. To the extent authorized by federal law, if the record concerning the petitioner was transmitted to the Central Repository pursuant to NRS 174.035, 175.533, 175.539, 178.425 or 433A.310, the petitioner may not file a petition pursuant to subsection 2 until 5 years after the date of the order transmitting the record to the Central Repository.

4. A petition filed pursuant to subsection 2 must be:

(a) Filed in the court which made the adjudication or finding pursuant to NRS 174.035, 175.533, 175.539, 178.425 or 433A.310 or section 11.5 of this act; and

(b) Served upon the district attorney for the county in which the court described in paragraph (a) is located.

5. The court shall grant the petition and issue the order described in subsection 2 if the court finds that the petitioner has established that:

(a) The basis for the adjudication or finding made pursuant to NRS [159.055,] 174.035, 175.533, 175.539, 178.425 or 433A.310 or section 11.5 of this act concerning the petitioner no longer exists;

(b) The petitioner's record and reputation indicate that the petitioner is not likely to act in a manner dangerous to public safety; and

(c) Granting the relief requested by the petitioner pursuant to subsection 2 is not contrary to the public interest.

[4.] 6. Except as otherwise provided in this subsection, the petitioner must establish the provisions of subsection [3] 5 by a preponderance of the evidence. If the adjudication or finding concerning the petitioner was made pursuant to NRS [159.055 or] 433A.310 [,] or section 11.5 of this act, the petitioner must establish the provisions of subsection [3] 5 by clear and convincing evidence.

[5.] 7. The court, upon entering an order pursuant to this section, shall cause , on a form prescribed by the Department of Public Safety, a record of the order to be transmitted to the Central Repository.

[6. Upon] *8. Within 5 business days after receiving a record of an order transmitted pursuant to subsection [5,] 7, the Central Repository shall take reasonable steps to ensure that information concerning the adjudication or finding made pursuant to NRS [159.055,] 174.035, 175.533, 175.539, 178.425 or 433A.310 or section 11.5 of this act is removed from the National Instant Criminal Background Check System.*

9. If the Central Repository fails to remove a record as provided in subsection 8, the petitioner may bring an action to compel the removal of the record. If the petitioner prevails in the action, the court may award the petitioner reasonable attorney's fees and costs incurred in bringing the action.

10. If a petition brought pursuant to subsection 2 is denied, the person who is the subject of the record may petition for a rehearing not sooner than 2 years after the date of the denial of the petition.

Sec. 8. *1. Any record described in section 7 of this act is confidential and is not a public book or record within the meaning of NRS 239.010. A*

person may not use the record for any purpose other than for inclusion in the appropriate database of the National Instant Criminal Background Check System.

2. If a person or governmental entity is required to transmit, report or take any other action concerning a record pursuant to NRS ~~[159.055,]~~ 174.035, 175.533, 175.539, 178.425 or 433A.310 or section 7 or 11.5 of this act, no ~~[cause of]~~ action for damages may be brought against the person or governmental entity for:

(a) Transmitting or reporting the record or taking any other required action concerning the record;

(b) Failing to transmit or report the record or failing to take any other required action concerning the record;

(c) Delaying the transmission or reporting of the record or delaying in taking any other required action concerning the record; or

(d) Transmitting or reporting an inaccurate or incomplete version of the record or taking any other required action concerning an inaccurate or incomplete version of the record.

Sec. 8.5. 1. The Central Repository shall permit a person who is or believes he may be the subject of information relating to records of mental health held by the Central Repository to inspect and correct any information contained in such records.

2. The Central Repository shall adopt regulations and make available necessary forms to permit inspection, review and correction of information relating to records of mental health by those persons who are the subjects thereof. The regulations must specify:

(a) The requirements for proper identification of the persons seeking access to the records; and

(b) The reasonable charges or fees, if any, for inspecting records.

3. The Director of the Department shall adopt regulations governing:

(a) All challenges to the accuracy or sufficiency of information or records of mental health by the person who is the subject of the allegedly inaccurate or insufficient record;

(b) The correction of any information relating to records of mental health found by the Director to be inaccurate, insufficient or incomplete in any material respect;

(c) The dissemination of corrected information to those persons or agencies which have previously received inaccurate or incomplete information; and

(d) A reasonable time limit within which inaccurate or insufficient information relating to records of mental health must be corrected and the corrected information disseminated.

4. As used in this section, "information relating to records of mental health" means information contained in a record:

(a) Transmitted to the Central Repository pursuant to NRS 174.035, 175.533, 175.539, 178.425 or 433A.310 or section 11.5 of this act; or

(b) Transmitted to the National Instant Criminal Background Check System pursuant to section 7 of this act.

Sec. 9. NRS 179A.010 is hereby amended to read as follows:

179A.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 179A.020 to 179A.073, inclusive, ***and section 6 of this act*** have the meanings ascribed to them in those sections.

Sec. 10. ~~[NRS 159.044 is hereby amended to read as follows:~~

~~159.044 1. Except as otherwise provided in NRS 127.045, a proposed ward, a governmental agency, a nonprofit corporation or any interested person may petition the court for the appointment of a guardian.~~

~~2. To the extent the petitioner knows or reasonably may ascertain or obtain, the petition must include, without limitation:~~

~~(a) The name and address of the petitioner.~~

~~(b) The name, date of birth and current address of the proposed ward.~~

~~(c) A copy of one of the following forms of identification of the proposed ward which must be placed in the records relating to the guardianship proceeding and, except as otherwise provided in NRS 239.0115 or as otherwise required to carry out a specific statute, maintained in a confidential manner:~~

~~(1) A social security number;~~

~~(2) A taxpayer identification number;~~

~~(3) A valid driver's license number;~~

~~(4) A valid identification card number; or~~

~~(5) A valid passport number.~~

~~If the information required pursuant to this paragraph is not included with the petition, the information must be provided to the court not later than 120 days after the appointment of a guardian or as otherwise ordered by the court.~~

~~(d) If the proposed ward is a minor, the date on which he will attain the age of majority and:~~

~~(1) Whether there is a current order concerning custody and, if so, the state in which the order was issued; and~~

~~(2) Whether the petitioner anticipates that the proposed ward will need guardianship after attaining the age of majority.~~

~~(e) Whether the proposed ward is a resident or nonresident of this State.~~

~~(f) The names and addresses of the spouse of the proposed ward and the relatives of the proposed ward who are within the second degree of consanguinity.~~

~~(g) The name, date of birth and current address of the proposed guardian. If the proposed guardian is a private professional guardian, the petition must include proof that the guardian meets the requirements of NRS 159.0595. If the proposed guardian is not a private~~

~~professional guardian, the petition must include a statement that the guardian currently is not receiving compensation for services as a guardian to more than one ward who is not related to the person by blood or marriage.~~

~~(h) A copy of one of the following forms of identification of the proposed guardian which must be placed in the records relating to the guardianship proceeding and, except as otherwise provided in NRS 239.0115 or as otherwise required to carry out a specific statute, maintained in a confidential manner:~~

~~(1) A social security number;~~

~~(2) A taxpayer identification number;~~

~~(3) A valid driver's license number;~~

~~(4) A valid identification card number; or~~

~~(5) A valid passport number.~~

~~(i) Whether the proposed guardian has ever been convicted of a felony and, if so, information concerning the crime for which he was convicted and whether the proposed guardian was placed on probation or parole.~~

~~(j) A summary of the reasons why a guardian is needed and recent documentation demonstrating the need for a guardianship. The documentation may include, without limitation:~~

~~(1) A certificate signed by a physician who is licensed to practice medicine in this State stating the need for a guardian;~~

~~(2) A letter signed by any governmental agency in this State which conducts investigations stating the need for a guardian; or~~

~~(3) A certificate signed by any other person whom the court finds qualified to execute a certificate stating the need for a guardian.~~

~~(k) Whether the appointment of a general or a special guardian is sought.~~

~~(l) A general description and the probable value of the property of the proposed ward and any income to which the proposed ward is or will be entitled, if the petition is for the appointment of a guardian of the estate or a special guardian. If any money is paid or is payable to the proposed ward by the United States through the Department of Veterans Affairs, the petition must so state.~~

~~(m) The name and address of any person or care provider having the care, custody or control of the proposed ward.~~

~~(n) The relationship, if any, of the petitioner to the proposed ward and the interest, if any, of the petitioner in the appointment.~~

~~(o) Requests for any of the specific powers set forth in NRS 159.117 to 159.175, inclusive, necessary to enable the guardian to carry out the duties of the guardianship.~~

~~(p) Whether the guardianship is sought as the result of an investigation of a report of abuse or neglect that is conducted pursuant to chapter 432B of NRS by an agency which provides child welfare~~

~~services. As used in this paragraph, "agency which provides child welfare services" has the meaning ascribed to it in NRS 432B.030.~~

~~(q) Whether the proposed ward is a party to any pending criminal or civil litigation.~~

~~(r) Whether the guardianship is sought for the purpose of initiating litigation.~~

~~(s) Whether the proposed ward has executed a durable power of attorney for health care, a durable power of attorney for financial matters or a written nomination of guardian and, if so, who the named agents are for each document.~~

~~3. The petition may include a request that the court determine whether the proposed ward is a person with a mental defect who is prohibited from possessing a firearm pursuant to 18 U.S.C. § 922(d)(4) or (g)(4).~~

~~4. As used in this section, "person with a mental defect" means a person who, as a result of marked subnormal intelligence, mental illness, incompetence, condition or disease, is:~~

~~(a) A danger to himself or others; or~~

~~(b) Lacks the capacity to contract or manage his own affairs.]~~ (Deleted by amendment.)

Sec. 11. ~~[NRS 159.055 is hereby amended to read as follows:~~

~~159.055 1. The petitioner has the burden of proving by clear and convincing evidence that the appointment of a guardian of the person, of the estate, or of the person and estate is necessary.~~

~~2. If it appears to the court that the allegations of the petition are sufficient and that a guardian should be appointed for the proposed ward, the court shall enter an order appointing a guardian. The order must:~~

~~(a) Specify whether the guardian appointed is guardian of the person, of the estate, of the person and estate or a special guardian;~~

~~(b) Specify whether the ward is a resident or nonresident of this State;~~

~~(c) Specify the amount of the bond to be executed and filed by the guardian; and~~

~~(d) Designate the names and addresses, so far as may be determined, of:~~

~~(1) The relatives of the proposed ward upon whom notice must be served pursuant to NRS 159.047; and~~

~~(2) Any other interested person.~~

~~3. A notice of entry of the court order must be sent to:~~

~~(a) The relatives of the proposed ward upon whom notice must be served pursuant to NRS 159.047; and~~

~~(b) Any other interested person.~~

~~4. If requested pursuant to subsection 3 of NRS 159.044, the court shall determine, by clear and convincing evidence, whether the proposed ward is a person with a mental defect who is prohibited from possessing~~

~~a firearm pursuant to 18 U.S.C. § 922(d)(4) or (g)(4). If a court makes a finding pursuant to this subsection that the proposed ward is a person with a mental defect, the court shall cause an order described in this section to be transmitted to the Central Repository for Nevada Records of Criminal History, along with a statement indicating that the record is being transmitted for inclusion in each appropriate database of the National Instant Criminal Background Check System.~~

~~5. As used in this section:~~

~~(a) "National Instant Criminal Background Check System" has the meaning ascribed to it in section 6 of this act.~~

~~(b) "Person with a mental defect" has the meaning ascribed to it in NRS 159.044.~~] (Deleted by amendment.)

Sec. 11.5. Chapter 159 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If the court orders a general guardian appointed for a proposed ward, the court shall determine, by clear and convincing evidence, whether the proposed ward is a person with a mental defect who is prohibited from possessing a firearm pursuant to 18 U.S.C. § 922(d)(4) or (g)(4). If a court makes a finding pursuant to this section that the proposed ward is a person with a mental defect, the court shall include the finding in the order appointing the guardian and cause a record of the order to be transmitted to the Central Repository for Nevada Records of Criminal History, along with a statement indicating that the record is being transmitted for inclusion in each appropriate database of the National Instant Criminal Background Check System.

2. As used in this section:

(a) "National Instant Criminal Background Check System" has the meaning ascribed to it in section 6 of this act.

(b) "Person with a mental defect" means a person who, as a result of marked subnormal intelligence, mental illness, incompetence, condition or disease, is:

(1) A danger to himself or others; or

(2) Lacks the capacity to contract or manage his own affairs.

Sec. 12. NRS 202.362 is hereby amended to read as follows:

202.362 1. Except as otherwise provided in subsection 3, a person within this State shall not sell or otherwise dispose of any firearm or ammunition to another person if he has actual knowledge that the other person:

(a) Is under indictment for, or has been convicted of, a felony in this or any other state, or in any political subdivision thereof, or of a felony in violation of the laws of the United States of America, unless he has received a pardon and the pardon does not restrict his right to bear arms;

(b) Is a fugitive from justice;

(c) Has been adjudicated as mentally ill or has been committed to any mental health facility; or

(d) Is illegally or unlawfully in the United States.

2. A person who violates the provisions of subsection 1 is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years, and may be further punished by a fine of not more than $10,000.

3. This section does not apply to a person who sells or disposes of any firearm or ammunition to:

(a) A licensed importer, licensed manufacturer, licensed dealer or licensed collector who, pursuant to 18 U.S.C. § 925(b), is not precluded from dealing in firearms or ammunition; or

(b) A person who has been granted relief from the disabilities imposed by federal laws pursuant to 18 U.S.C. § 925(c) ~~[.]~~ ***or section 7 of this act.***

Sec. 13. NRS 433A.310 is hereby amended to read as follows:

433A.310 1. Except as otherwise provided in NRS 432B.6076 and 432B.6077, if the district court finds, after proceedings for the involuntary court-ordered admission of a person to a public or private mental health facility:

(a) That there is not clear and convincing evidence that the person with respect to whom the hearing was held has a mental illness or exhibits observable behavior such that he is likely to harm himself or others if allowed his liberty, the court shall enter its finding to that effect and the person must not be involuntarily detained in such a facility.

(b) That there is clear and convincing evidence that the person with respect to whom the hearing was held has a mental illness and, because of that illness, is likely to harm himself or others if allowed his liberty, the court may order the involuntary admission of the person for the most appropriate course of treatment. The order of the court must be interlocutory and must not become final if, within 30 days after the involuntary admission, the person is unconditionally released pursuant to NRS 433A.390.

2. Except as otherwise provided in NRS 432B.608, an involuntary admission pursuant to paragraph (b) of subsection 1 automatically expires at the end of 6 months if not terminated previously by the medical director of the public or private mental health facility as provided for in subsection 2 of NRS 433A.390. Except as otherwise provided in NRS 432B.608, at the end of the court-ordered period of treatment, the Division or any mental health facility that is not operated by the Division may petition to renew the detention of the person for additional periods not to exceed 6 months each. For each renewal, the petition must set forth to the court specific reasons why further treatment would be in the person's own best interests.

3. Before issuing an order for involuntary admission or a renewal thereof, the court shall explore other alternative courses of treatment within the least restrictive appropriate environment as suggested by the evaluation team who evaluated the person, or other persons professionally qualified in

the field of psychiatric mental health, which the court believes may be in the best interests of the person.

4. If the court issues an order involuntarily admitting a person to a public or private mental health facility pursuant to this section, the court shall , notwithstanding the provisions of NRS 433A.715, cause , on a form prescribed by the Department of Public Safety, a ~~[copy]~~ record of such order to be transmitted to the Central Repository for Nevada Records of Criminal History, along with a statement indicating that the record is being transmitted for inclusion in each appropriate database of the National Instant Criminal Background Check System.

5. As used in this section, "National Instant Criminal Background Check System" has the meaning ascribed to it in section 6 of this act.

Sec. 14. The provisions of NRS 354.599 do not apply to any additional expenses of a local government that are related to the provisions of this act.

Sec. 15. This act becomes effective on January 1, 2010.

Assemblyman Segerblom moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 48.

Bill read second time.

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

Amendment No. 125.

AN ACT relating to public works; allowing a public body to resolve a dispute arising between the public body and the contractor engaged on a public work by way of ~~[processes other than arbitration;]~~ **methods of alternate dispute resolution;** and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, a contract for a public work must include a provision that requires arbitration of a dispute between the public body and the contractor engaged on the public work. (NRS 338.150) This bill ~~[makes the inclusion of such a]~~ **revises the requirement of that** provision ~~[discretionary, thus allowing]~~ **to allow** the public body and the contractor to resolve a dispute relating to the contract for the public work by way of ~~[processes other than arbitration.]~~ **methods of alternate dispute resolution.**

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

Section 1. NRS 338.150 is hereby amended to read as follows:

338.150 1. ~~[Except as otherwise provided in subsection 3, any]~~ ***A*** public body charged with the drafting of specifications for a public work shall ~~*[may]*~~ include in the specifications a clause requiring ~~[arbitration of]~~ ***the use of a method of alternate dispute resolution before initiation of a***

judicial action if a dispute arising between the public body and the contractor engaged on a public work ~~[if the dispute]~~ cannot otherwise be settled.

2. ~~[Any dispute requiring arbitration must be handled in accordance with the construction industry's rules for arbitration as administered by the American Arbitration Association or the Nevada Arbitration Association.~~

~~3.]~~ The provisions of subsection 1 do not require the Department of Transportation to include such a clause in any contract entered into by the Department.

~~[4. This section does not prohibit the use of]~~ ~~*[If a clause requiring arbitration of a dispute arising between a public body and a contractor is included in the specifications for a public work as allowed pursuant to subsection 1, the public body and the contractor are not prohibited from using*~~ alternate dispute resolution methods before arbitration.~~*]*~~

Sec. 2. This act becomes effective upon passage and approval.

Assemblyman Bobzien moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 80.

Bill read second time.

The following amendment was proposed by the Committee on Health and Human Services:

Amendment No. 330.

AN ACT relating to excavations; setting forth the duties of an operator of a sewer main with respect to a sewer service lateral connected to that sewer main; revising provisions relating to the operators of subsurface installations; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 4 of this bill sets forth the duties and rights of an operator of a sewer main with respect to a sewer service lateral connected to that sewer main when he is notified of a proposed excavation or demolition by an association for operators. **Section 4** also authorizes an operator of a sewer main, which may be a local government, to require the person responsible for the excavation or demolition to reimburse any costs incurred by the operator to locate and identify the connection . ~~[in an amount not exceeding $200 for each connection.~~

~~Section 5 of this bill requires a person conducting an excavation or demolition to provide certain information to the operator of a sewer main upon the location and identification of a connection of a sewer service lateral to the sewer main.]~~

Section 6 of this bill requires the operator of a sewer main to maintain certain information relating to the locations of connections of sewer service laterals to the sewer main.

Section 7 of this bill establishes limitations on the duties and responsibilities of an operator of a sewer main with respect to a connection of a sewer service lateral to the sewer main.

Section 12 of this bill sets forth the duties of a person who connects a sewer service lateral to a sewer main. (NRS 455.131)

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

Section 1. Chapter 455 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this act.

Sec. 2. ***"Sewer main" means a sewer line with a diameter that exceeds 6 inches.***

Sec. 3. ***"Sewer service lateral" means a pipe or conduit that connects a building or other property to a sewer main.***

Sec. 4. ~~*[1.]*~~ ***If an operator of a sewer main receives notice through an association for operators pursuant to paragraph (a) of subsection 1 of NRS 455.110:***

~~*[(a) For a sewer service lateral that was connected to the sewer main before October 1, 2009:*~~

~~*(1) For a proposed excavation or demolition which will be conducted by trenching, the operator of the sewer main shall make available to the person responsible for the excavation or demolition, for the purposes of inspection and making copies, documents in the possession of the operator showing the location of the connection of the sewer service lateral to the sewer main, including, without limitation, maps, drawings and diagrams. If the operator possesses no such documents, the operator shall provide the person responsible for the excavation or demolition with written notice that the operator does not have any such documents in his possession. If the operator complies with the provisions of this subparagraph, the operator shall not have any other duty or requirement with respect to locating or identifying the connection of the sewer service lateral to the sewer main.*~~

~~*(2)*~~ ***1. For a proposed excavation or demolition*** **,** ~~*[which will be conducted by a method not involving trenching,]*~~ ***the operator of the sewer main shall provide the person responsible for the excavation or demolition with the operator's best available information regarding the location of the connection of the sewer service lateral to the sewer main. The operator shall convey the information to the person responsible for the excavation or demolition in such manner as is determined by the operator which may include any one or more of the following methods, without limitation:***

~~*[(I)]*~~ ***(a) Identification of the location of the connection of the sewer service lateral to the sewer main;***

~~*[(II)]*~~ ***(b) Providing copies of documents relating to the location of the sewer service lateral within*** ~~*[a reasonable period of time;]*~~ ***2 working days; or***

~~*[(III) Arranging to meet the person responsible for the excavation or demolition at the site of the proposed excavation or demolition to provide the best available information regarding the location of the connection of the sewer service lateral to the sewer main; or*~~

~~*(IV)]*~~ ***(c) Placement of a triangular green marking along the sewer main*** ~~*[,]*~~ ***or the edge of the public right-of-way, pointing toward the real property serviced by the sewer service lateral to indicate that the location of the sewer service lateral is unknown.***

~~*[(b) For a sewer service lateral that was connected to the sewer main on or after October 1, 2009, the operator of the sewer main shall locate and identify the sewer service lateral that is affected by the proposed excavation or demolition. The information to be provided pursuant to this paragraph by the operator to the person responsible for the excavation or demolition includes, without limitation, the locations at which the sewer service lateral:*~~

~~*(1) Is connected to the sewer main; and*~~

~~*(2) Exits the real property on which the sewer main is installed.]*~~

2. ~~*[The operator of the sewer main and the person who contacted the association for operators shall mutually agree to a reasonable amount of time within which the operator shall comply with subsection 1.]*~~ ***The operator of a sewer main shall make its best efforts to comply with paragraph (a) or (c) of subsection 1 within 2 working days. If an operator of a sewer main cannot complete the requirements of paragraph (a) or (c) of subsection 1 within 2 working days, then the operator and the person responsible for the excavation or demolition must mutually agree upon a reasonable amount of time within which the operator must comply.***

3. ~~*[If an operator of a sewer main locates and identifies the connection of a sewer service lateral to the sewer main pursuant to subparagraph (2) of paragraph (a) of subsection 1, the operator may require the person who is responsible for the excavation or demolition to reimburse the operator for the costs incurred by the operator to locate and identify the connection in an amount that is not more than $200 for each connection which is so located and identified.]*~~ ***A government, governmental agency or political subdivision of a government that operates a sewer main may charge a person responsible for excavation or demolition in a public right-of-way for complying with this section in an amount that does not exceed the actual costs for the operator for compliance with this section. Costs assessed pursuant to this subsection are not subject to the provisions of NRS 354.59881 to 354.59889, inclusive.***

4. If the operator of a sewer main has received the information required pursuant to NRS 455.131 or has otherwise identified the location of the sewer service lateral in the public right-of-way, then the operator of the sewer main shall be responsible thereafter to identify the location of the sewer service lateral from that information.

Sec. 5. ~~***[A person conducting an excavation or demolition who locates and identifies the location of a connection of a sewer service lateral to a***~~

~~*sewer main shall provide the operator of the sewer main with written information describing the location of the connection, including, without limitation, global positioning system coordinates which:*~~

~~*1. Are either identified by latitude and longitude using decimal degrees or are identified using coordinates of the Universal Transverse Mercator system; and*~~

~~*2. Specify for each coordinate whether the North American Datum of 1927, North American Datum of 1983 or the World Geodetic System 1984 was used.]*~~ **(Deleted by amendment.)**

Sec. 6. ***An operator of a sewer main shall maintain all information relating to the locations of connections of sewer service laterals to the sewer main:***

1. Developed by the operator pursuant to section 4 of this act; or

2. Provided to the operator pursuant to ~~*[:*~~

~~*(a) Subsection]*~~ ***subsection 2 of NRS 455.131*** ~~*[; or*~~

~~*(b) Section 5 of this act.]*~~

Sec. 7. ~~*[1. Except as otherwise provided by law or in sections 4 and 6 of this act, an operator of a sewer main shall not have pursuant to this chapter any duty with respect to a connection of a sewer service lateral to the sewer main if the operator of the sewer main is not the operator of the sewer service lateral.*~~

~~*2.]*~~ ***An operator of a sewer main who is not otherwise required by law to be responsible for the maintenance, operation, ownership or repair*** ~~*[of a connection]*~~ ***of a sewer service lateral that connects to the sewer main does not assume any further duty with respect to a sewer service lateral pursuant to this chapter nor become responsible for the maintenance, operation, ownership or repair*** ~~*[of the connection]*~~ ***of the sewer service lateral that connects to the sewer main solely because the operator complied with the provisions of NRS 455.080 to 455.180, inclusive, and sections 2 to 7, inclusive, of this act.***

Sec. 8. NRS 455.080 is hereby amended to read as follows:

455.080 As used in NRS 455.080 to 455.180, inclusive, ***and sections 2 to 7, inclusive, of this act,*** unless the context otherwise requires, the words and terms defined in NRS 455.082 to 455.105, inclusive, ***and sections 2 and 3 of this act*** have the meanings ascribed to them in those sections.

Sec. 9. NRS 455.092 is hereby amended to read as follows:

455.092 "Excavation" means the movement or removal of earth, rock or other material in or on the ground by use of mechanical equipment or by the placement and discharge of explosives. The term includes augering, backfilling, ***boring,*** digging, ditching, drilling, grading, plowing-in, ripping, scraping, trenching and tunneling.

Sec. 10. NRS 455.107 is hereby amended to read as follows:

455.107 1. Except as otherwise provided in subsection 2, possession of a permit to conduct an excavation or demolition does not exempt a person

from complying with the provisions of NRS 455.080 to 455.180, inclusive ~~[.]~~ ***, and sections 2 to 7, inclusive, of this act.***

2. A person is exempt from complying with the provisions of NRS 455.080 to 455.180, inclusive, ***and sections 2 to 7, inclusive, of this act,*** if he obtains the written consent of all operators involved in the proposed excavation or demolition before he receives a permit to conduct the excavation or demolition.

Sec. 11. NRS 455.130 is hereby amended to read as follows:

455.130 1. Except in an emergency or as otherwise provided in subsection 2 ~~[,]~~ ***or section 4 of this act,*** if an operator receives notice through an association for operators pursuant to paragraph (a) of subsection 1 of NRS 455.110, the operator shall:

(a) Locate and identify the subsurface installations and, if known, the number of subsurface installations that are affected by the proposed excavation or demolition to the extent and to the degree of accuracy that the information is available in the records of the operator or can be determined by using techniques of location that are commonly used in the industry, except excavating, within 2 working days or within a time mutually agreed upon by the operator and the person who is responsible for the excavation or demolition;

(b) Remove or protect a subsurface installation as soon as practicable if the operator decides it should be removed or protected; and

(c) Advise the person who contacted the association for operators of the location of the subsurface installations of the operator that are affected by the proposed excavation or demolition.

2. The operator shall notify the person who contacted the association for operators if the operator has no subsurface installations that are affected by the proposed excavation or demolition.

Sec. 12. NRS 455.131 is hereby amended to read as follows:

455.131 1. ~~[An]~~ ***Except as otherwise provided in subsection 2, an*** operator shall, for each subsurface installation that is installed on or after October 1, 2005, which cannot be detected from or above the surface of the ground by means of either the material used in constructing the subsurface installation or a conductor within the subsurface installation, install a permanent device which designates or provides a means of detecting a subsurface installation through the use of a noninvasive method from or above the surface of the ground. Such a device includes, without limitation, a tracer wire or a marker.

2. ***A person who connects a sewer service lateral to a sewer main*** ~~*[on or after October 1, 2009,]*~~ ***shall, at the option of the operator of the sewer main:***

(a) Install a permanent device as described in subsection 1 of a type designated by the operator of the sewer main ~~*[; or]*~~ ***at the connection of the sewer service lateral to the sewer main and where the sewer service lateral***

exits the public right-of-way and promptly provide the operator of the sewer main with the location of such permanent devices;

(b) ~~[Provide]~~ Promptly provide the operator of the sewer main with the location of the connection of the sewer service lateral to the sewer main and where the sewer service lateral exits the public right-of-way as described by global positioning system coordinates which:

(1) Are either identified by latitude and longitude using decimal degrees or are identified using coordinates of the Universal Transverse Mercator system; and

(2) Specify for each coordinate whether the North American Datum of 1927, North American Datum of 1983 or the World Geodetic System 1984 was used ~~[.]~~ ; or

(c) Provide to the operator of the sewer main notification of when the sewer service lateral is exposed so that the operator of the sewer main can identify the location of the sewer service lateral.

3. As used in this section:

(a) "Above ground marker" is a marker which is installed flush with the surface of the ground or which protrudes above the surface of the ground above a subsurface installation and includes information concerning the subsurface installation.

(b) "Electronic marker" is a marker which is buried at various depths below or near the surface of the ground above a subsurface installation and which contains a passive antenna that:

(1) Can be identified with detection equipment; and

(2) Does not require an internal power source.

(c) "Marker" is a device that physically designates the location of a subsurface installation at intermittent locations along or above the subsurface installation and includes, without limitation, an above ground marker or electronic marker.

(d) "Tracer wire" is a locating wire which is installed in conjunction with a subsurface installation and is connected to a transmitter that carries a signal which is read by a receiver above the surface of the ground for the detection of the location of the subsurface installation.

Sec. 13. NRS 455.150 is hereby amended to read as follows:

455.150 Any person who substantially complies with the provisions of NRS 455.080 to 455.180, inclusive, ***and sections 2 to 7, inclusive, of this act*** is not liable for the cost of repairing any damage to a subsurface installation which results from his excavation or demolition.

Sec. 14. NRS 455.170 is hereby amended to read as follows:

455.170 1. An action for the enforcement of a civil penalty pursuant to this section may be brought before the Public Utilities Commission of Nevada by the Attorney General, a district attorney, a city attorney, the Regulatory Operations Staff of the Public Utilities Commission of Nevada, the governmental agency that issued the permit to conduct an excavation or demolition, an operator or a person conducting an excavation or demolition.

2. Any person who willfully or repeatedly violates a provision of NRS 455.080 to 455.180, inclusive, ***and sections 2 to 7, inclusive, of this act*** is liable for a civil penalty:

(a) Not to exceed $1,000 per day for each violation; and

(b) Not to exceed $100,000 for any related series of violations within a calendar year.

3. Any person who negligently violates any such provision is liable for a civil penalty:

(a) Not to exceed $200 per day for each violation; and

(b) Not to exceed $1,000 for any related series of violations within a calendar year.

4. The amount of any civil penalty imposed pursuant to this section and the propriety of any settlement or compromise concerning a penalty must be determined by the Public Utilities Commission of Nevada upon receipt of a complaint by the Attorney General, the Regulatory Operations Staff of the Public Utilities Commission of Nevada, a district attorney, a city attorney, the agency that issued the permit to excavate or the operator or the person responsible for the excavation or demolition.

5. In determining the amount of the penalty or the amount agreed upon in a settlement or compromise, the Public Utilities Commission of Nevada shall consider:

(a) The gravity of the violation;

(b) The good faith of the person charged with the violation in attempting to comply with the provisions of NRS 455.080 to 455.180, inclusive, ***and sections 2 to 7, inclusive, of this act*** before and after notification of a violation; and

(c) Any history of previous violations of those provisions by the person charged with the violation.

6. A civil penalty recovered pursuant to this section must first be paid to reimburse the person who initiated the action for any cost incurred in prosecuting the matter.

7. Any person aggrieved by a determination of the Public Utilities Commission of Nevada pursuant to this section may seek judicial review of the determination in the manner provided by NRS 703.373.

Sec. 15. NRS 455.180 is hereby amended to read as follows:

455.180 The provisions of NRS 455.080 to 455.170, inclusive, ***and sections 2 to 7, inclusive, of this act*** do not affect any civil remedies provided by law for personal injury or property damage and do not create a new civil remedy for any personal injury or property damage.

Sec. 16. **1. On or before December 31, 2010, each operator of a sewer main shall submit a report to the Director of the Legislative Counsel Bureau for transmission to the 76th Session of the Nevada Legislature which provides:**

(a) The number of sewer service lateral connections that the operator of the sewer main has identified between October 1, 2009, and September 30, 2010;

(b) The method that the operator of the sewer main used to locate such sewer service lateral connections; and

(c) The costs accrued by the operator of the sewer main to locate such sewer service lateral connections.

2. As used in this section:

(a) "Operator" has the meaning ascribed to it in NRS 455.096.

(b) "Sewer main" has the meaning ascribed to it in section 2 of this act.

(c) "Sewer service lateral" has the meaning ascribed to it in section 3 of this act.

Sec. 17. The provisions of NRS 354.599 do not apply to any additional expenses of a local government that are related to the provisions of this act.

Assemblywoman Smith moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 102.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 256.

AN ACT relating to public health; authorizing a court to establish a program of treatment for problem gambling and to assign a person to the program; authorizing a problem gambler to elect to be assigned to such a program under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes a court to assign a person who commits certain crimes to an appropriate program of treatment for the abuse of alcohol or drugs established by the court or to an appropriate facility for the treatment of abuse of alcohol or drugs which is certified by the Health Division of the Department of Health and Human Services. (NRS 453.580) **Section 6** of this bill authorizes a court to establish a program for the treatment of problem gambling. Existing law creates the Advisory Committee on Problem Gambling and provides a grant of money or a contract for services to certain programs for the prevention and treatment of problem gambling. (Chapter 458A of NRS) **Sections 7-12** of this bill provide that a problem gambler who has been convicted of certain crimes is eligible to be assigned by a court to a program of treatment and provide eligibility requirements and conditions that must be completed for such treatment.

Existing law allows a court to seal the records related to a dismissal or acquittal of criminal charges. (NRS 179.255) Section 14 of this bill allows a court to seal records relating to the setting aside of a conviction if the

person satisfactorily completed a program for treatment of problem gambling and satisfied the conditions upon the election of that treatment. The sealing of these records is subject to the same procedures, and has the same effect, as the sealing of records related to a dismissal or acquittal of criminal charges. (NRS 179.255, 179.265-179.301)

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

Section 1. Chapter 458A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this act.

Sec. 2. ~~[*"Certified counselor" has the meaning ascribed to it in NRS 641C.050.]~~ **(Deleted by amendment.)**

Sec. 3. ~~[*"Certified intern" has the meaning ascribed to it in NRS 641C.060.]~~ **(Deleted by amendment.)**

Sec. 4. ***"Problem gambler" means a person who suffers from problem gambling.***

Sec. 5. ***"Problem gambling" has the meaning ascribed to it in NRS 641C.110.***

Sec. 5.5. 1. "Qualified mental health professional" means any of the following persons:

(a) A person who is certified as a problem gambling counselor pursuant to the provisions of chapter 641C of NRS.

(b) A person who is certified as a problem gambling counselor intern pursuant to the provisions of chapter 641C of NRS.

(c) A physician who is licensed pursuant to the provisions of chapter 630 or 633 of NRS.

(d) A nurse who is licensed pursuant to the provisions of chapter 632 of NRS and is authorized by the State Board of Nursing to engage in the practice of counseling problem gamblers.

(e) A psychologist who is licensed pursuant to the provisions of chapter 641 of NRS.

(f) A clinical professional counselor or clinical professional counselor intern who is licensed pursuant to chapter 641A of NRS.

(g) A marriage and family therapist or marriage and family therapist intern who is licensed pursuant to the provisions of chapter 641A of NRS and is authorized by the Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors to engage in the practice of counseling problem gamblers.

(h) A person who is licensed as a clinical social worker pursuant to the provisions of chapter 641B of NRS and is authorized by the Board of Examiners for Social Workers to engage in the practice of counseling problem gamblers.

2. As used in this section, "practice of counseling problem gamblers" has the meaning ascribed to it in NRS 641C.105.

Sec. 6. ***1. A court may establish a program for the treatment of problem gambling to which it may assign a person pursuant to section 7 of this act. The assignment must include the terms and conditions for successful completion of the program and provide for progress reports at intervals set by the court to ensure that the person is making satisfactory progress toward completion of the program.***

2. A program established pursuant to this section must be administered by a ~~[certified counselor or certified intern]~~ qualified mental health professional and must include, without limitation:

(a) Information and encouragement for the participant to cease problem gambling through educational, counseling and support sessions;

(b) The opportunity for the participant to understand the medical, psychological, social and financial implications of problem gambling; and

(c) Appropriate referral to community, health, substance abuse, religious and social service agencies for additional resources and related services, as needed.

3. Before the court assigns a person to a program for the treatment of problem gambling, the person must agree to pay the cost of the program to which he is assigned, to the extent of his financial resources. If the person does not have the financial resources to pay all the related costs, the court shall, to the extent practicable, arrange for the person to be assigned to a program that receives a sufficient amount of federal or state funding to offset the remainder of the costs.

Sec. 7. ***Subject to the provisions of sections 2 to 12, inclusive, of this act, a problem gambler who has been convicted of a crime is eligible to elect to be assigned by the court to a program for the treatment of problem gambling before he is sentenced unless:***

1. The crime is:

(a) A crime against the person punishable as a felony or gross misdemeanor as provided in chapter 200 of NRS;

(b) A crime against a child as defined in NRS 179D.0357;

(c) A sexual offense as defined in NRS 179D.097; or

(d) An act which constitutes domestic violence as set forth in NRS 33.018;

2. The problem gambler has a record of two or more convictions of a crime described in subsection 1 or a similar crime in violation of the laws of another state, or of three or more convictions of any felony;

3. Other criminal proceedings alleging commission of a felony are pending against the problem gambler; or

4. The problem gambler is on probation or parole ~~[and]~~ , except that the problem gambler is eligible to make the election if the appropriate probation or parole authority ~~[does not consent]~~ consents to the election ~~[.]~~ or the court finds that the problem gambler is eligible to make the election after considering any objections made by the appropriate probation or parole authority.

Sec. 8. ***1. If the court has reason to believe that a person who has been convicted of a crime is a problem gambler*** ~~***[, or the person states that he is a problem gambler,]***~~ ***and the court finds that he is eligible to make the election as provided in section 7 of this act, the court shall hold a hearing before it sentences the person to determine whether or not he should receive treatment under the supervision of a*** ~~***[certified counselor or certified intern.]***~~ ***qualified mental health professional. The district attorney may present the court with any evidence concerning the advisability of permitting the person to make the election.***

2. At the hearing, the court shall advise the person that sentencing will be postponed if he elects to submit to treatment and is accepted into a program for the treatment of problem gambling. In offering the election, the court shall advise him that:

(a) The court may impose any conditions upon the election of treatment that could be imposed as conditions of probation;

(b) If he elects to submit to treatment and is accepted, he may be placed under the supervision of the ~~***[certified counselor or certified intern]***~~ ***qualified mental health professional for a period of not less than 1 year and not more than 3 years;***

(c) During treatment, he may be confined in an institution or, at the discretion of the ~~***[certified counselor or certified intern,]***~~ ***qualified mental health professional, released for treatment or supervised care in the community;*** ~~***[and]***~~

(d) If he satisfactorily completes treatment and satisfies the conditions upon the election of treatment, as determined by the court, the conviction will be set aside, but if he does not satisfactorily complete treatment and satisfy the conditions, he may be sentenced and the sentence executed ~~***[.]***~~ ***; and***

(e) If his conviction is set aside pursuant to section 10 of this act, he may, at any time after the conviction is set aside, file a petition pursuant to NRS 179.255 for the sealing of all records relating to the setting aside of the conviction.

Sec. 9. ***1. If the court, after a hearing, determines that a person is entitled to accept the treatment offered pursuant to section 7 of this act, the court shall order a*** ~~***[certified counselor or certified intern]***~~ ***qualified mental health professional to conduct an examination of the person to determine whether he is a problem gambler and is likely to be rehabilitated through treatment. The*** ~~***[certified counselor or certified intern]***~~ ***qualified mental health professional shall report to the court the results of the examination and recommend whether the person should be placed under supervision for treatment.***

2. If the court, acting on the report or other relevant information, determines that the person is not a problem gambler, is not likely to be rehabilitated through treatment or is otherwise not a good candidate for treatment, he may be sentenced and the sentence executed.

3. If the court determines that the person is a problem gambler, is likely to be rehabilitated through treatment and is a good candidate for treatment, the court may:

(a) Impose any conditions upon the election of treatment that may be imposed as conditions of probation;

(b) Defer sentencing until such time, if any, as sentencing is authorized pursuant to section 10 of this act; and

(c) Place the person under the supervision of a ~~[certified counselor or certified intern]~~ qualified mental health professional for not less than 1 year and not more than 3 years.

➥ The court may require such progress reports on the treatment of the person as it deems necessary.

4. A person who is placed under the supervision of a ~~[certified counselor or certified intern]~~ qualified mental health professional shall pay the cost of the program of treatment to which he is assigned and the cost of any additional supervision that may be required, to the extent of his financial resources. The court may issue a judgment in favor of the court or the ~~[certified counselor or certified intern]~~ qualified mental health professional for the costs of the treatment and supervision which remain unpaid at the conclusion of the treatment. The judgment constitutes a lien in like manner as a judgment for money rendered in a civil action, but in no event may the amount of the judgment include any amount of the debt which was extinguished by the successful completion of community service pursuant to subsection 5.

5. If the person who is placed under the supervision of a ~~[certified counselor or certified intern]~~ qualified mental health professional does not have the financial resources to pay all of the related costs:

(a) The court shall, to the extent practicable, arrange for the person to be assigned to a program that receives a sufficient amount of federal or state funding to offset the remainder of the costs; and

(b) The court may order the person to perform supervised community service in lieu of paying the remainder of the costs relating to his treatment and supervision. The community service must be performed for and under the supervising authority of a county, city, town or other political subdivision or agency of this State or a charitable organization that renders service to the community or its residents. The court may require the person to deposit with the court a reasonable sum of money to pay for the cost of policies of insurance against liability for personal injury and damage to property or for industrial insurance, or both, during those periods in which the person performs the community service, unless, if the insurance is industrial insurance, it is provided by the authority for which he performs the community service.

6. No person may be placed under the supervision of a ~~[certified counselor or certified intern]~~ qualified mental health professional pursuant

to this section unless the ~~[certified counselor or certified intern]~~ qualified mental health professional accepts him for treatment.

Sec. 10. ***1. Whenever a person is placed under the supervision of a ~~[certified counselor or certified intern,]~~ qualified mental health professional, his sentencing must be deferred and, except as otherwise provided in subsection 4, his conviction must be set aside if the ~~[certified counselor or certified intern]~~ qualified mental health professional certifies to the court that he has satisfactorily completed the program of treatment and the court approves the certification and determines that the conditions upon the election of treatment have been satisfied.***

2. If, upon the expiration of the treatment period, the ~~[certified counselor or certified intern]~~ qualified mental health professional has not certified that the person has completed his program of treatment, the court shall sentence him. If he has satisfied the conditions upon the election of treatment and the court believes that he will complete his treatment voluntarily, the court may set the conviction aside.

3. If, before the treatment period expires, the ~~[certified counselor or certified intern]~~ qualified mental health professional determines that the person is not likely to benefit from further treatment, the ~~[certified counselor or certified intern]~~ qualified mental health professional shall so advise the court. The court shall then:

(a) Arrange for the transfer of the person to a more suitable program, if any; or

(b) Terminate the supervision and conduct a hearing to determine whether the person should be sentenced.

➥ If a person is sentenced pursuant to this section, any time spent in institutional care must be deducted from any sentence imposed.

4. Regardless of whether the person successfully completes treatment, the court shall not set aside the conviction of a person who has a record of two or more convictions of any felony for two or more separate incidents.

Sec. 11. ***1. The determination of problem gambling and civil commitment pursuant to sections 2 to 12, inclusive, of this act shall not be deemed a criminal conviction.***

2. The records relating to the setting aside of a conviction pursuant to section 10 of this act may be sealed pursuant to NRS 179.255.

Sec. 12. ***The provisions of sections 2 to 12, inclusive, of this act do not require this State or any of its political subdivisions to establish or finance any program for the treatment of problem gambling.***

Sec. 13. NRS 458A.010 is hereby amended to read as follows:

458A.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 458A.020 to 458A.050, inclusive, ***and sections 2 to ~~[5,]~~ 5.5, inclusive, of this act*** have the meanings ascribed to them in those sections.

Sec. 14. **NRS 179.255 is hereby amended to read as follows:**

179.255 1. If a person has been arrested for alleged criminal conduct and the charges are dismissed or such person is acquitted of the charges, the person may petition:

(a) The court in which the charges were dismissed, at any time after the date the charges were dismissed; or

(b) The court in which the acquittal was entered, at any time after the date of the acquittal,

➥ for the sealing of all records relating to the arrest and the proceedings leading to the dismissal or acquittal.

2. ***If the conviction of a person is set aside pursuant to section 10 of this act, the person may petition the court that set aside the conviction, at any time after the conviction has been set aside, for the sealing of all records relating to the setting aside of the conviction.***

3. A petition filed pursuant to ~~[this section]~~ ***subsection 1 or 2*** must:

(a) Be accompanied by a current, verified record of the criminal history of the petitioner received from the local law enforcement agency of the city or county in which the petitioner appeared in court;

(b) Include a list of any other public or private agency, company, official and other custodian of records that is reasonably known to the petitioner to have possession of records of the arrest and of the proceedings leading to the dismissal or acquittal and to whom the order to seal records, if issued, will be directed; and

(c) Include information that, to the best knowledge and belief of the petitioner, accurately and completely identifies the records to be sealed.

~~[3.]~~ ***4.*** Upon receiving a petition pursuant to ~~[this section,]~~ ***subsection 1,*** the court shall notify the law enforcement agency that arrested the petitioner for the crime and:

(a) If the charges were dismissed or the acquittal was entered in a district court or ~~[Justice Court,]~~ ***justice court,*** the prosecuting attorney for the county; or

(b) If the charges were dismissed or the acquittal was entered in a municipal court, the prosecuting attorney for the city.

➥ The prosecuting attorney and any person having relevant evidence may testify and present evidence at the hearing on the petition.

~~[4.]~~ ***5. Upon receiving a petition pursuant to subsection 2, the court shall notify:***

(a) If the conviction was set aside in a district court or justice court, the prosecuting attorney for the county; or

(b) If the conviction was set aside in a municipal court, the prosecuting attorney for the city.

➥ The prosecuting attorney and any person having relevant evidence may testify and present evidence at the hearing on the petition.

6. If, after the hearing ***on a petition submitted pursuant to subsection 1***, the court finds that there has been an acquittal or that the charges were dismissed and there is no evidence that further action will be brought against

the person, the court may order sealed all records of the arrest and of the proceedings leading to the acquittal or dismissal which are in the custody of the court, of another court in the State of Nevada or of a public or private company, agency or official in the State of Nevada.

7. If, after the hearing on a petition submitted pursuant to subsection 2, the court finds that the conviction of the petitioner was set aside pursuant to section 10 of this act, the court may order sealed all records relating to the setting aside of the conviction which are in the custody of the court, of another court in the State of Nevada or of a public or private company, agency or official in the State of Nevada.

Assemblyman Segerblom moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 111.

Bill read second time.

The following amendment was proposed by the Committee on Health and Human Services:

Amendment No. 287.

AN ACT relating to public health; requiring a licensed facility for the dependent, medical facility or home for individual residential care to obtain an endorsement on the license if the facility or home offers housing for independent living; prohibiting certain residential facilities for groups and homes for individual residential care from providing accommodations to certain persons; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires certain facilities for the dependent, medical facilities and homes for individual residential care to obtain a license to operate such facilities and homes. (NRS 449.030) Existing law requires such a licensed facility or home that offers housing for independent living to post a notice indicating that the portion of the facility or home designated for independent living does not include the provision of personal care, supportive services or health-related services. (NRS 449.2487) **Sections 4 and 20** of this bill require such a facility or home to obtain an endorsement on its license on or before October 1, 2010, if the facility or home offers housing for independent living. **Section 7** of this bill requires the State Board of Health to adopt regulations governing the issuance and renewal of an endorsement, including fees. The regulations are subject to review by the Legislative Committee on Health Care. (NRS 439B.225) Existing law prescribes grounds for the denial, suspension or revocation of a license to operate a facility or home under chapter 449 of NRS and the disciplinary action and penalties that apply to a licensee for certain violations. (NRS 449.160, 449.163, 449.170, 449.210) **Sections 9-13** of this bill include the endorsement to offer housing for independent living within these provisions setting forth the grounds for

issuance and denial of an endorsement and the disciplinary action and penalties which apply.

Section 5 of this bill prohibits a residential facility for groups which is authorized to have 10 or fewer beds or a home for individual residential care from providing accommodations to a person who does not meet the requirements for admission unless that person is related to a resident ~~[or employee]~~ of the facility or home within the third degree of consanguinity.

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

Section 1. NRS 439B.225 is hereby amended to read as follows:

439B.225 1. As used in this section, "licensing board" means any division or board empowered to adopt standards for ~~[licensing or registration or for the renewal of licenses or certificates]~~ ***the issuance or renewal of a license, an endorsement on a license or a certificate*** of registration pursuant to NRS 435.3305 to 435.339, inclusive, chapter 449, 625A, 630, 630A, 631, 632, 633, 634, 634A, 635, 636, 637, 637A, 637B, 639, 640, 640A, 641, 641A, 641B, 641C, 652 or 654 of NRS.

2. The Committee shall review each regulation that a licensing board proposes or adopts that relates to standards for ~~[licensing or registration or to]~~ the ***issuance or*** renewal of a license ***, an endorsement on a license*** or ***a*** certificate of registration issued to a person or facility regulated by the board, giving consideration to:

(a) Any oral or written comment made or submitted to it by members of the public or by persons or facilities affected by the regulation;

(b) The effect of the regulation on the cost of health care in this State;

(c) The effect of the regulation on the number of licensed or registered persons and facilities available to provide services in this State; and

(d) Any other related factor the Committee deems appropriate.

3. After reviewing a proposed regulation, the Committee shall notify the agency of the opinion of the Committee regarding the advisability of adopting or revising the proposed regulation.

4. The Committee shall recommend to the Legislature as a result of its review of regulations pursuant to this section any appropriate legislation.

Sec. 2. Chapter 449 of NRS is hereby amended by adding thereto the provisions set forth as sections 3, 4 and 5 of this act.

Sec. 3. ***"Housing for independent living" means single dwelling units, including, without limitation, single dwelling units located in a multidwelling or a multipurpose building, which provide residential housing intended for independent living and which do not directly provide or coordinate the oversight of services to meet the scheduled and unscheduled needs of its residents, including, without limitation, the provision of personal care, supportive services and health-related services.***

Sec. 4. ***A facility for the dependent, a medical facility or a home for individual residential care that offers housing for independent living shall***

obtain an endorsement on its license authorizing the facility or home to offer housing for independent living.

Sec. 5. ***1. Except as otherwise provided in subsection 2, a residential facility for groups which is authorized to have 10 or fewer beds or a home for individual residential care shall not provide accommodations for a person who does not meet the requirements for admission to the facility or home.***

2. A residential facility for groups which is authorized to have 10 or fewer beds or a home for individual residential care may provide accommodations for a person who is related within the third degree of consanguinity to a resident ~~*[or employee]*~~ ***of the facility or home regardless of whether the person meets the requirements for admission to the facility or home.***

Sec. 6. NRS 449.001 is hereby amended to read as follows:

449.001 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 449.0015 to 449.0195, inclusive, ***and section 3 of this act*** have the meanings ascribed to them in those sections.

Sec. 7. NRS 449.037 is hereby amended to read as follows:

449.037 1. The Board shall adopt:

(a) Licensing standards for each class of medical facility or facility for the dependent covered by NRS 449.001 to 449.240, inclusive, ***and sections 3, 4 and 5 of this act*** and for programs of hospice care.

(b) Regulations governing the licensing of such facilities and programs.

(c) Regulations governing the procedure and standards for granting an extension of the time for which a natural person may provide certain care in his home without being considered a residential facility for groups pursuant to NRS 449.017. The regulations must require that such grants are effective only if made in writing.

(d) Regulations establishing a procedure for the indemnification by the Health Division, from the amount of any surety bond or other obligation filed or deposited by a facility for refractive surgery pursuant to NRS 449.068 or 449.069, of a patient of the facility who has sustained any damages as a result of the bankruptcy of or any breach of contract by the facility.

(e) Any other regulations as it deems necessary or convenient to carry out the provisions of NRS 449.001 to 449.240, inclusive ~~[.]~~ ***, and sections 3, 4 and 5 of this act.***

2. The Board shall adopt separate regulations governing the licensing and operation of:

(a) Facilities for the care of adults during the day; and

(b) Residential facilities for groups,

➥ which provide care to persons with Alzheimer's disease.

3. The Board shall adopt separate regulations for:

(a) The licensure of rural hospitals which take into consideration the unique problems of operating such a facility in a rural area.

(b) The licensure of facilities for refractive surgery which take into consideration the unique factors of operating such a facility.

(c) The licensure of mobile units which take into consideration the unique factors of operating a facility that is not in a fixed location.

4. The Board shall require that the practices and policies of each medical facility or facility for the dependent provide adequately for the protection of the health, safety and physical, moral and mental well-being of each person accommodated in the facility.

5. The Board shall establish minimum qualifications for administrators and employees of residential facilities for groups. In establishing the qualifications, the Board shall consider the related standards set by nationally recognized organizations which accredit such facilities.

6. The Board shall adopt separate regulations regarding the assistance which may be given pursuant to NRS 453.375 and 454.213 to an ultimate user of controlled substances or dangerous drugs by employees of residential facilities for groups. The regulations must require at least the following conditions before such assistance may be given:

(a) The ultimate user's physical and mental condition is stable and is following a predictable course.

(b) The amount of the medication prescribed is at a maintenance level and does not require a daily assessment.

(c) A written plan of care by a physician or registered nurse has been established that:

(1) Addresses possession and assistance in the administration of the medication; and

(2) Includes a plan, which has been prepared under the supervision of a registered nurse or licensed pharmacist, for emergency intervention if an adverse condition results.

(d) The prescribed medication is not administered by injection or intravenously.

(e) The employee has successfully completed training and examination approved by the Health Division regarding the authorized manner of assistance.

7. The Board shall adopt separate regulations governing the licensing and operation of residential facilities for groups which provide assisted living services. The Board shall not allow the licensing of a facility as a residential facility for groups which provides assisted living services and a residential facility for groups shall not claim that it provides "assisted living services" unless:

(a) Before authorizing a person to move into the facility, the facility makes a full written disclosure to the person regarding what services of personalized care will be available to the person and the amount that will be charged for those services throughout the resident's stay at the facility.

(b) The residents of the facility reside in their own living units which:

(1) Except as otherwise provided in subsection 8, contain toilet facilities;

(2) Contain a sleeping area or bedroom; and

(3) Are shared with another occupant only upon consent of both occupants.

(c) The facility provides personalized care to the residents of the facility and the general approach to operating the facility incorporates these core principles:

(1) The facility is designed to create a residential environment that actively supports and promotes each resident's quality of life and right to privacy;

(2) The facility is committed to offering high-quality supportive services that are developed by the facility in collaboration with the resident to meet the resident's individual needs;

(3) The facility provides a variety of creative and innovative services that emphasize the particular needs of each individual resident and his personal choice of lifestyle;

(4) The operation of the facility and its interaction with its residents supports, to the maximum extent possible, each resident's need for autonomy and the right to make decisions regarding his own life;

(5) The operation of the facility is designed to foster a social climate that allows the resident to develop and maintain personal relationships with fellow residents and with persons in the general community;

(6) The facility is designed to minimize and is operated in a manner which minimizes the need for its residents to move out of the facility as their respective physical and mental conditions change over time; and

(7) The facility is operated in such a manner as to foster a culture that provides a high-quality environment for the residents, their families, the staff, any volunteers and the community at large.

8. The Health Division may grant an exception from the requirement of subparagraph (1) of paragraph (b) of subsection 7 to a facility ***which is*** licensed as a residential facility for groups on or before July 1, 2005, and which is authorized to have 10 or fewer beds and was originally constructed as a single-family dwelling ~~[.]~~ if the Health Division finds that:

(a) Strict application of that requirement would result in economic hardship to the facility requesting the exception; and

(b) The exception, if granted, would not:

(1) Cause substantial detriment to the health or welfare of any resident of the facility;

(2) Result in more than two residents sharing a toilet facility; or

(3) Otherwise impair substantially the purpose of that requirement.

9. The Board shall, if it determines necessary, adopt regulations and requirements to ensure that each residential facility for groups and its staff are prepared to respond to an emergency, including, without limitation:

(a) The adoption of plans to respond to a natural disaster and other types of emergency situations, including, without limitation, an emergency involving fire;

(b) The adoption of plans to provide for the evacuation of a residential facility for groups in an emergency, including, without limitation, plans to ensure that nonambulatory patients may be evacuated;

(c) Educating the residents of residential facilities for groups concerning the plans adopted pursuant to paragraphs (a) and (b); and

(d) Posting the plans or a summary of the plans adopted pursuant to paragraphs (a) and (b) in a conspicuous place in each residential facility for groups.

10. The regulations governing the licensing and operation of facilities for transitional living for released offenders must provide for the licensure of at least three different types of facilities, including, without limitation:

(a) Facilities that only provide a housing and living environment;

(b) Facilities that provide or arrange for the provision of supportive services for residents of the facility to assist the residents with reintegration into the community, in addition to providing a housing and living environment; and

(c) Facilities that provide or arrange for the provision of alcohol and drug abuse programs, in addition to providing a housing and living environment and providing or arranging for the provision of other supportive services.

➥ The regulations must provide that if a facility was originally constructed as a single-family dwelling, the facility must not be authorized for more than eight beds.

11. ***The Board shall adopt regulations for the issuance and renewal of an endorsement to offer housing for independent living pursuant to section 4 of this act. The regulations must:***

(a) Prescribe the grounds for the approval, denial, suspension or revocation of an endorsement;

(b) Prescribe the fees for the issuance and renewal of an endorsement; and

(c) Require compliance with all applicable laws and regulations, including, without limitation:

(1) The provisions of NRS 449.2487;

(2) Any law, ordinance or governmental regulation concerning health, safety, sanitation or fitness for habitation of the facility or home;

(3) Any law, ordinance or governmental regulation concerning the construction, maintenance, operation, occupancy, use or appearance of the facility or home; and

(4) The provisions of chapter 446 of NRS and any other laws or regulations governing the preparation of meals.

12. As used in this section, "living unit" means an individual private accommodation designated for a resident within the facility.

Sec. 8. NRS 449.140 is hereby amended to read as follows:

449.140 1. Money received from licensing medical facilities and facilities for the dependent ***, including, without limitation, an endorsement on a license,*** must be forwarded to the State Treasurer for deposit in the State General Fund.

2. The Health Division shall enforce the provisions of NRS 449.001 to 449.245, inclusive, ***and sections 3, 4 and 5 of this act*** and may incur any necessary expenses not in excess of money appropriated for that purpose by the State or received from the Federal Government.

Sec. 9. NRS 449.160 is hereby amended to read as follows:

449.160 1. The Health Division may deny an application for a license ***or an endorsement on a license*** or may suspend or revoke any license ***or endorsement*** issued under the provisions of NRS 449.001 to 449.240, inclusive, ***and sections 3, 4 and 5 of this act*** upon any of the following grounds:

(a) Violation by the applicant or the licensee of any of the provisions of NRS 439B.410 or 449.001 to 449.245, inclusive, ***and sections 3, 4 and 5 of this act*** or of any other law of this State or of the standards, rules and regulations adopted thereunder.

(b) Aiding, abetting or permitting the commission of any illegal act.

(c) Conduct inimical to the public health, morals, welfare and safety of the people of the State of Nevada in the maintenance and operation of the premises for which a license ***or endorsement*** is issued.

(d) Conduct or practice detrimental to the health or safety of the occupants or employees of the facility.

(e) Failure of the applicant to obtain written approval from the Director of the Department of Health and Human Services as required by NRS 439A.100 or as provided in any regulation adopted pursuant to this chapter, if such approval is required.

(f) Failure to comply with the provisions of NRS 449.2486.

2. In addition to the provisions of subsection 1, the Health Division may revoke a license to operate a facility for the dependent ***and an endorsement on such a license*** if, with respect to that facility, the licensee that operates the facility, or an agent or employee of the licensee:

(a) Is convicted of violating any of the provisions of NRS 202.470;

(b) Is ordered to but fails to abate a nuisance pursuant to NRS 244.360, 244.3603 or 268.4124; or

(c) Is ordered by the appropriate governmental agency to correct a violation of a building, safety or health code or regulation but fails to correct the violation.

3. The Health Division shall maintain a log of any complaints that it receives relating to activities for which the Health Division may revoke the license to operate a facility for the dependent pursuant to subsection 2. The Health Division shall provide to a facility for the care of adults during the day:

(a) A summary of a complaint against the facility if the investigation of the complaint by the Health Division either substantiates the complaint or is inconclusive;

(b) A report of any investigation conducted with respect to the complaint; and

(c) A report of any disciplinary action taken against the facility.

➥ The facility shall make the information available to the public pursuant to NRS 449.2486.

4. On or before February 1 of each odd-numbered year, the Health Division shall submit to the Director of the Legislative Counsel Bureau a written report setting forth, for the previous biennium:

(a) Any complaints included in the log maintained by the Health Division pursuant to subsection 3; and

(b) Any disciplinary actions taken by the Health Division pursuant to subsection 2.

Sec. 10. NRS 449.163 is hereby amended to read as follows:

449.163 1. If a medical facility or facility for the dependent violates any provision related to its licensure ~~[,]~~ ***or endorsement,*** including any provision of NRS 439B.410 ~~[,]~~ ***or*** 449.001 to 449.240, inclusive, ***and sections 3, 4 and 5 of this act,*** or any condition, standard or regulation adopted by the Board, the Health Division **,** in accordance with the regulations adopted pursuant to NRS 449.165 **,** may:

(a) Prohibit the facility from admitting any patient until it determines that the facility has corrected the violation;

(b) Limit the occupancy of the facility to the number of beds occupied when the violation occurred, until it determines that the facility has corrected the violation;

(c) Impose an administrative penalty of not more than $1,000 per day for each violation, together with interest thereon at a rate not to exceed 10 percent per annum; and

(d) Appoint temporary management to oversee the operation of the facility and to ensure the health and safety of the patients of the facility, until:

(1) It determines that the facility has corrected the violation and has management which is capable of ensuring continued compliance with the applicable statutes, conditions, standards and regulations; or

(2) Improvements are made to correct the violation.

2. If the facility fails to pay any administrative penalty imposed pursuant to paragraph (c) of subsection 1, the Health Division may:

(a) Suspend the license ***or endorsement, or both,*** of the facility until the administrative penalty is paid; and

(b) Collect court costs, reasonable attorney's fees and other costs incurred to collect the administrative penalty.

3. The Health Division may require any facility that violates any provision of NRS 439B.410 ~~[,]~~ ***or*** 449.001 to 449.240, inclusive, ***and sections 3, 4 and 5 of this act*** or any condition, standard or regulation

adopted by the Board ~~[.]~~ to make any improvements necessary to correct the violation.

4. Any money collected as administrative penalties pursuant to this section must be accounted for separately and used to protect the health or property of the residents of the facility in accordance with applicable federal standards.

Sec. 11. NRS 449.170 is hereby amended to read as follows:

449.170 1. When the Health Division intends to deny, suspend or revoke a license ~~[.]~~ ***or an endorsement on a license,*** or impose any sanction prescribed by NRS 449.163, it shall give reasonable notice to all parties by certified mail. The notice must contain the legal authority, jurisdiction and reasons for the action to be taken. Notice is not required if the Health Division finds that the public health requires immediate action. In that case, it may order a summary suspension of a license ***or endorsement*** or impose any sanction prescribed by NRS 449.163, pending proceedings for revocation or other action.

2. If a person wants to contest the action of the Health Division, he must file an appeal pursuant to regulations adopted by the Board.

3. Upon receiving notice of an appeal, the Health Division shall hold a hearing pursuant to regulations adopted by the Board.

4. The Board shall adopt such regulations as are necessary to carry out the provisions of this section.

Sec. 12. NRS 449.210 is hereby amended to read as follows:

449.210 1. Except as otherwise provided in subsections 2 and 3, a person who operates a medical facility or facility for the dependent without a license ***or an endorsement on a license, if applicable,*** issued by the Health Division is guilty of a misdemeanor.

2. A person who operates a residential facility for groups without a license ***or an endorsement on a license, if applicable,*** issued by the Health Division:

(a) Is liable for a civil penalty **,** to be recovered by the Attorney General in the name of the Health Division **,** for the first offense of not more than $10,000 and for a second or subsequent offense of not less than $10,000 nor more than $20,000;

(b) Shall be required to move all of the persons who are receiving services in the residential facility for groups to a residential facility for groups that is licensed at his own expense; and

(c) May not apply for a license to operate a residential facility for groups ***or an endorsement to offer housing for independent living, if applicable,*** for a period of 6 months after he is punished pursuant to this section.

3. Unless otherwise required by federal law, the Health Division shall deposit all civil penalties collected pursuant to this section into a separate account in the State General Fund to be used for the protection of the health, safety and well-being of patients, including residents of residential facilities for groups.

Sec. 13. NRS 449.220 is hereby amended to read as follows:

449.220 1. The Health Division may bring an action in the name of the State to enjoin any person, state or local government unit or agency thereof from operating or maintaining any facility within the meaning of NRS 449.001 to 449.240, inclusive ~~[.]~~ ***, and sections 3, 4 and 5 of this act:***

(a) Without first obtaining a license therefor ~~[,]~~ ***or an endorsement on a license, if applicable;*** or

(b) After his license ***or endorsement*** has been revoked or suspended by the Health Division.

2. It is sufficient in such action to allege that the defendant did, on a certain date and in a certain place ~~[, operate]~~ ***:***

(a) Operate and maintain such ***a*** facility without a license.

(b) Offer housing for independent living without an endorsement on the license.

Sec. 14. NRS 449.230 is hereby amended to read as follows:

449.230 1. Any authorized member or employee of the Health Division may enter and inspect any building or premises at any time to secure compliance with or prevent a violation of any provision of NRS 449.001 to 449.245, inclusive ~~[.]~~ ***, and sections 3, 4 and 5 of this act.***

2. The State Fire Marshal or his designee shall, upon receiving a request from the Health Division or a written complaint concerning compliance with the plans and requirements to respond to an emergency adopted pursuant to subsection 9 of NRS 449.037:

(a) Enter and inspect a residential facility for groups; and

(b) Make recommendations regarding the adoption of plans and requirements pursuant to subsection 9 of NRS 449.037,

➥ to ensure the safety of the residents of the facility in an emergency.

3. The State Health Officer or his designee shall enter and inspect at least annually each building or the premises of a residential facility for groups to ensure compliance with standards for health and sanitation.

4. An authorized member or employee of the Health Division shall enter and inspect any building or premises operated by a residential facility for groups within 72 hours after the Health Division is notified that a residential facility for groups is operating without a license.

Sec. 15. NRS 449.240 is hereby amended to read as follows:

449.240 The district attorney of the county in which the facility is located shall, upon application by the Health Division, institute and conduct the prosecution of any action for violation of any provisions of NRS 449.001 to 449.245, inclusive ~~[.]~~ ***, and sections 3, 4 and 5 of this act.***

Sec. 16. NRS 233B.063 is hereby amended to read as follows:

233B.063 1. At least 30 days before the time of giving notice of its intention to adopt, amend or repeal a permanent regulation ***,*** an agency shall deliver to the Legislative Counsel a copy of the proposed regulation. The Legislative Counsel shall examine and if appropriate revise the language submitted so that it is clear, concise and suitable for incorporation in the

Nevada Administrative Code, but shall not alter the meaning or effect without the consent of the agency.

2. Unless the proposed regulation is submitted to him between July 1 of an even-numbered year and July 1 of the succeeding odd-numbered year, the Legislative Counsel shall deliver the approved or revised text of the regulation within 30 days after it is submitted to him. If the proposed or revised text of a regulation is changed before adoption, the agency shall submit the changed text to the Legislative Counsel, who shall examine and revise it if appropriate pursuant to the standards of subsection 1. Unless it is submitted between July 1 of an even-numbered year and July 1 of the succeeding odd-numbered year, the Legislative Counsel shall return it with any appropriate revisions within 30 days. If the agency is a licensing board as defined in NRS 439B.225 and the proposed regulation relates to standards for ~~[licensing or registration or for]~~ the ***issuance or*** renewal of a license ***, an endorsement on a license*** or a certificate of registration issued to a person or facility regulated by the agency, the Legislative Counsel shall also deliver one copy of the approved or revised text of the regulation to the Legislative Committee on Health Care.

3. An agency may adopt a temporary regulation between August 1 of an even-numbered year and July 1 of the succeeding odd-numbered year without following the procedure required by this section and NRS 233B.064, but any such regulation expires by limitation on November 1 of the odd-numbered year. A substantively identical permanent regulation may be subsequently adopted.

4. An agency may amend or suspend a permanent regulation between August 1 of an even-numbered year and July 1 of the succeeding odd-numbered year by adopting a temporary regulation in the same manner and subject to the same provisions as prescribed in subsection 3.

Sec. 17. NRS 233B.070 is hereby amended to read as follows:

233B.070 1. A permanent regulation becomes effective when the Legislative Counsel files with the Secretary of State the original of the final draft or revision of a regulation, except as otherwise provided in NRS 293.247 or where a later date is specified in the regulation.

2. Except as otherwise provided in NRS 233B.0633, an agency that has adopted a temporary regulation may not file the temporary regulation with the Secretary of State until 35 days after the date on which the temporary regulation was adopted by the agency. A temporary regulation becomes effective when the agency files with the Secretary of State the original of the final draft or revision of the regulation, together with the informational statement prepared pursuant to NRS 233B.066. The agency shall also file a copy of the temporary regulation with the Legislative Counsel, together with the informational statement prepared pursuant to NRS 233B.066.

3. An emergency regulation becomes effective when the agency files with the Secretary of State the original of the final draft or revision of an emergency regulation, together with the informational statement prepared

pursuant to NRS 233B.066. The agency shall also file a copy of the emergency regulation with the Legislative Counsel, together with the informational statement prepared pursuant to NRS 233B.066.

4. The Secretary of State shall maintain the original of the final draft or revision of each regulation in a permanent file to be used only for the preparation of official copies.

5. The Secretary of State shall file, with the original of each agency's rules of practice, the current statement of the agency concerning the date and results of its most recent review of those rules.

6. Immediately after each permanent or temporary regulation is filed, the agency shall deliver one copy of the final draft or revision, bearing the stamp of the Secretary of State indicating that it has been filed, including material adopted by reference which is not already filed with the State Library and Archives Administrator, to the State Library and Archives Administrator for use by the public. If the agency is a licensing board as defined in NRS 439B.225 and it has adopted a permanent regulation relating to standards for ~~[licensing or registration or for]~~ the ***issuance or*** renewal of a license ***, an endorsement on a license*** or a certificate of registration issued to a person or facility regulated by the agency, the agency shall also deliver one copy of the regulation, bearing the stamp of the Secretary of State, to the Legislative Committee on Health Care within 10 days after the regulation is filed with the Secretary of State.

7. Each agency shall furnish a copy of all or part of that part of the Nevada Administrative Code which contains its regulations, to any person who requests a copy, and may charge a reasonable fee for the copy based on the cost of reproduction if it does not have money appropriated or authorized for that purpose.

8. An agency which publishes any regulations included in the Nevada Administrative Code shall use the exact text of the regulation as it appears in the Nevada Administrative Code, including the leadlines and numbers of the sections. Any other material which an agency includes in a publication with its regulations must be presented in a form which clearly distinguishes that material from the regulations.

Sec. 18. NRS 654.190 is hereby amended to read as follows:

654.190 1. The Board may, after notice and a hearing as required by law, impose an administrative fine of not more than $5,000 on, recover reasonable investigative fees and costs incurred from, suspend, revoke or place conditions on the license of, and place on probation any nursing facility administrator or administrator of a residential facility for groups who:

(a) Is convicted of a felony relating to the practice of administering a nursing facility or residential facility or of any offense involving moral turpitude.

(b) Has obtained his license by the use of fraud or deceit.

(c) Violates any of the provisions of this chapter.

(d) Aids or abets any person in the violation of any of the provisions of NRS 449.001 to 449.240, inclusive, ***and sections 3, 4 and 5 of this act*** as those provisions pertain to a facility for skilled nursing, facility for intermediate care or residential facility for groups.

(e) Violates any regulation of the Board prescribing additional standards of conduct for nursing facility administrators or administrators of residential facilities for groups, including, without limitation, a code of ethics.

(f) Engages in conduct that violates the trust of a patient or resident or exploits the relationship between the nursing facility administrator or administrator of a residential facility for groups and the patient or resident for the financial or other gain of the licensee.

2. The Board shall give a licensee against whom proceedings are brought pursuant to this section written notice of a hearing not less than 10 days before the date of the hearing.

3. An order that imposes discipline and the findings of fact and conclusions of law supporting that order are public records.

4. The expiration of a license by operation of law or by order or decision of the Board or a court, or the voluntary surrender of a license, does not deprive the Board of jurisdiction to proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

Sec. 19. On or before January 1, 2010, the State Board of Health shall adopt regulations governing the issuance and renewal of an endorsement to offer housing for independent living required by NRS 449.037, as amended by section 7 of this act.

Sec. 20. Each licensed facility for the dependent, medical facility and home for individual residential care which offers housing for independent living shall, on or before October 1, 2010, obtain the endorsement required by section 4 of this act.

Sec. 21. 1. This section and sections 1, 2, 3, 6, 7, 16, 17 and 19 of this act become effective upon passage and approval.

2. Sections 5, 14, 15 and 18 of this act become effective on October 1, 2009.

3. Sections 4, 8 to 13, inclusive, and 20 of this act become effective on January 1, 2010.

Assemblywoman Pierce moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 112.

Bill read second time.

The following amendment was proposed by the Committee on Health and Human Services:

Amendment No. 475.

SUMMARY—Establishes provisions relating to **the coordinated response to** public health emergencies **[.] and other health events.** (BDR 40-214)

AN ACT relating to public health; requiring the Governor to **[**declare**]** **determine whether** a public health emergency **or other health event requires a coordinated response** if there is an immediate threat to the health and safety of the public; **[**creating the Committee on Public Health Emergencies; prescribing the powers and duties of the Committee; establishing provisions for responding to and resolving**]** **providing for the establishment of an emergency team to coordinate a response to a** public health **[**emergencies;**]** **emergency or other health event; prescribing the membership, duties and scope of authority of such an emergency team;** and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Health Division of the Department of Health and Human Services and city, county and district boards of health to protect the public health of the residents of this State. (Chapter 439 of NRS)

Section [3**] 15.5** of this bill requires the Governor to **[**declare**]** **determine whether** a public health emergency **or other health event exists that requires a coordinated response by an emergency team** when there is an immediate threat to the health and safety of the public. **[**Section 5 of this bill creates the Committee on Public Health Emergencies and prescribes the membership of the Committee. Section 9 of this bill prescribes the duties of the Committee, including the development of a plan for responding to and resolving public health emergencies and the coordination of a response to a public health emergency. Section 10 of this bill provides that if the Governor declares a public health emergency, the Committee may, by affirmative majority vote, temporarily close a facility which provides health care if the Committee determines that: (1) the facility is the cause of or significantly contributed to the public health emergency; and (2) the health, safety or welfare of the public imperatively requires the emergency closure of the facility. Section 10 also provides that the Committee may not require the closure of the facility for longer than is necessary to ensure that the facility no longer poses an immediate threat to the health, safety or welfare of the public. Section 12 of this bill provides that if the Governor declares a public health emergency, the Committee may, by affirmative majority vote, temporarily suspend certain state statutes and regulations to allow public agencies, law enforcement agencies and political subdivisions of this State to share information, medical records and other resources during the public health emergency. Section 13 of this bill requires the Chairman of the Committee under certain circumstances to appoint a subcommittee to investigate a public health emergency and to assist the Committee in the coordination of a response to the public health emergency. Section 14 of this bill sets forth the powers of the Committee and any subcommittee thereof in conducting investigations and hearings in connection with a public health

~~emergency. Section 15 of this bill requires the Committee and any subcommittee thereof to keep confidential certain information provided to the Committee or subcommittee during the course of an investigation of a public health emergency relating to the medical history and personal identifying information of persons.]~~ **Section 15.5 also prescribes the membership of such an emergency team.**

Section 15.7 of this bill prescribes the duties of the emergency team, including the investigation of the response of each state agency, division, board and other entity that is represented on the emergency team and the coordination of the response to the public health emergency or other health event with those agencies, divisions, boards and other entities.

Section 15.8 of this bill requires the chairman of the emergency team or his designee to provide information to the public and to certain persons regarding the progress of the work of the emergency team and to submit a report on the findings of the emergency team upon the resolution of the public health emergency or other health event.

Section 15.9 of this bill requires the emergency team to make recommendations to the State Board of Health and local boards of health regarding regulations and policies concerning public health emergencies or other health events and to evaluate the response of each state agency, division, board and other entity represented on the emergency team.

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 ~~[2 to 15,]~~ **15.1 to 15.9,** inclusive, of this act.

Sec. 2. ~~*[As used in sections 2 to 15, inclusive, of this act, unless the context otherwise requires, "Committee" means the Committee on Public Health Emergencies created by section 5 of this act.]*~~ **(Deleted by amendment.)**

Sec. 3. ~~*[1. If a local board of health identifies within its jurisdiction or the Health Division identifies within this State an immediate threat to the health and safety of the public, the local board of health or Health Division, as applicable, shall immediately transmit to the Governor a report of the immediate threat.*~~

~~*2. Upon receiving a report pursuant to subsection 1, the Governor shall determine whether a public health emergency exists. If the Governor determines that a public health emergency exists, he shall, by executive order, declare a public health emergency.*~~

~~*3. An executive order declaring a public health emergency must include, without limitation:*~~

~~*(a) The nature of the public health emergency;*~~

~~*(b) Each political subdivision and each geographic area subject to the declaration;*~~

~~*(c) The conditions that have brought about the public health emergency;*~~

~~*(d) The estimated duration of the public health emergency; and*~~

~~*(e) An identification of each person and entity responsible for responding to the public health emergency.*~~

~~*4. The Governor shall immediately transmit the executive order declaring a public health emergency to:*~~

~~*(a) The Legislature or, if the Legislature is not in session, to the Legislative Commission and the Legislative Committee on Health Care;*~~

~~*(b) The Committee;*~~

~~*(c) Each person and entity identified in the executive order as being responsible for responding to the public health emergency;*~~

~~*(d) Each political subdivision subject to the declaration; and*~~

~~*(e) Any other person or entity deemed necessary or advisable by the Governor.*~~

~~*5. The Governor shall declare a public health emergency terminated before the estimated duration stated in the executive order upon a finding that the public health emergency no longer poses an immediate threat to the health and safety of the public. Upon such a finding, the Governor shall notify each person and entity identified in subsection 4.*~~

~~*6. If a public health emergency lasts longer than the estimated duration stated in the executive order, the Governor is not required to reissue an executive order, but shall notify each person and entity identified in subsection 4 of the extension.]*~~ **(Deleted by amendment.)**

Sec. 4. ~~*[During a public health emergency, the Governor may, upon consultation with the Committee, request from a governor of a contiguous state assistance in carrying out an inspection of a facility which provides health care, including, without limitation, a medical facility, facility for the dependent, medical laboratory or office of a provider of health care. The Governor may enter into an agreement for the provision of such services relating to inspections.]*~~ **(Deleted by amendment.)**

Sec. 5. ~~*[1. There is hereby created the Committee on Public Health Emergencies. The membership of the Committee consists of:*~~

~~*(a) The State Health Officer or a person appointed pursuant to subsection 3, as applicable;*~~

~~*(b) The Administrator of the Health Division;*~~

~~*(c) The Administrator of the Division of Health Care Financing and Policy of the Department;*~~

~~*(d) The Director of the Department of Public Safety; and*~~

~~*(e) The district health officer of each health district.*~~

~~*2. The State Health Officer or the person appointed pursuant to subsection 3, as applicable, is the Chairman of the Committee.*~~

~~*3. If the State Health Officer has a conflict of interest relating to a public health emergency or is otherwise unable to carry out his duties pursuant to sections 2 to 15, inclusive, of this act, the Director shall temporarily appoint a person to carry out the duties of the State Health*~~

~~*Officer prescribed in sections 2 to 15, inclusive, of this act until such time as the public health emergency has been resolved or the State Health Officer is able to resume his duties. The person appointed by the Director must meet the requirements prescribed in subsection 1 of NRS 439.090.*~~

~~*4. The Director or his designee shall act as the nonvoting Secretary of the Committee.*~~

~~*5. The Attorney General shall provide legal counsel to the Committee and any subcommittee created pursuant to section 13 of this act.]*~~ **(Deleted by amendment.)**

Sec. 6. ~~*[1. The Committee shall meet throughout the year at the times and places specified by a call of the Chairman or a majority of the Committee.*~~

~~*2. A majority of the members of the Committee constitutes a quorum, and a quorum may exercise all the power and authority conferred on the Committee.]*~~ **(Deleted by amendment.)**

Sec. 7. ~~*[1. While engaged in the business of the Committee or any subcommittee created pursuant to section 13 of this act, a member of the Committee or subcommittee who is:*~~

~~*(a) Not a public employee is entitled to receive compensation of not more than $80 per day, as fixed by the Governor.*~~

~~*(b) A public employee may not receive any compensation for his services as a member of the Committee or subcommittee. Any member of the Committee or subcommittee who is a public employee must be granted administrative leave from his duties to engage in the business of the Committee or subcommittee without loss of his regular compensation. Such leave does not reduce the amount of the member's other accrued leave.*~~

~~*2. In addition to any compensation received pursuant to subsection 1, while engaged in the business of the Committee or a subcommittee thereof, each member is entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally.]*~~ **(Deleted by amendment.)**

Sec. 8. ~~*[The Chairman of the Committee shall:*~~

~~*1. As soon as practicable after the Governor declares a public health emergency pursuant to section 3 of this act, determine whether a subcommittee is required to be created pursuant to section 13 of this act.*~~

~~*2. Provide information to the general public and ensure that the public remains informed on the progress of the work of the Committee and any subcommittee created pursuant to section 13 of this act.*~~

~~*3. Act as the liaison between the Committee and the Governor, the Speaker of the Assembly, the Majority Leader of the Senate, the Attorney General and any other officer, agency or political subdivision of this State with an interest in the response to and resolution of the public health emergency.*~~

~~*4. Provide to the Governor and the Legislature or, if the Legislature is not in session, to the Legislative Commission and the Legislative Committee on Health Care:*~~

~~*(a) During the course of an investigation of a public health emergency, monthly updates, or more frequent updates if requested, on the progress of the work of the Committee and any subcommittee created pursuant to section 13 of this act; and*~~

~~*(b) Upon the resolution of a public health emergency, a report on the findings of the Committee and any subcommittee created pursuant to section 13 of this act and the action that was taken to resolve the public health emergency.]*~~ **(Deleted by amendment.)**

Sec. 9. ~~*[The Committee shall:*~~

~~*1. Work cooperatively with the State Board of Health and local boards of health in this State to develop a plan for a coordinated response to public health emergencies, which, to the extent practicable, must be consistent with the provisions of chapters 239C, 414 and 441A of NRS and any plans and procedures adopted pursuant to those chapters.*~~

~~*2. Evaluate the response of each agency in this State which has the authority to oversee public health emergencies and make recommendations to the agency, the Governor and the Legislature or, if the Legislature is not in session, to the Legislative Commission and the Legislative Committee on Health Care with respect to actions and measures that may be taken to improve such responses.*~~

~~*3. Investigate, or create a subcommittee pursuant to section 13 of this act to investigate, each public health emergency.*~~

~~*4. Coordinate the response to and resolution of each public health emergency.*~~

~~*5. Work cooperatively with the health authority and the law enforcement agency with jurisdiction over the public health emergency to secure the medical records, whether maintained in written, electronic or other form, of patients of a facility which provides health care, including, without limitation, a medical facility, facility for the dependent, medical laboratory or office of a provider of health care and which is closed pursuant to section 10 of this act or chapter 449 of NRS or otherwise ceases operation as a result of the involvement of the facility in a public health emergency. The medical records must be protected in accordance with the statutes and regulations of this State and federal law and made available to the patients of the facility in accordance with those laws.]*~~ **(Deleted by amendment.)**

Sec. 10. ~~*[1. If the Governor declares a public health emergency pursuant to section 3 of this act, notwithstanding the provisions of chapter 449 of NRS and any other statute or regulation of this State to the contrary, the Committee may, by an affirmative vote of the majority of the Committee, temporarily close a facility which provides health care, including, without limitation, a medical facility, facility for the dependent,*~~

~~*medical laboratory or office of a provider of health care, if the Committee determines that:*~~

~~*(a) The facility is the cause of or significantly contributed to the public health emergency; and*~~

~~*(b) The health, safety or welfare of the public imperatively requires the emergency closure of the facility.*~~

~~*2. The Committee may not require the closure of a facility for longer than is necessary to ensure that the facility no longer poses an immediate threat to the health, safety or welfare of the public.*~~

~~*3. The Attorney General shall take such legal actions as are necessary and appropriate to carry out and enforce the vote of the Committee to close a facility.]*~~ **(Deleted by amendment.)**

Sec. 11. ~~*[The Committee may:*~~

~~*1. Provide information to or otherwise educate providers of medical care and persons who are employed at facilities which provide health care to prevent and respond to public health emergencies, including, without limitation, education relating to the accepted standards for the control and prevention of disease;*~~

~~*2. Coordinate with the Centers for Disease Control and Prevention or other agency of the Federal Government in carrying out the provisions of sections 2 to 15, inclusive, of this act; and*~~

~~*3. Take such other actions as are necessary to resolve a public health emergency.]*~~ **(Deleted by amendment.)**

Sec. 12. ~~*[1. If the Governor declares a public health emergency pursuant to section 3 of this act, notwithstanding any other statute or regulation of this State to the contrary, the Committee may, by an affirmative vote of the majority of the Committee, adopt a resolution temporarily suspending the enforcement of a statute or regulation of this State which restricts the ability of a public agency, law enforcement agency or a political subdivision of this State to share information, medical records, reports, personnel or other resources if the Committee finds that:*~~

~~*(a) It is in the best interest of the public for the public agency, law enforcement agency or political subdivision to share information, medical records, reports, personnel or other resources; and*~~

~~*(b) The temporary suspension of the enforcement of the statute or regulation will protect the health and safety of the public.*~~

~~*2. A resolution adopted pursuant to this section must set forth the:*~~

~~*(a) Findings of fact which support suspending the enforcement of the statute or regulation;*~~

~~*(b) Specific statute or regulation, or part thereof, for which enforcement is being suspended; and*~~

~~*(c) Period during which such enforcement will be suspended, which must not be later than the date on which the public health emergency is resolved.*~~

~~*3. A resolution adopted pursuant to this section must be forwarded to the:*~~

~~*(a) Governor;*~~

~~*(b) State Board of Health;*~~

~~*(c) Legislature or, if the Legislature is not in session, to the Legislative Commission and the Legislative Committee on Health Care; and*~~

~~*(d) Public agency, law enforcement agency or political subdivision of this State which is responsible for enforcing the statute or regulation.]*~~ **(Deleted by amendment.)**

Sec. 13. ~~*[1. If the Governor declares a public health emergency pursuant to section 3 of this act and more than one public officer, public agency or political subdivision of this State has authority to oversee any aspect of the public health emergency, the Chairman of the Committee, with the approval of the Committee, shall create a subcommittee to:*~~

~~*(a) Investigate the underlying cause of the public health emergency;*~~

~~*(b) Make recommendations to the Committee concerning the response to and actions which must be taken to resolve the public health emergency;*~~

~~*(c) Assist the Committee in the coordination of the response to the public health emergency; and*~~

~~*(d) Provide reports and updates relating to the work of the subcommittee at the request of the Chairman of the Committee.*~~

~~*2. The membership of a subcommittee may consist of:*~~

~~*(a) If the public health emergency concerns a licensee of a professional licensing board created pursuant to title 54 of NRS, the chairman of each such professional licensing board;*~~

~~*(b) The administrative head of the district, county or city health department in the jurisdiction in which the emergency exists;*~~

~~*(c) The chairman of the board of health in the jurisdiction in which the emergency exists;*~~

~~*(d) The health officer in the jurisdiction in which the emergency exists;*~~

~~*(e) One or more members of the Committee; and*~~

~~*(f) Any other person deemed necessary by the Chairman of the Committee.*~~

~~*3. The Chairman of the Committee shall appoint the chairman of a subcommittee.*~~

~~*4. Within 30 days after the resolution of the public health emergency for which a subcommittee is created, the subcommittee shall be deemed dissolved.]*~~ **(Deleted by amendment.)**

Sec. 14. ~~*[1. In conducting the investigations and hearings of the Committee or a subcommittee created pursuant to section 13 of this act:*~~

~~*(a) The Secretary of the Committee or subcommittee, or in his absence any member of the Committee or a subcommittee, may administer oaths.*~~

~~*(b) The Chairman of the Committee or the chairman of a subcommittee may cause the deposition of witnesses, residing either within or outside of*~~

~~*this State, to be taken in the manner prescribed by rule of court for taking depositions in civil actions in the district courts.*~~

~~*(c) The Chairman of the Committee or the chairman of a subcommittee may issue subpoenas to compel the attendance of witnesses and the production of books and papers.*~~

~~*2. If any witness refuses to attend or testify or produce any books and papers as required by the subpoena, the Chairman of the Committee or the chairman of a subcommittee may report to the district court by petition, setting forth that:*~~

~~*(a) Due notice has been given of the time and place of attendance of the witness or the production of the books and papers;*~~

~~*(b) The witness has been subpoenaed by the Committee or subcommittee pursuant to this section; and*~~

~~*(c) The witness has failed or refused to attend or produce the books and papers required by the subpoena before the Committee or subcommittee which is named in the subpoena, or has refused to answer questions propounded to him,*~~

~~*" and asking for an order of the court compelling the witness to attend and testify or produce the books and papers before the Committee or subcommittee.*~~

~~*3. Upon such petition, the court shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 10 days after the date of the order, and to show cause why he has not attended or testified or produced the books or papers before the Committee or subcommittee. A certified copy of the order must be served upon the witness.*~~

~~*4. If it appears to the court that the subpoena was regularly issued by the Committee or subcommittee, the court shall enter an order that the witness appear before the Committee or subcommittee at the time and place fixed in the order and testify or produce the required books or papers. Failure to obey the order constitutes contempt of court.]*~~ **(Deleted by amendment.)**

Sec. 15. ~~*[1. Except as otherwise provided in this section and NRS 439.538 or by resolution adopted pursuant to section 12 of this act, a person shall not make public the name of, or other personal identifying information about, any person whose medical information is provided to the Committee or a subcommittee created pursuant to section 13 of this act during the course of an investigation of a public health emergency without the consent of the person.*~~

~~*2. All information of a personal nature about the health of any person which is provided to the Committee or a subcommittee created pursuant to section 13 of this act during the course of an investigation of a public health emergency is confidential medical information and must not be disclosed to any person under any circumstances, including, without*~~

~~*limitation, pursuant to any subpoena, search warrant or discovery proceeding, except:*~~

~~*(a) As otherwise provided in NRS 439.538.*~~

~~*(b) As otherwise provided by resolution adopted pursuant to section 12 of this act.*~~

~~*(c) For statistical purposes, if the identity of the person is not discernible from the information disclosed.*~~

~~*(d) In reporting the actual or suspected abuse or neglect of a child or elderly person.*~~

~~*(e) To any person who has a medical need to know the information for his own protection or for the well being of a patient or dependent person, as determined by the Committee.*~~

~~*(f) If the person who is the subject of the information consents in writing to the disclosure.*~~

~~*(g) If the disclosure is made to the Department and the person about whom the disclosure is made has been diagnosed as having acquired immunodeficiency syndrome or an illness related to the human immunodeficiency virus and is a recipient of or an applicant for Medicaid.*~~

~~*(h) If the disclosure is authorized or required by NRS 239.0115 or another specific statute.]*~~ **(Deleted by amendment.)**

Sec. 15.1. ***As used in sections 15.1 to 15.9, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 15.2, 15.3 and 15.4 of this act have the meanings ascribed to them in those sections.***

Sec. 15.2. ***"Emergency team" means an emergency team designated in an executive order of the Governor pursuant to section 15.5 of this act to respond to a public health emergency or other health event.***

Sec. 15.3. ***"Health care facility" means any facility licensed pursuant to chapter 449 of NRS.***

Sec. 15.4. ***"Provider of health care" has the meaning ascribed to it in NRS 629.031.***

Sec. 15.5. ***1. Except as otherwise provided in chapter 414 of NRS, if a health authority identifies within its jurisdiction a public health emergency or other health event that is an immediate threat to the health and safety of the public in a health care facility or the office of a provider of health care, the health authority shall immediately transmit to the Governor a report of the immediate threat.***

2. Upon receiving a report pursuant to subsection 1, the Governor shall determine whether a public health emergency or other health event exists that requires a coordinated response for the health and safety of the public. If the Governor determines that a public health emergency or other health event exists that requires such a coordinated response, the Governor shall issue an executive order:

(a) Stating the nature of the public health emergency or other health event;

(b) Stating the conditions that have brought about the public health emergency or other health event, including, without limitation, an identification of each health care facility or provider of health care, if any, related to the public health emergency or other health event;

(c) Stating the estimated duration of the immediate threat to the health and safety of the public; and

(d) Designating an emergency team comprised of:

(1) The State Health Officer or a person appointed pursuant to subsection 5, as applicable; and

(2) Representatives of state agencies, divisions, boards and other entities, including, without limitation, professional licensing boards, with authority by statute to govern or regulate the health care facilities and providers of health care identified as being related to the public health emergency or other health event pursuant to paragraph (b).

3. If additional state agencies, divisions, boards or other entities are identified during the course of the response to the public health emergency or other health event as having authority regarding a health care facility or provider of health care that is related to the public health emergency or other health event, the Governor shall direct that agency, division, board or entity to appoint a representative to the emergency team.

4. The State Health Officer or a person appointed pursuant to subsection 5, as applicable, is the chairman of the emergency team.

5. If the State Health Officer has a conflict of interest relating to a public health emergency or other health event or is otherwise unable to carry out his duties pursuant to sections 15.1 to 15.9, inclusive, of this act, the Director shall temporarily appoint a person to carry out the duties of the State Health Officer prescribed in sections 15.1 to 15.9, inclusive, of this act until such time as the public health emergency or other health event has been resolved or the State Health Officer is able to resume his duties. The person appointed by the Director must meet the requirements prescribed by subsection 1 of NRS 439.090.

6. The Governor shall immediately transmit the executive order to:

(a) The Legislature or, if the Legislature is not in session, to the Legislative Commission and the Legislative Committee on Health Care; and

(b) Any person or entity deemed necessary or advisable by the Governor.

7. The Governor shall declare a public health emergency or other health event terminated before the estimated duration stated in the executive order upon a finding that the public health emergency or other health event no longer poses an immediate threat to the health and safety of the public. Upon such a finding, the Governor shall notify each person and entity described in subsection 6.

8. If a public health emergency or other health event lasts longer than the estimated duration stated in the executive order, the Governor is not

required to reissue an executive order, but shall notify each person and entity identified in subsection 6.

9. The Attorney General shall provide legal counsel to the emergency team.

Sec. 15.6. During a public health emergency or other health event, the Governor may, upon consultation with the emergency team, request from a governor of a contiguous state assistance in carrying out an inspection of any health care facility or the office of a provider of health care. The Governor may enter into an agreement for the provision of such services relating to inspections.

Sec. 15.7. 1. The emergency team shall:

(a) Convene as soon as practicable after the executive order is issued pursuant to section 15.5 of this act; and

(b) Upon the advice of the Attorney General, investigate the response of each state agency, division, board and other entity that is represented on the emergency team to the public health emergency or other health event and work cooperatively to ensure the sharing of any material information and coordinate a response to the public health emergency or other health event with all the state agencies, divisions, boards and other entities represented on the emergency team.

2. The scope of powers and duties of the emergency team extends only to the respective jurisdiction of each state agency, division, board or other entity represented on the team and does not supersede the authority of a health authority to investigate the public health emergency or other health event within its jurisdiction.

Sec. 15.8. The chairman of the emergency team or a member of the emergency team designated by the chairman shall:

1. Provide information to the general public and ensure that the public remains informed on the progress of the work of the emergency team.

2. Act as the liaison between the emergency team and the Governor, the Speaker of the Assembly, the Majority Leader of the Senate, the Attorney General and any other officer, agency or political subdivision of this State with an interest in the response to and resolution of the public health emergency or other health event.

3. Provide to the Governor and the Legislature or, if the Legislature is not in session, to the Legislative Commission and the Legislative Committee on Health Care:

(a) During the course of an investigation of a public health emergency or other health event, monthly updates, or more frequent updates if requested, on the progress of the work of the emergency team; and

(b) Upon the resolution of the issues involved in the public health emergency or other health event, a report on the findings of the emergency team and the action that was taken to resolve the public health emergency or other health event and any consequences thereof.

Sec. 15.9. ***Upon the resolution of a public health emergency or other health event, the emergency team shall:***

1. Make recommendations to the State Board of Health and local boards of health with respect to regulations or policies which may be adopted to prevent public health emergencies and other health events or to improve responses to public health emergencies and other health events; and

2. Evaluate the response of each state agency, division, board or other entity represented on the emergency team and make recommendations to the Governor and the Legislature or, if the Legislature is not in session, to the Legislative Commission and the Legislative Committee on Health Care with respect to actions and measures that may be taken to improve such responses.

Sec. 16. NRS 439.130 is hereby amended to read as follows:

439.130 1. The State Health Officer shall:

(a) Enforce all laws and regulations pertaining to the public health.

(b) Investigate causes of disease, epidemics, source of mortality, nuisances affecting the public health, and all other matters related to the health and life of the people, and to this end he may enter upon and inspect any public or private property in the State.

(c) Direct the work of subordinates and may authorize them to act in his place and stead.

(d) ***Except as otherwise provided in subsection*** ~~*[3]*~~ ***5 of section*** ~~*[5]*~~ ***15.5 of this act, perform the duties prescribed in sections*** ~~*[2 to 15,]*~~ ***15.1 to 15.9, inclusive, of this act.***

(e) Perform such other duties as the Director may, from time to time, prescribe.

2. The Administrator shall direct the work of the Health Division, administer the Division and perform such other duties as the Director may, from time to time, prescribe.

Sec. 17. NRS 439.150 is hereby amended to read as follows:

439.150 1. The State Board of Health is hereby declared to be supreme in all nonadministrative health matters. It has general supervision over all matters, except for administrative matters ~~[,]~~ ***and as otherwise provided in sections*** ~~*[2 to 15,]*~~ ***15.1 to 15.9, inclusive, of this act,*** relating to the preservation of the health and lives of citizens of this State and over the work of the State Health Officer and all district, county and city health departments, boards of health and health officers.

2. The Department is hereby designated as the agency of this State to cooperate with the federal authorities in the administration of those parts of the Social Security Act which relate to the general promotion of public health. It may receive and expend all money made available to the Health Division by the Federal Government, the State of Nevada or its political subdivisions, or from any other source, for the purposes provided in this chapter. In developing and revising any state plan in connection with federal

assistance for health programs, the Department shall consider, without limitation, the amount of money available from the Federal Government for those programs, the conditions attached to the acceptance of that money and the limitations of legislative appropriations for those programs.

3. Except as otherwise provided in NRS 576.128, the State Board of Health may set reasonable fees for the:

(a) Licensing, registering, certifying, inspecting or granting of permits for any facility, establishment or service regulated by the Health Division;

(b) Programs and services of the Health Division;

(c) Review of plans; and

(d) Certification and licensing of personnel.

➥ Fees set pursuant to this subsection must be calculated to produce for that period the revenue from the fees projected in the budget approved for the Health Division by the Legislature.

Sec. 18. ~~[On or before January 1, 2010, the Committee on Public Health Emergencies created by section 5 of this act shall complete the plan for a coordinated response to public health emergencies required pursuant to section 9 of this act.]~~ **(Deleted by amendment.)**

Sec. 19. This act becomes effective on July 1, 2009.

Assemblywoman Smith moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 202.

Bill read second time.

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

Amendment No. 434.

AN ACT relating to cosmetology; revising various definitions; revising provisions relating to the qualifications for examination as an instructor of aestheticians, an instructor in nail technology, a nail technologist or an aesthetician; revising provisions relating to cosmetologists' apprentices; ~~[establishing certain continuing education requirements;]~~ increasing the required instruction hours for an aesthetician; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Sections 1 and 3 of this bill revise the definitions of "aesthetician" and "cosmetologist" to reference sugaring and threading. (NRS 644.0205, 644.023) **Section 5** of this bill changes the term "manicurist" to "nail technologist," and this bill carries out this change for variations of the term "manicurist" that appear in chapter 644 of NRS. (NRS 644.029)

Section 11 of this bill revises the requirements for admission to examination as an instructor of aestheticians, effective July 1, 2010. (NRS 644.1955) **Section 13** of this bill revises the requirements for admission to examination as an instructor in nail technology, effective July 1,

2010. (NRS 644.197) **Section 15** of this bill revises the requirements for admission to examination for a license as a nail technologist, effective July 1, 2010. (NRS 644.205) **Section 16** of this bill revises the requirements for admission to examination for a license as an aesthetician, effective July 1, 2010. (NRS 644.207)

Existing law sets forth various requirements that must be met before the State Board of Cosmetology may issue to a person a certificate of registration as a cosmetologist's apprentice. (NRS 644.217) **Section 17** of this bill: (1) eliminates the requirement that such a person be a resident of a county whose population is less than 50,000; (2) requires the training of the person as a cosmetologist's apprentice to be conducted at a licensed cosmetological establishment that is located 60 miles or more from a licensed school of cosmetology; and (3) authorizes the Board to waive, for good cause shown, various requirements for an applicant for a certificate of registration as a cosmetologist's apprentice.

~~[Section 25 of this bill establishes continuing education requirements for the renewal of a license as a nail technologist, electrologist, aesthetician, hair designer, demonstrator of cosmetics, cosmetologist or instructor, effective January 1, 2011. (NRS 644.325)]~~ **Section 29** of this bill increases from 120 to 150 the number of hours of instruction a student enrolled as an aesthetician must receive before commencing work on members of the public. (NRS 644.408)

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

Section 1. NRS 644.0205 is hereby amended to read as follows:

644.0205 "Aesthetician" means any person who engages in the practices of:

1. Beautifying, massaging, cleansing or stimulating the skin of the human body ~~[, except the scalp,]~~ by the use of cosmetic preparations, antiseptics, tonics, lotions or creams, or any device, electrical or otherwise, for the care of the skin;

2. Applying cosmetics or eyelashes to any person, tinting eyelashes and eyebrows, and lightening hair on the body ***;*** ~~[except the scalp;]~~ and

3. Removing superfluous hair from the body of any person by the use of depilatories, waxing***,*** ~~[or]~~ tweezers, ***sugaring or threading,***

➥ but does not include ~~*[sugaring or threading or]*~~ the branches of cosmetology of a cosmetologist, hair designer, electrologist or ~~[manicurist.]~~ ***nail technologist.***

Sec. 2. NRS 644.0225 is hereby amended to read as follows:

644.0225 "Cosmetological establishment" means any premises, mobile unit, building or part of a building where cosmetology is practiced, other than a licensed barbershop in which one or more licensed ~~[manicurists]~~ ***nail technologists*** practice.

Sec. 3. NRS 644.023 is hereby amended to read as follows:

644.023 "Cosmetologist" means a person who engages in the practices of:

1. Cleansing, stimulating or massaging the scalp or cleansing or beautifying the hair by the use of cosmetic preparations, antiseptics, tonics, lotions or creams.

2. Cutting, trimming or shaping the hair.

3. Arranging, dressing, curling, waving, cleansing, singeing, bleaching, tinting, coloring or straightening the hair of any person with the hands, mechanical or electrical apparatus or appliances, or by other means, or similar work incident to or necessary for the proper carrying on of the practice or occupation provided by the terms of this chapter.

4. Removing superfluous hair from the surface of the body of any person by the use of electrolysis where the growth is a blemish, or by the use of depilatories, waxing ***,*** ~~[or]~~ tweezers, ***sugaring or threading,*** except for the permanent removal of hair with needles.

5. Manicuring the nails of any person.

6. Beautifying, massaging, stimulating or cleansing the skin of the human body by the use of cosmetic preparations, antiseptics, tonics, lotions, creams or any device, electrical or otherwise, for the care of the skin.

7. Giving facials or skin care or applying cosmetics or eyelashes to any person.

Sec. 4. NRS 644.024 is hereby amended to read as follows:

644.024 "Cosmetology" includes the occupations of a cosmetologist, aesthetician, electrologist, hair designer, demonstrator of cosmetics and ~~[manicurist.]~~ ***nail technologist.***

Sec. 5. NRS 644.029 is hereby amended to read as follows:

644.029 ~~["Manicurist"]~~ ***"Nail technologist"*** means any person who, for compensation or by demonstration, engages in the practices of:

1. Care of another's fingernails or toenails.

2. Beautification of another's nails.

3. Extension of another's nails.

4. Massaging of another's hands, forearms, feet or lower legs.

Sec. 6. NRS 644.030 is hereby amended to read as follows:

644.030 1. The State Board of Cosmetology consisting of seven members appointed by the Governor is hereby created.

2. The Board must consist of four cosmetologists, one ~~[manicurist,]~~ ***nail technologist,*** one aesthetician and one member representing customers of cosmetology.

Sec. 7. NRS 644.040 is hereby amended to read as follows:

644.040 1. No person is eligible for appointment as a member of the Board:

(a) Who is not licensed as a ~~[manicurist,]~~ ***nail technologist,*** electrologist, aesthetician or cosmetologist under the provisions of this chapter.

(b) Who is not, at the time of appointment, actually engaged in the practice of his respective branch of cosmetology.

(c) Who is not at least 25 years of age.

(d) Who has not been a resident of this State for at least 3 years immediately before his appointment.

2. The requirements of paragraphs (a) and (b) of subsection 1 do not apply to a person appointed to represent customers of cosmetology.

3. Not more than one member of the Board may be connected, directly or indirectly, with any school of cosmetology, or have been so connected while previously serving as a member of the Board.

Sec. 8. NRS 644.130 is hereby amended to read as follows:

644.130 1. The Board shall keep a record containing the name, known place of business, and the date and number of the license of every ~~[manicurist,]~~ ***nail technologist,*** electrologist, aesthetician, hair designer, demonstrator of cosmetics and cosmetologist, together with the names and addresses of all cosmetological establishments and schools of cosmetology licensed pursuant to this chapter. The record must also contain the facts which the applicants claimed in their applications to justify their licensure.

2. The Board may disclose the information contained in the record kept pursuant to subsection 1 to:

(a) Any other licensing board or agency that is investigating a licensee.

(b) A member of the general public, except information concerning the home and work address and telephone number of a licensee.

Sec. 9. NRS 644.193 is hereby amended to read as follows:

644.193 1. The Board may grant a provisional license as an instructor to a person who:

(a) Has successfully completed the 12th grade in school or its equivalent and submits written verification of the completion of his education;

(b) Has practiced as a full-time licensed cosmetologist, hair designer, aesthetician or ~~[manicurist]~~ ***nail technologist*** for 1 year and submits written verification of his experience;

(c) Is licensed pursuant to this chapter;

(d) Applies for a provisional license on a form supplied by the Board;

(e) Submits two current photographs of himself; and

(f) Has paid the fee established pursuant to subsection 2.

2. The Board shall establish and collect a fee of not less than $40 and not more than $75 for the issuance of a provisional license as an instructor.

3. A person issued a provisional license pursuant to this section may act as an instructor for compensation while accumulating the number of hours of training required for an instructor's license.

4. A provisional license as an instructor expires upon accumulation by the licensee of the number of hours of training required for an instructor's license or 1 year ~~[from]~~ ***after*** the date of issuance, whichever occurs first. The Board may grant an extension of not more than 45 days to those provisional licensees who have applied to the Board for examination as instructors and are awaiting examination.

Sec. 10. NRS 644.195 is hereby amended to read as follows:

644.195 1. Each instructor must:

(a) Be licensed as a cosmetologist pursuant to this chapter.

(b) Have successfully completed the 12th grade in school or its equivalent.

(c) Have 1 year of experience as a cosmetologist or as a licensed student instructor.

(d) Have completed 1,000 hours of training as an instructor or 500 hours of training as a ***licensed*** provisional instructor in a school of cosmetology.

(e) Except as otherwise provided in subsection 2, take one or more courses in advanced techniques for teaching or training, approved by the Board, whose combined duration is at least 30 hours during each 2-year period.

2. The provisions of paragraph (e) of subsection 1 do not apply to an instructor who is initially licensed not more than 6 months before the renewal date of the license. An instructor who is initially licensed more than 6 months but less than 1 year before the renewal date of the license must take one or more courses specified in paragraph (e) whose combined duration is at least 15 hours during each 2-year period.

3. Each instructor shall pay an initial fee for a license of not less than $60 and not more than $90.

Sec. 11. NRS 644.1955 is hereby amended to read as follows:

644.1955 1. The Board shall admit to examination for a license as an instructor of aestheticians any person who has applied to the Board in proper form, paid the fee and:

(a) Is at least 18 years of age;

(b) Is of good moral character;

(c) Has successfully completed the 12th grade in school or its equivalent;

(d) Has received a minimum of ~~[800]~~ ***700*** hours of training as an instructor or ~~[400]~~ ***500*** hours of training as a ***licensed*** provisional instructor in a licensed school of cosmetology;

(e) Is licensed as an aesthetician pursuant to this chapter; and

(f) Has practiced as a full-time licensed aesthetician or as a licensed student instructor for 1 year.

2. Except as otherwise provided in subsection 3, an instructor of aestheticians shall complete at least 30 hours of advanced training in a course approved by the Board during each 2-year period of his license.

3. The provisions of subsection 2 do not apply to an instructor of aestheticians who is initially licensed not more than 6 months before the renewal date of the license. An instructor of aestheticians who is initially licensed more than 6 months but less than 1 year before the renewal date of the license must take one or more courses specified in subsection 2 whose combined duration is at least 15 hours during each 2-year period.

Sec. 12. NRS 644.197 is hereby amended to read as follows:

644.197 1. The Board shall admit to examination for a license as an instructor in ~~[manicuring]~~ ***nail technology*** any person who has applied to the Board in proper form, paid the fee and:

(a) Is at least 18 years of age;

(b) Is of good moral character;

(c) Has successfully completed the 12th grade in school or its equivalent;

(d) Has received a minimum of 500 hours of training as an instructor or 250 hours of training as a provisional instructor in a licensed school of cosmetology;

(e) Is licensed as a ~~[manicurist]~~ ***nail technologist*** pursuant to this chapter; and

(f) Has practiced as a full-time licensed ~~[manicurist]~~ ***nail technologist*** or as a licensed student instructor for 1 year.

2. Except as otherwise provided in subsection 3, an instructor in ~~[manicuring]~~ ***nail technology*** shall complete at least 30 hours of advanced training in a course approved by the Board during each 2-year period of his license.

3. The provisions of subsection 2 do not apply to an instructor in ~~[manicuring]~~ ***nail technology*** who is initially licensed not more than 6 months before the renewal date of the license. An instructor in ~~[manicuring]~~ ***nail technology*** who is initially licensed more than 6 months but less than 1 year before the renewal date of the license must take one or more courses specified in subsection 2 whose combined duration is at least 15 hours during each 2-year period.

Sec. 13. NRS 644.197 is hereby amended to read as follows:

644.197 1. The Board shall admit to examination for a license as an instructor in nail technology any person who has applied to the Board in proper form, paid the fee and:

(a) Is at least 18 years of age;

(b) Is of good moral character;

(c) Has successfully completed the 12th grade in school or its equivalent;

(d) Has received a minimum of 500 hours of training as an instructor or ~~[250 hours of training]~~ as a ***licensed*** provisional instructor in a licensed school of cosmetology;

(e) Is licensed as a nail technologist pursuant to this chapter; and

(f) Has practiced as a full-time licensed nail technologist or as a licensed student instructor for 1 year.

2. Except as otherwise provided in subsection 3, an instructor in nail technology shall complete at least 30 hours of advanced training in a course approved by the Board during each 2-year period of his license.

3. The provisions of subsection 2 do not apply to an instructor in nail technology who is initially licensed not more than 6 months before the renewal date of the license. An instructor in nail technology who is initially licensed more than 6 months but less than 1 year before the renewal date of the license must take one or more courses specified in subsection 2 whose combined duration is at least 15 hours during each 2-year period.

Sec. 14. NRS 644.205 is hereby amended to read as follows:

644.205 The Board shall admit to examination for a license as a ~~[manicurist]~~ ***nail technologist*** any person who has made application to the

Board in proper form, paid the fee ~~[,]~~ and who ***,*** before or on the date of the examination:

1. Is not less than 18 years of age.
2. Is of good moral character.
3. Has successfully completed the 10th grade in school or its equivalent.
4. Has had any one of the following:

(a) Practical training of at least 500 hours under the immediate supervision of a licensed instructor in a licensed school of cosmetology in which the practice is taught.

(b) Practice as a full-time licensed ~~[manicurist]~~ ***nail technologist*** for 1 year outside the State of Nevada.

Sec. 15. NRS 644.205 is hereby amended to read as follows:

644.205 The Board shall admit to examination for a license as a nail technologist any person who has made application to the Board in proper form, paid the fee ~~[,]~~ and who ***,*** before or on the date of the examination:

1. Is not less than 18 years of age.
2. Is of good moral character.
3. Has successfully completed the 10th grade in school or its equivalent.
4. Has had any one of the following:

(a) Practical training of at least ~~[500]~~ ***600*** hours under the immediate supervision of a licensed instructor in a licensed school of cosmetology in which the practice is taught.

(b) Practice as a full-time licensed nail technologist for 1 year outside the State of Nevada.

Sec. 16. NRS 644.207 is hereby amended to read as follows:

644.207 The Board shall admit to examination for a license as an aesthetician any person who has made application to the Board in proper form, paid the fee and:

1. Is at least 18 years of age;
2. Is of good moral character;
3. Has successfully completed the 10th grade in school or its equivalent; and
4. Has received a minimum of ~~[600]~~ ***900*** hours of training, which includes theory, modeling and practice, in a licensed school of cosmetology or who has practiced as a full-time licensed aesthetician for at least 1 year.

Sec. 17. NRS 644.217 is hereby amended to read as follows:

644.217 1. The Board may issue a certificate of registration as a cosmetologist's apprentice to a person if:

(a) The person is ~~[a resident of a county whose population is less than 50,000;~~

~~(b) The person is]~~ required to travel more than 60 miles from his place of residence to attend a licensed school of cosmetology; and

~~[(c)]~~ ***(b)*** The training of the person as a cosmetologist's apprentice will be conducted at a licensed cosmetological establishment that is located ~~[in such a county.]~~ ***60 miles or more from a licensed school of cosmetology.***

2. ***The Board may, for good cause shown, waive the requirements of subsection 1 for a particular applicant.***

3. An applicant for a certificate of registration as a cosmetologist's apprentice must submit an application to the Board on a form prescribed by the Board. The application must be accompanied by a fee of $100 and must include:

(a) A statement signed by the licensed cosmetologist who will be supervising and training the cosmetologist's apprentice which states that the licensed cosmetologist has been licensed by the Board to practice cosmetology in this State for not less than 3 years immediately preceding the date of the application and that his license has been in good standing during that period;

(b) A statement signed by the owner of the licensed cosmetological establishment where the applicant will be trained which states that the owner will permit the applicant to be trained as a cosmetologist's apprentice at the cosmetological establishment; and

(c) Such other information as the Board may require by regulation.

~~[3.]~~ ***4.*** A certificate of registration as a cosmetologist's apprentice is valid for 2 years after the date on which it is issued and may be renewed by the Board upon good cause shown.

Sec. 18. NRS 644.220 is hereby amended to read as follows:

644.220 1. In addition to the fee for an application, the fees for examination are:

(a) For examination as a cosmetologist, not less than $75 and not more than $200.

(b) For examination as an electrologist, not less than $75 and not more than $200.

(c) For examination as a hair designer, not less than $75 and not more than $200.

(d) For examination as a ~~[manicurist,]~~ ***nail technologist,*** not less than $75 and not more than $200.

(e) For examination as an aesthetician, not less than $75 and not more than $200.

(f) For examination as an instructor of aestheticians, hair designers, cosmetology or ~~[manicuring,]~~ ***nail technology,*** not less than $75 and not more than $200.

➥ The fee for each reexamination is not less than $75 and not more than $200.

2. In addition to the fee for an application, the fee for examination or reexamination as a demonstrator of cosmetics is $75.

3. Each applicant referred to in subsections 1 and 2 shall, in addition to the fees specified therein, pay the reasonable value of all supplies necessary to be used in the examination.

Sec. 19. NRS 644.240 is hereby amended to read as follows:

644.240 Examinations for licensure as a cosmetologist may include:

1. Practical demonstrations in shampooing the hair, hairdressing, styling of hair, finger waving, coloring of hair, ~~[manicuring,]~~ ***nail technology,*** cosmetics, thermal curling, marcelling, facial massage, massage of the scalp with the hands, and cutting, trimming or shaping hair;

2. Written or oral tests on:

(a) Antisepsis, sterilization and sanitation;

(b) The use of mechanical apparatus and electricity as applicable to the practice of a cosmetologist; and

(c) The laws of Nevada and the regulations of the Board relating to the practice of cosmetology; and

3. Such other demonstrations and tests as the Board may require.

Sec. 20. NRS 644.245 is hereby amended to read as follows:

644.245 The examination for a license as a ~~[manicurist]~~ ***nail technologist*** may include:

1. Practical demonstrations in manicuring, pedicuring or the wrapping or extension of nails;

2. Written and oral tests on:

(a) Antisepsis, sterilization and sanitation;

(b) The use of mechanical apparatus and electricity in caring for the nails; and

(c) The laws of Nevada and regulations of the Board relating to cosmetology; and

3. Such other demonstrations and tests as the Board requires.

Sec. 21. NRS 644.260 is hereby amended to read as follows:

644.260 The Board shall issue a license as a cosmetologist, aesthetician, electrologist, hair designer, ~~[manicurist,]~~ ***nail technologist,*** demonstrator of cosmetics or instructor to each applicant who:

1. Passes a satisfactory examination, conducted by the Board to determine his fitness to practice that occupation of cosmetology; and

2. Complies with such other requirements as are prescribed in this chapter for the issuance of the license.

Sec. 22. NRS 644.300 is hereby amended to read as follows:

644.300 Every licensed ~~[manicurist,]~~ ***nail technologist,*** electrologist, aesthetician, hair designer, demonstrator of cosmetics or cosmetologist shall, within 30 days after changing his place of business, as designated in the records of the Board, notify the Secretary of the Board of his new place of business. Upon receipt of the notification, the Secretary shall make the necessary change in the records.

Sec. 23. NRS 644.320 is hereby amended to read as follows:

644.320 1. The license of every cosmetologist, aesthetician, electrologist, hair designer, ~~[manicurist,]~~ ***nail technologist,*** demonstrator of cosmetics and instructor expires:

(a) If the last name of the licensee begins with the letter "A" through the letter "M," on the date of birth of the licensee in the next succeeding odd-numbered year or such other date in that year as specified by the Board.

(b) If the last name of the licensee begins with the letter "N" through the letter "Z," on the date of birth of the licensee in the next succeeding even-numbered year or such other date in that year as specified by the Board.

2. The Board shall adopt regulations governing the proration of the fee required for initial licenses issued for less than 1 1/2 years.

Sec. 24. NRS 644.325 is hereby amended to read as follows:

644.325 1. An application for renewal of any license issued pursuant to this chapter must be:

(a) Made on a form prescribed and furnished by the Board;

(b) Made on or before the date for renewal specified by the Board;

(c) Accompanied by the fee for renewal; and

(d) Accompanied by all information required to complete the renewal.

2. The fees for renewal are:

(a) For ~~[manicurists,]~~ ***nail technologists,*** electrologists, aestheticians, hair designers, demonstrators of cosmetics and cosmetologists, not less than $50 and not more than $100.

(b) For instructors, not less than $60 and not more than $100.

(c) For cosmetological establishments, not less than $100 and not more than $200.

(d) For schools of cosmetology, not less than $500 and not more than $800.

3. For each month or fraction thereof after the date for renewal specified by the Board in which a license is not renewed, there must be assessed and collected at the time of renewal a penalty of $50 for a school of cosmetology and $20 for a cosmetological establishment and all persons licensed pursuant to this chapter.

4. An application for the renewal of a license as a cosmetologist, hair designer, aesthetician, electrologist, ~~[manicurist,]~~ ***nail technologist,*** demonstrator of cosmetics or instructor must be accompanied by two current photographs of the applicant which are 1 1/2 by 1 1/2 inches. The name and address of the applicant must be written on the back of each photograph.

Sec. 25. ~~[NRS 644.325 is hereby amended to read as follows:~~

~~644.325 1. An application for renewal of any license issued pursuant to this chapter must be:~~

~~(a) Made on a form prescribed and furnished by the Board;~~

~~(b) Made on or before the date for renewal specified by the Board;~~

~~(c) Accompanied by the fee for renewal; and~~

~~(d) Accompanied by all information required to complete the renewal.~~

~~2. The fees for renewal are:~~

~~(a) For nail technologists, electrologists, aestheticians, hair designers, demonstrators of cosmetics and cosmetologists, not less than $50 and not more than $100.~~

~~(b) For instructors, not less than $60 and not more than $100.~~

~~(c) For cosmetological establishments, not less than $100 and not more than $200.~~

~~(d) For schools of cosmetology, not less than $500 and not more than $800.~~

~~3. For each month or fraction thereof after the date for renewal specified by the Board in which a license is not renewed, there must be assessed and collected at the time of renewal a penalty of $50 for a school of cosmetology and $20 for a cosmetological establishment and all persons licensed pursuant to this chapter.~~

~~4. An application for the renewal of a license as a cosmetologist, hair designer, aesthetician, electrologist, nail technologist, demonstrator of cosmetics or instructor must be accompanied by two current photographs of the applicant which are 1 1/2 by 1 1/2 inches. The name and address of the applicant must be written on the back of each photograph.~~

~~***5. An applicant for the renewal of a license must complete, before the license may be renewed:***~~

~~***(a) Course work of a duration and type approved by the Board and relating to infection control, sign language, establishment management, or hair, skin or nail care;***~~

~~***(b) At least 2 credits of course work from a university or community college in general health, biology, chemistry, English, foreign language, cardiopulmonary resuscitation or first aid; or***~~

~~***(c) At least 8 hours of continuing education from a professional course or seminar presented by a person or nationally recognized organization approved by the Board.]*** **(Deleted by amendment.)**~~

Sec. 26. NRS 644.330 is hereby amended to read as follows:

644.330 1. A ~~[manicurist,]~~ ***nail technologist,*** electrologist, aesthetician, hair designer, cosmetologist, demonstrator of cosmetics or instructor whose license has expired may have his license renewed only upon payment of all required fees and submission of all information required to complete the renewal.

2. Any ~~[manicurist,]~~ ***nail technologist,*** electrologist, aesthetician, hair designer, cosmetologist, demonstrator of cosmetics or instructor who retires from practice for more than 1 year may have his license restored only upon payment of all required fees and submission of all information required to complete the restoration.

3. No ~~[manicurist,]~~ ***nail technologist,*** electrologist, aesthetician, hair designer, cosmetologist, demonstrator of cosmetics or instructor who has retired from practice for more than 4 years may have his license restored without examination and must comply with any additional requirements established in regulations adopted by the Board.

Sec. 27. NRS 644.360 is hereby amended to read as follows:

644.360 1. Every holder of a license issued by the Board to operate a cosmetological establishment shall display the license in plain view of members of the general public in the principal office or place of business of the holder.

2. Except as otherwise provided in this section, the operator of a cosmetological establishment may lease space to or employ only licensed ~~[manicurists,]~~ ***nail technologists,*** electrologists, aestheticians, hair designers, demonstrators of cosmetics and cosmetologists at his establishment to provide cosmetological services. This subsection does not prohibit an operator of a cosmetological establishment from:

(a) Leasing space to or employing a barber. Such a barber remains under the jurisdiction of the State Barbers' Health and Sanitation Board and remains subject to the laws and regulations of this State applicable to his business or profession.

(b) Leasing space to any other professional, including, without limitation, a provider of health care pursuant to subsection 3. Each such professional remains under the jurisdiction of the regulatory body which governs his business or profession and remains subject to the laws and regulations of this State applicable to his business or profession.

3. The operator of a cosmetological establishment may lease space at his cosmetological establishment to a provider of health care for the purpose of providing health care within the scope of his practice. The provider of health care shall not use the leased space to provide such health care at the same time a cosmetologist uses that space to engage in the practice of cosmetology. A provider of health care who leases space at a cosmetological establishment pursuant to this subsection remains under the jurisdiction of the regulatory body which governs his business or profession and remains subject to the laws and regulations of this State applicable to his business or profession.

4. As used in this section:

(a) "Provider of health care" means a person who is licensed, certified or otherwise authorized by the law of this State to administer health care in the ordinary course of business or practice of a profession.

(b) "Space" includes, without limitation, a separate room in the cosmetological establishment.

Sec. 28. NRS 644.370 is hereby amended to read as follows:

644.370 A cosmetological establishment must, at all times, be under the immediate supervision of a licensed ~~[manicurist,]~~ ***nail technologist,*** electrologist, aesthetician, hair designer or cosmetologist.

Sec. 29. NRS 644.408 is hereby amended to read as follows:

644.408 A student must receive the following minimum amount of instruction in the classroom before commencing work on members of the public:

1. A student enrolled as a cosmetologist must receive at least 300 hours.

2. A student enrolled as a hair designer must receive at least 300 hours.

3. A student enrolled as a ~~[manicurist]~~ ***nail technologist*** must receive at least 100 hours.

4. A student enrolled as an electrologist's apprentice must receive at least 150 hours.

5. A student enrolled as an aesthetician must receive at least ~~[120]~~ ***150*** hours.

Sec. 30. NRS 644.430 is hereby amended to read as follows:

644.430 1. The following are grounds for disciplinary action by the Board:

(a) Failure of an owner of a cosmetological establishment, a licensed aesthetician, cosmetologist, hair designer, electrologist, instructor, ~~[manicurist,]~~ ***nail technologist,*** demonstrator of cosmetics or school of cosmetology, or a cosmetologist's apprentice to comply with the requirements of this chapter or the applicable regulations adopted by the Board.

(b) Obtaining practice in cosmetology or any branch thereof, for money or any thing of value, by fraudulent misrepresentation.

(c) Gross malpractice.

(d) Continued practice by a person knowingly having an infectious or contagious disease.

(e) Drunkenness or the use or possession, or both, of a controlled substance or dangerous drug without a prescription, while engaged in the practice of cosmetology.

(f) Advertisement by means of knowingly false or deceptive statements.

(g) Permitting a license to be used where the holder thereof is not personally, actively and continuously engaged in business.

(h) Failure to display the license as provided in NRS 644.290, 644.360 and 644.410.

(i) Entering, by a school of cosmetology, into an unconscionable contract with a student of cosmetology.

(j) Continued practice of cosmetology or operation of a cosmetological establishment or school of cosmetology after the license therefor has expired.

(k) Any other unfair or unjust practice, method or dealing which, in the judgment of the Board, may justify such action.

2. If the Board determines that a violation of this section has occurred, it may:

(a) Refuse to issue or renew a license;

(b) Revoke or suspend a license;

(c) Place the licensee on probation for a specified period;

(d) Impose a fine not to exceed $2,000; or

(e) Take any combination of the actions authorized by paragraphs (a) to (d), inclusive.

3. An order that imposes discipline and the findings of fact and conclusions of law supporting that order are public records.

Sec. 31. 1. This section and sections 1 to 9, inclusive, 12, 14, 17 to 24, inclusive, and 26 to 30, inclusive, of this act become effective upon passage and approval.

2. Sections 10, 11, 13, 15 and 16 of this act become effective on July 1, 2010.

~~[3. Section 25 of this act becomes effective on January 1, 2011.]~~

Assemblyman Conklin moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 206.

Bill read second time.

The following amendment was proposed by the Committee on Health and Human Services:

Amendment No. 464.

AN ACT relating to public health; revising provisions relating to reports of sentinel events and patient safety by medical facilities; authorizing health authorities to conduct investigations of cases or suspected cases of an infectious disease **or exposure to biological, radiological or chemical agents** and to issue cease and desist orders relating to those investigations; authorizing the Health Division of the Department of Health and Human Services to take control of certain medical records under certain circumstances; revising provisions relating to the licensure and discipline of certain medical facilities and facilities for the dependent; requiring the Director of the Office of Consumer Health Assistance to assist consumers in filing certain complaints; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires medical facilities to report certain sentinel events to the Health Division of the Department of Health and Human Services. (NRS 439.800-439.890) **Section 2** of this bill requires medical facilities to prepare an annual summary of sentinel events and requires the Health Division to annually report to the State Board of Health concerning those summary reports. **Section 3** of this bill authorizes the Health Division to, upon receipt of a report of a sentinel event by a medical facility, request additional information, conduct an audit or conduct an investigation of the facility. **Section 9** of this bill authorizes the imposition of an administrative sanction to a medical facility that fails to submit a report of a sentinel event, does not have a patient safety plan or does not have a patient safety committee as required by law. (NRS 439.835, 439.865, 439.875, 439.885) **Section 10** of this bill changes the authority to adopt regulations relating to reports of sentinel events from the Administrator of the Health Division to the State Board of Health. (NRS 439.890)

Existing law establishes the office of the State Health Officer and establishes county, district and city boards of health. (NRS 439.090-439.130, 439.280-439.470) Existing law further prescribes the duties and responsibilities of those health authorities, including the prevention and control of nuisances, regulation of sanitation, protection of the public health and investigation of certain communicable diseases. (Chapters 439 and 441A of NRS) **Sections 13-17** of this bill authorize health authorities to **: (1)**

conduct investigations concerning infectious diseases or ~~[other events]~~ **exposure to biological, radiological or chemical agents** which significantly impair the health, safety or welfare of the public ~~[.]~~ **; (2) petition the court for a** subpoena **to compel the production of** information relevant to those investigations **;** and **(3)** issue cease and desist orders against a provider of health care or medical facility subject to such an investigation.

Section ~~[20]~~ 21 of this bill provides that if the Health Division suspends the license of a medical facility or facility for the dependent, the Health Division may take control of certain medical records of the facility and requires the State Board of Health to adopt regulations to pay for the services of a contractor to oversee the seizure and control of such records.

Existing law prohibits a medical facility, physician or osteopathic physician from retaliating or discriminating against an employee who reports information concerning the conduct of a physician or osteopathic physician to the Board of Medical Examiners or the State Board of Osteopathic Medicine, reports a sentinel event to the Health Division of the Department of Health and Human Services or cooperates or participates in an investigation or proceeding conducted by the Board of Medical Examiners, the State Board of Osteopathic Medicine or another governmental entity concerning the conduct or sentinel event. Existing law also prohibits such retaliation or discrimination against a registered nurse, licensed practical nurse or nursing assistant who refuses to provide nursing services that he does not have the knowledge, skill or experience to provide. (NRS 449.205)

Section 22 of this bill requires a medical facility to prepare and post a written notice for the employees of the medical facility and the nurses and nursing assistants who contract with the medical facility regarding these protections from retaliation and discrimination and the process for making a report.

Section ~~[21]~~ 23 of this bill amends existing provisions governing administrative sanctions against a medical facility or facility for the dependent which violates applicable laws and regulations by authorizing the Health Division to impose sanctions at a rate of not less than $1,000 and not more than $10,000 for each patient who was harmed or at risk of harm as a result of the violation. (NRS 449.163)

Existing law authorizes the Health Division to immediately suspend the license of a medical facility, facility for the dependent or other licensed facility if the public health, safety or welfare imperatively requires such suspension. (NRS 233B.127, 449.170) **Section ~~[22]~~ 24** of this bill amends existing law to specifically reference summary suspensions issued pursuant to NRS 233B.127. (NRS 449.170)

Existing law requires the Health Division to provide a copy of the results of certain inspections of certain medical facilities to any person who requests a copy of the report. **Section ~~[23]~~ 25** of this bill requires the Health Division to complete a report of each investigation and to include in the report any

recommendations of a health authority that also conducted an investigation of the facility. (NRS 449.200)

Section ~~[24]~~ 26 of this bill amends the duties of the Director of the Office for Consumer Health Assistance to require the Director to provide assistance to consumers who wish to file a complaint against a health care facility or a health care professional. (NRS 223.560)

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 in sections 2 and 3 of this act.

Sec. 2. ***1. On or before March 1 of each year, each medical facility shall provide to the Health Division, in the form prescribed by the State Board of Health, a summary of the reports submitted by the medical facility pursuant to NRS 439.835 during the immediately preceding calendar year. The summary must include, without limitation:***

(a) The total number and types of sentinel events reported by the medical facility, if any;

(b) A copy of the patient safety plan established pursuant to NRS 439.865;

(c) A summary of the membership and activities of the patient safety committee established pursuant to NRS 439.875; and

(d) Any other information required by the State Board of Health ~~[.]~~ concerning the reports submitted by the medical facility pursuant to NRS 439.835.

2. On or before June 1 of each year, the Health Division shall submit to the State Board of Health an annual summary of the reports and information received by the Health Division pursuant to this section. The annual summary must include, without limitation, a compilation of the information submitted pursuant to subsection 1 and any other pertinent information deemed necessary by the State Board of Health ~~[.]~~ concerning the reports submitted by the medical facility pursuant to NRS 439.835. The Health Division shall maintain the confidentiality of the reports submitted pursuant to NRS 439.835 and any other information requested by the State Board of Health concerning those reports when preparing the annual summary pursuant to this section.

Sec. 3. ***1. Upon receipt of a report pursuant to NRS 439.835, the Health Division may, as often as deemed necessary by the Administrator to protect the health and safety of the public, request additional information regarding the sentinel event or conduct an audit or investigation of the medical facility.***

2. A medical facility shall provide to the Health Division any information requested in furtherance of a request for information, an audit or an investigation pursuant to this section.

3. If the Health Division conducts an audit or investigation pursuant to this section, the Health Division shall, within 30 days after completing such an audit or investigation, report its findings to the State Board of Health.

4. A medical facility which is audited or investigated pursuant to this section shall pay to the Health Division the actual cost of conducting the audit or investigation.

Sec. 4. NRS 439.565 is hereby amended to read as follows:

439.565 1. Any person, corporation, firm, partnership, joint stock company, or any other association or organization which violates or proposes to violate this chapter, provisions of law requiring the immunization of children in public schools, private schools and child care facilities, any regulation of the State Board of Health or any regulation of a county, district or city board of health approved by the State Board of Health pursuant to this chapter may be enjoined by any court of competent jurisdiction.

2. Actions for injunction under this section may be prosecuted by the Attorney General, any district attorney in this State or any retained counsel of any local board of health in the name and upon the complaint of the State Board of Health or any local board of health, or upon the complaint of the State Health Officer or of any local health officer or his deputy.

3. A court may issue a permanent or temporary injunction, restraining order or other appropriate order pursuant to this section.

Sec. 5. NRS 439.800 is hereby amended to read as follows:

439.800 As used in NRS 439.800 to 439.890, inclusive, ***and sections 2 and 3 of this act,*** unless the context otherwise requires, the words and terms defined in NRS 439.802 to 439.830, inclusive, have the meanings ascribed to them in those sections.

Sec. 6. NRS 439.802 is hereby amended to read as follows:

439.802 "Facility-acquired infection" means a localized or systemic condition which results from an adverse reaction to the presence of an infectious agent or its toxins and which was not detected as present or incubating at the time a patient was admitted to a medical facility, including, without limitation:

1. Surgical site infections;
2. Ventilator-associated pneumonia;
3. Central line-related bloodstream infections;
4. Urinary tract infections; and
5. Other categories of infections as may be established by the ~~[Administrator]~~ ***State Board of Health*** by regulation pursuant to NRS 439.890.

Sec. 7. NRS 439.835 is hereby amended to read as follows:

439.835 1. Except as otherwise provided in subsection 2:

(a) A person who is employed by a medical facility shall, within 24 hours after becoming aware of a sentinel event that occurred at the medical facility, notify the patient safety officer of the facility of the sentinel event; and

(b) The patient safety officer shall, within 13 days after receiving notification pursuant to paragraph (a), report the date, the time and a brief description of the sentinel event to:

(1) The Health Division; and

(2) The representative designated pursuant to NRS 439.855, if that person is different from the patient safety officer.

2. If the patient safety officer of a medical facility personally discovers or becomes aware, in the absence of notification by another employee, of a sentinel event that occurred at the medical facility, the patient safety officer shall, within 14 days after discovering or becoming aware of the sentinel event, report the date, time and brief description of the sentinel event to:

(a) The Health Division; and

(b) The representative designated pursuant to NRS 439.855, if that person is different from the patient safety officer.

3. The ~~[Administrator]~~ ***State Board of Health*** shall prescribe the manner in which reports of sentinel events must be made pursuant to this section ***.*** ~~*[, including, without limitation, a standardized form for submission of such reports.]*~~

Sec. 8. NRS 439.840 is hereby amended to read as follows:

439.840 1. The Health Division shall, to the extent of legislative appropriation and authorization:

(a) Collect and maintain reports received pursuant to NRS 439.835 ~~[,]~~ ***and section 2 of this act*** ~~*[,]*~~ ***and any additional information requested by the Health Division pursuant to section 3 of this act;*** and

(b) Ensure that such reports, and any additional documents created from such reports, are protected adequately from fire, theft, loss, destruction and other hazards and from unauthorized access.

2. Except as otherwise provided in NRS 239.0115, reports received pursuant to NRS 439.835 ***and subsection 1 of section 2 of this act and any additional information requested by the Health Division pursuant to section 3 of this act*** are confidential, not subject to subpoena or discovery and not subject to inspection by the general public.

Sec. 9. NRS 439.885 is hereby amended to read as follows:

439.885 ***1.*** If a medical facility:

~~[1.]~~ ***(a)*** Commits a violation of any provision of NRS 439.800 to 439.890, inclusive, ***and sections 2 and 3 of this act*** or for any violation for which an administrative sanction pursuant to NRS 449.163 would otherwise be applicable; and

~~[2.]~~ ***(b)*** Of its own volition, reports the violation to the Administrator,

➥ such a violation must not be used as the basis for imposing an administrative sanction pursuant to NRS 449.163.

2. If a medical facility commits a violation of any provision of NRS 439.800 to 439.890, inclusive, and sections 2 and 3 of this act and does not, of its own volition, report the violation to the Administrator, the

Health Division may, in accordance with the provisions of subsection 3, impose an administrative sanction:

(a) For failure to report a sentinel event, in an amount not to exceed $100 per day for each day after the date on which the sentinel event was required to be reported pursuant to NRS 439.835;

(b) For failure to adopt and implement a patient safety plan pursuant to NRS 439.865, in an amount not to exceed $1,000 for each month in which a patient safety plan was not in effect; and

(c) For failure to establish a patient safety committee or failure of such a committee to meet pursuant to the requirements of NRS 439.875, in an amount not to exceed $2,000 for each violation of that section.

3. Before the Health Division imposes an administrative sanction pursuant to subsection 2, the Health Division shall provide the medical facility with reasonable notice. The notice must contain the legal authority, jurisdiction and reasons for the action to be taken. If a medical facility wants to contest the action, the facility may file an appeal pursuant to the regulations of the State Board of Health adopted pursuant to NRS 449.165 and 449.170. Upon receiving notice of an appeal, the Health Division shall hold a hearing in accordance with those regulations.

~~[3.]~~ ***4. An administrative sanction collected pursuant to this section must be accounted for separately and used by the Health Division to provide training and education to employees of the Health Division, employees of medical facilities and members of the general public regarding issues relating to the provision of quality and safe health care.***

Sec. 10. NRS 439.890 is hereby amended to read as follows:

439.890 The ~~[Administrator]~~ ***State Board of Health*** shall adopt such regulations as the ~~[Administrator]~~ ***the Board*** determines to be necessary or advisable to carry out the provisions of NRS 439.800 to 439.890, inclusive ~~[.]~~ ***, and sections 2 and 3 of this act.***

Sec. 11. Chapter 441A of NRS is hereby amended by adding thereto the provisions set forth as sections 12 to 17, inclusive, of this act.

Sec. 12. ***"Infectious disease" means a disease which is caused by pathogenic microorganisms, including, without limitation, bacteria, viruses, parasites or fungi, which spread, either directly or indirectly, from one person to another. The term includes a communicable disease.***

Sec. 13. ***1. Except as otherwise required pursuant to NRS 441A.160, a health authority may conduct an investigation of a case or suspected case of*** ~~*[an]*~~ ***:***

(a) An infectious disease within its jurisdiction ; or ~~*[any other event]*~~

(b) Exposure to a biological, radiological or chemical agent within its jurisdiction,

➥ which significantly impairs the health, safety or welfare of the public within its jurisdiction.

2. Each health authority shall:

(a) Except as otherwise required pursuant to NRS 441A.170, report each week to the State Health Officer the number and types of cases or suspected cases of infectious diseases ~~[or other events]~~ or cases or suspected cases of exposure to biological, radiological or chemical agents which significantly impair the health, safety or welfare of the public reported to the health authority, and any other information required by the regulations of the Board.

(b) Report the results of an investigation conducted pursuant to subsection 1 to the State Health Officer within 30 days after concluding the investigation.

3. The Board may adopt regulations to carry out the provisions of sections 13 to 17, inclusive, of this act.

Sec. 14. ***1. A health authority which conducts an investigation pursuant to NRS 441A.160 or section 13 of this act ~~[may,]~~ shall, for the protection of the health, safety and welfare of the public, ~~[issue a subpoena for the release of information,]~~ have access to all medical records, laboratory records and reports, books and papers relevant to the investigation which are in the possession of a provider of health care or medical facility being investigated or which are otherwise necessary to carry out the investigation. The determination of what information is necessary to carry out the investigation is at the discretion of the health authority.***

2. If a health authority conducts an investigation pursuant to NRS 441A.160 or section 13 of this act, the health authority may require a provider of health care or medical facility being investigated to pay a proportionate share of the actual cost of carrying out the investigation, including, without limitation, the cost of notifying and testing patients who may have contracted an infectious disease , been exposed to a biological, radiological or chemical agent or otherwise been harmed.

Sec. 15. ***1. ~~[The]~~ Upon petition by a health authority to the district court for the county in which an investigation is being conducted by ~~[a]~~ the health authority pursuant to NRS 441A.160 or section 13 of this act , the court may issue a subpoena to compel the production of ~~[information,]~~ medical records, laboratory records and reports, books and papers as ~~[required by a subpoena issued by the health authority.]~~ set forth in section 14 of this act.***

2. If a witness refuses to produce any ~~[information,]~~ medical records, laboratory records and reports, books or papers required by a subpoena ~~[, the health authority may report to the district court for the county in which the investigation is pending by petition, setting forth that:~~

~~(a) Due notice has been given of the time and place of the production of the information, books and papers; and~~

~~(b) The witness has failed or refused to produce the information, books and papers required by subpoena before the health authority in the~~

~~*investigation named in the subpoena, or has refused to answer questions propounded to him in the course of the investigation,*~~

~~*— and asking for an order of the court compelling the witness to produce the information, books or papers before the health authority.*~~

~~*3. Upon receiving such a petition,]*~~ ***issued by a court pursuant to subsection 1,*** ***the court shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 10 days after the date of the order, and then and there show cause why he has not produced the*** ~~*[information,]*~~ ***medical records, laboratory records and reports, books or papers before the health authority. A certified copy of the order must be served upon the witness.***

~~*[4. If it appears to the court that the subpoena was regularly issued by the health authority, the court shall]*~~ ***The court may enter an order that the witness appear before the*** ~~*[agency]*~~ ***health authority at the time and place fixed in the order and produce the required*** ~~*[information,]*~~ ***medical records, laboratory records and reports, books or papers, and upon failure to obey the order , the witness must be dealt with as for contempt of court.***

Sec. 16. ***1. A public agency, law enforcement agency or political subdivision of this State which has information that is relevant to an investigation relating to an infectious disease or*** ~~*[other event]*~~ ***exposure to a biological, radiological or chemical agent which significantly impairs the health, safety and welfare of the public shall share the information and any medical records and reports with*** ~~*[other agencies and political subdivisions]*~~ ***the appropriate state and local health authorities if it is in the best interest of the public and*** ~~*[will]*~~ ***as necessary to further the investigation of the requesting*** ~~*[agency or political subdivision.]*~~ ***health authority.***

2. The Board shall adopt regulations to carry out this section, including, without limitation:

(a) Identifying the public agencies and political subdivisions with which the information set forth in subsection 1 may be shared;

(b) Prescribing the circumstances and procedures by which the information may be shared with those identified public agencies and political subdivisions; and

(c) Ensuring the confidentiality of the information if it is protected health information.

Sec. 17. ***1. During the course of or as a result of an investigation concerning the case or suspected case of an infectious disease or the case or suspected case of exposure to a biological, radiological or chemical agent pursuant to NRS 441A.160 or section 13 of this act, a health authority may, upon finding that a provider of health care or medical facility significantly contributed to a case of an infectious disease or to a case of exposure to a biological, radiological or chemical agent and that the public health imperatively requires:***

(a) Issue a written order directing the provider of health care or medical facility to cease and desist any act or conduct which is harmful to the health, safety or welfare of the public; and

(b) Take any other action to reduce or eliminate the harm to the health, safety or welfare of the public.

2. A written order directing a provider of health care or medical facility to cease and desist issued pursuant to subsection 1 must contain a statement of the:

(a) Provision of law or regulation which the provider of health care or medical facility is violating; or

(b) Standard of care that the provider of health care or medical facility is violating which led to the case of the infectious disease ~~[.]~~ ***or to the case of exposure to a biological, radiological or chemical agent.***

3. An order to cease and desist must be served upon the person or an authorized representative of the facility directly or by certified or registered mail, return receipt requested. The order becomes effective upon service.

4. An order to cease and desist expires 30 days after the date of service unless the health authority institutes an action in a court of competent jurisdiction seeking an injunction.

5. Upon a showing by the health authority that a provider of health care or medical facility is committing or is about to commit an act which is harmful to the health, safety or welfare of the public, a court of competent jurisdiction may enjoin the provider of health care or medical facility from committing the act.

Sec. 18. NRS 441A.010 is hereby amended to read as follows:

441A.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 441A.020 to 441A.115, inclusive, ***and section 12 of this act*** have the meanings ascribed to them in those sections.

Sec. 19. NRS 441A.130 is hereby amended to read as follows:

441A.130 The State Health Officer shall inform each local health officer of the regulations adopted by the Board and the procedures established for investigating and reporting cases or suspected cases of ~~[communicable]~~ ***infectious*** diseases ~~[.]~~ ***and cases or suspected cases of exposure to biological, radiological or chemical agents pursuant to this chapter.***

Sec. 20. Chapter 449 of NRS is hereby amended by adding thereto ~~[a new section to read as follows:]~~ **the provisions set forth in sections 21 and 22 of this act.**

Sec. 21. 1. If the Health Division suspends the license of a medical facility or a facility for the dependent pursuant to the provisions of this chapter, or if a facility otherwise ceases to operate, including, without limitation, pursuant to an action or order of a health authority pursuant to chapter 441A of NRS, the Health Division may, if deemed necessary by the Administrator of the Health Division, take control of and ensure the safety of the medical records of the facility.

2. Subject to the provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, the Health Division shall:

(a) Maintain the confidentiality of the medical records obtained pursuant to subsection 1.

(b) Share medical records obtained pursuant to subsection 1 with law enforcement agencies in this State and other governmental entities which have authority to license the facility or to license the owners or employees of the facility.

(c) Release a medical record obtained pursuant to subsection 1 to the patient or legal guardian of the patient who is the subject of the medical record.

3. The State Board of Health shall adopt regulations to carry out the provisions of this section, including, without limitation, regulations for contracting with a person to maintain any medical records under the control of the Health Division pursuant to subsection 1 and for payment by the facility of the cost of maintaining medical records.

Sec. 22. 1. A medical facility shall prepare a written notice for the employees of the medical facility and for the nurses and nursing assistants who contract with the medical facility regarding the protections provided for actions taken pursuant to subsection 1 of NRS 449.205 and the legal remedy provided pursuant to NRS 449.207. The notice must include the process by which an employee, nurse or nursing assistant may make a report pursuant to subsection 1 of NRS 449.205.

2. A medical facility shall:

(a) Post in one or more conspicuous places at the medical facility the notice prepared pursuant to subsection 1; and

(b) Include the text of the written notice in any manual or handbook that the medical facility provides to employees and nurses and nursing assistants who contract with the medical facility concerning employment practices at the medical facility.

~~[Sec. 21.]~~ ***Sec. 23.*** NRS 449.163 is hereby amended to read as follows:

449.163 1. If a medical facility or facility for the dependent violates any provision related to its licensure, including any provision of NRS 439B.410 ~~[,]~~ ***or*** 449.001 to 449.240, inclusive, ***and section*** ~~[20]~~ ***21 of this act,*** or any condition, standard or regulation adopted by the Board, the Health Division in accordance with the regulations adopted pursuant to NRS 449.165 may:

(a) Prohibit the facility from admitting any patient until it determines that the facility has corrected the violation;

(b) Limit the occupancy of the facility to the number of beds occupied when the violation occurred, until it determines that the facility has corrected the violation;

(c) Impose an administrative penalty of not more than $1,000 per day for each violation, together with interest thereon at a rate not to exceed 10 percent per annum; and

(d) Appoint temporary management to oversee the operation of the facility and to ensure the health and safety of the patients of the facility, until:

(1) It determines that the facility has corrected the violation and has management which is capable of ensuring continued compliance with the applicable statutes, conditions, standards and regulations; or

(2) Improvements are made to correct the violation.

2. ***If a violation by a medical facility or facility for the dependent relates to the health or safety of a patient, an administrative penalty imposed pursuant to paragraph (c) of subsection 1 must be in a total amount of not less than $1,000 and not more than $10,000 for each patient who was harmed or at risk of harm as a result of the violation.***

3. If the facility fails to pay any administrative penalty imposed pursuant to paragraph (c) of subsection 1, the Health Division may:

(a) Suspend the license of the facility until the administrative penalty is paid; and

(b) Collect court costs, reasonable attorney's fees and other costs incurred to collect the administrative penalty.

~~[3.]~~ ***4.*** The Health Division may require any facility that violates any provision of NRS 439B.410 ~~[,]~~ ***or*** 449.001 to 449.240, inclusive, ***and section*** ~~*[20]*~~ ***21 of this act,*** or any condition, standard or regulation adopted by the Board, to make any improvements necessary to correct the violation.

~~[4.]~~ ***5.*** Any money collected as administrative penalties pursuant to this section must be accounted for separately and used to protect the health or property of the residents of the facility in accordance with applicable federal standards.

~~[Sec. 22.]~~ ***Sec. 24.*** NRS 449.170 is hereby amended to read as follows:

449.170 1. When the Health Division intends to deny, suspend or revoke a license, or impose any sanction prescribed by NRS 449.163, it shall give reasonable notice to all parties by certified mail. The notice must contain the legal authority, jurisdiction and reasons for the action to be taken. Notice is not required if the Health Division finds that the public health requires immediate action. In that case, it may order a summary suspension of a license ***pursuant to this section and NRS 233B.127*** or impose any sanction prescribed by NRS 449.163, pending proceedings for revocation or other action.

2. If a person wants to contest the action of the Health Division, he must file an appeal pursuant to regulations adopted by the Board.

3. Upon receiving notice of an appeal, the Health Division shall hold a hearing pursuant to regulations adopted by the Board.

4. The Board shall adopt such regulations as are necessary to carry out the provisions of this section.

~~[Sec. 23.]~~ ***Sec. 25.*** NRS 449.200 is hereby amended to read as follows:

449.200 The Health Division shall ~~[, upon]~~ ***:***

1. Prepare a report of the results of its inspections of medical facilities and facilities for the dependent regarding compliance with applicable regulations and standards. The report must be provided to the facility and include, without limitation, a recommendation of the Health Division for correcting any deficiencies and, if a deficiency is discovered as a result of an investigation by a county, district or city board of health or health officer, the recommendations of the board or health officer.

2. Upon request, disclose to any person or governmental entity the results of its inspections of facilities for skilled nursing, facilities for intermediate care and residential facilities for groups regarding their compliance with applicable regulations and standards.

~~[Sec. 24.]~~ ***Sec. 26.*** NRS 223.560 is hereby amended to read as follows:

223.560 The Director shall:

1. Respond to written and telephonic inquiries received from consumers and injured employees regarding concerns and problems related to health care and workers' compensation;

2. Assist consumers and injured employees in understanding their rights and responsibilities under health care plans, including, without limitation, the Public Employees' Benefits Program, and policies of industrial insurance;

3. Identify and investigate complaints of consumers and injured employees regarding their health care plans, including, without limitation, the Public Employees' Benefits Program, and policies of industrial insurance and assist those consumers and injured employees to resolve their complaints, including, without limitation:

(a) Referring consumers and injured employees to the appropriate agency, department or other entity that is responsible for addressing the specific complaint of the consumer or injured employee; and

(b) Providing counseling and assistance to consumers and injured employees concerning health care plans, including, without limitation, the Public Employees' Benefits Program, and policies of industrial insurance;

4. Provide information to consumers and injured employees concerning health care plans, including, without limitation, the Public Employees' Benefits Program, and policies of industrial insurance in this State;

5. Establish and maintain a system to collect and maintain information pertaining to the written and telephonic inquiries received by the Office for Consumer Health Assistance;

6. Take such actions as are necessary to ensure public awareness of the existence and purpose of the services provided by the Director pursuant to this section;

7. In appropriate cases and pursuant to the direction of the Governor, refer a complaint or the results of an investigation to the Attorney General for further action;

8. Provide information to and applications for prescription drug programs for consumers without insurance coverage for prescription drugs or pharmaceutical services; ~~[and]~~

9. Establish and maintain an Internet website which includes:

(a) Information concerning purchasing prescription drugs from Canadian pharmacies that have been recommended by the State Board of Pharmacy for inclusion on the Internet website pursuant to subsection 4 of NRS 639.2328;

(b) Links to websites of Canadian pharmacies which have been recommended by the State Board of Pharmacy for inclusion on the Internet website pursuant to subsection 4 of NRS 639.2328; and

(c) A link to the website established and maintained pursuant to NRS 439A.270 which provides information to the general public concerning the charges imposed and the quality of the services provided by the hospitals and surgical centers for ambulatory patients in this State ~~[.]~~ ***; and***

10. Assist consumers with filing complaints against health care facilities and health care professionals. As used in this subsection, "health care facility" has the meaning ascribed to it in NRS 449.800.

~~[Sec. 25.]~~ ***Sec. 27.*** NRS 630.30665 is hereby amended to read as follows:

630.30665 1. The Board shall require each holder of a license to practice medicine to submit annually to the Board, on a form provided by the Board, a report stating the number and type of surgeries requiring conscious sedation, deep sedation or general anesthesia performed by the holder of the license at his office or any other facility, excluding any surgical care performed:

(a) At a medical facility as that term is defined in NRS 449.0151; or

(b) Outside of this State.

2. In addition to the report required pursuant to subsection 1, the Board shall require each holder of a license to practice medicine to submit a report annually to the Board concerning the occurrence of any sentinel event arising from any surgery described in subsection 1. The report must be submitted in the manner prescribed by the Board which must be substantially similar to the manner prescribed by the ~~[Administrator of the Health Division of the Department of Health and Human Services]~~ ***State Board of Health*** for reporting information pursuant to NRS 439.835.

3. Each holder of a license to practice medicine shall submit the report required pursuant to subsections 1 and 2 whether or not he performed any surgery described in subsection 1. Failure to submit a report or knowingly filing false information in a report constitutes grounds for initiating disciplinary action pursuant to subsection 8 of NRS 630.306.

4. The Board shall:

(a) Collect and maintain reports received pursuant to subsections 1 and 2; and

(b) Ensure that the reports, and any additional documents created from the reports, are protected adequately from fire, theft, loss, destruction and other hazards, and from unauthorized access.

5. Except as otherwise provided in NRS 239.0115, a report received pursuant to subsection 1 or 2 is confidential, not subject to subpoena or discovery, and not subject to inspection by the general public.

6. The provisions of this section do not apply to surgical care requiring only the administration of oral medication to a patient to relieve the patient's anxiety or pain, if the medication is not given in a dosage that is sufficient to induce in a patient a controlled state of depressed consciousness or unconsciousness similar to general anesthesia, deep sedation or conscious sedation.

7. In addition to any other remedy or penalty, if a holder of a license to practice medicine fails to submit a report or knowingly files false information in a report submitted pursuant to this section, the Board may, after providing the holder of a license to practice medicine with notice and opportunity for a hearing, impose against the holder of a license to practice medicine an administrative penalty for each such violation. The Board shall establish by regulation a sliding scale based on the severity of the violation to determine the amount of the administrative penalty to be imposed against the holder of the license pursuant to this subsection. The regulations must include standards for determining the severity of the violation and may provide for a more severe penalty for multiple violations.

8. As used in this section:

(a) "Conscious sedation" means a minimally depressed level of consciousness, produced by a pharmacologic or nonpharmacologic method, or a combination thereof, in which the patient retains the ability independently and continuously to maintain an airway and to respond appropriately to physical stimulation and verbal commands.

(b) "Deep sedation" means a controlled state of depressed consciousness, produced by a pharmacologic or nonpharmacologic method, or a combination thereof, and accompanied by a partial loss of protective reflexes and the inability to respond purposefully to verbal commands.

(c) "General anesthesia" means a controlled state of unconsciousness, produced by a pharmacologic or nonpharmacologic method, or a combination thereof, and accompanied by partial or complete loss of protective reflexes and the inability independently to maintain an airway and respond purposefully to physical stimulation or verbal commands.

(d) "Sentinel event" means an unexpected occurrence involving death or serious physical or psychological injury or the risk thereof, including, without limitation, any process variation for which a recurrence would carry a significant chance of serious adverse outcome. The term includes loss of limb or function.

~~[Sec. 26.]~~ ***Sec. 28.*** NRS 633.524 is hereby amended to read as follows:

633.524 1. The Board shall require each holder of a license to practice osteopathic medicine issued pursuant to this chapter to submit annually to the Board, on a form provided by the Board, and in the format required by the Board by regulation, a report stating the number and type of surgeries requiring conscious sedation, deep sedation or general anesthesia performed by the holder of the license at his office or any other facility, excluding any surgical care performed:

(a) At a medical facility as that term is defined in NRS 449.0151; or

(b) Outside of this State.

2. In addition to the report required pursuant to subsection 1, the Board shall require each holder of a license to practice osteopathic medicine to submit a report annually to the Board concerning the occurrence of any sentinel event arising from any surgery described in subsection 1. The report must be submitted in the manner prescribed by the Board which must be substantially similar to the manner prescribed by the ~~[Administrator of the Health Division of the Department of Health and Human Services]~~ ***State Board of Health*** for reporting information pursuant to NRS 439.835.

3. Each holder of a license to practice osteopathic medicine shall submit the report required pursuant to subsections 1 and 2 whether or not he performed any surgery described in subsection 1. Failure to submit a report or knowingly filing false information in a report constitutes grounds for initiating disciplinary action pursuant to NRS 633.511.

4. The Board shall:

(a) Collect and maintain reports received pursuant to subsections 1 and 2; and

(b) Ensure that the reports, and any additional documents created from the reports, are protected adequately from fire, theft, loss, destruction and other hazards, and from unauthorized access.

5. Except as otherwise provided in NRS 239.0115, a report received pursuant to subsection 1 or 2 is confidential, not subject to subpoena or discovery, and not subject to inspection by the general public.

6. The provisions of this section do not apply to surgical care requiring only the administration of oral medication to a patient to relieve the patient's anxiety or pain, if the medication is not given in a dosage that is sufficient to induce in a patient a controlled state of depressed consciousness or unconsciousness similar to general anesthesia, deep sedation or conscious sedation.

7. In addition to any other remedy or penalty, if a holder of a license to practice osteopathic medicine fails to submit a report or knowingly files false information in a report submitted pursuant to this section, the Board may, after providing the holder of a license to practice osteopathic medicine with notice and opportunity for a hearing, impose against the holder of a license an administrative penalty for each such violation. The Board shall establish

by regulation a sliding scale based on the severity of the violation to determine the amount of the administrative penalty to be imposed against the holder of the license to practice osteopathic medicine. The regulations must include standards for determining the severity of the violation and may provide for a more severe penalty for multiple violations.

8. As used in this section:

(a) "Conscious sedation" means a minimally depressed level of consciousness, produced by a pharmacologic or nonpharmacologic method, or a combination thereof, in which the patient retains the ability independently and continuously to maintain an airway and to respond appropriately to physical stimulation and verbal commands.

(b) "Deep sedation" means a controlled state of depressed consciousness, produced by a pharmacologic or nonpharmacologic method, or a combination thereof, and accompanied by a partial loss of protective reflexes and the inability to respond purposefully to verbal commands.

(c) "General anesthesia" means a controlled state of unconsciousness, produced by a pharmacologic or nonpharmacologic method, or a combination thereof, and accompanied by partial or complete loss of protective reflexes and the inability independently to maintain an airway and respond purposefully to physical stimulation or verbal commands.

(d) "Sentinel event" means an unexpected occurrence involving death or serious physical or psychological injury or the risk thereof, including, without limitation, any process variation for which a recurrence would carry a significant chance of serious adverse outcome. The term includes loss of limb or function.

~~[Sec. 27.]~~ ***Sec. 29.*** Any regulations adopted by the Administrator of the Health Division of the Department of Health and Human Services before July 1, 2009, pursuant to NRS 439.800 to 439.890, inclusive, and section 2 of this act remain in effect and may be enforced by the State Board of Health until the Board adopts regulations to repeal or replace those regulations.

~~[Sec. 28.]~~ ***Sec. 30.*** This act becomes effective on July 1, 2009.

Assemblywoman Smith moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 229.

Bill read second time.

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

Amendment No. 198.

AN ACT relating to cigarettes; setting forth the testing requirements and performance standard for fire safety for cigarettes sold or offered for sale in this State; requiring a manufacturer of cigarettes to submit a written certification to the State Fire Marshal concerning the cigarettes that the manufacturer intends to sell in this State; imposing a fee for each cigarette

listed in a certification; requiring packages of cigarettes to be marked to indicate compliance of the cigarettes with the testing requirements and performance standard; imposing civil penalties for various violations; creating the Cigarette Fire Safety Standard and Firefighter Protection Fund in the State Treasury; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill, which is modeled on requirements first adopted in New York in 2004, sets forth the testing requirements and performance standard for fire safety for cigarettes sold or offered for sale in Nevada. **Section 10** of this bill prohibits the sale of any cigarettes in Nevada which do not meet the testing requirements or performance standard for cigarettes set forth in that section and which have not been certified in accordance with **section 11** of this bill or properly marked in accordance with **section 12** of this bill. **Section 10** also sets forth the testing requirements for cigarettes and the performance standard they must meet, using the ASTM International Standard ASTM E2187-04, while allowing for alternate testing methods and performance standards approved by the State Fire Marshal, and sets forth other requirements manufacturers must meet, such as keeping reports of testing.

Section 11 of this bill requires a manufacturer of cigarettes to submit to the State Fire Marshal a written certification concerning each cigarette the manufacturer intends to sell in Nevada, certifying that the cigarette meets the testing requirements and performance standard set forth in **section 10** of this bill, and to pay a fee of $250 to the State Fire Marshal for each cigarette listed in a certification. **Section 11.5 of this bill requires the Executive Director of the Department of Taxation to establish a procedure to ensure that agents, wholesale dealers and retail dealers receive notice of the cigarettes that have been certified by manufacturers.** **Section 12** of this bill requires that cigarettes which have been certified be marked with the letters "FSC," signifying "Fire Standard Compliant."

Section 13 of this bill provides for the imposition of a civil penalty against a manufacturer, wholesale dealer, retail dealer, agent or other person who violates any provision of this bill. **Section 14** of this bill authorizes the State Fire Marshal to adopt regulations to carry out the provisions of this bill. **Section 15** of this bill authorizes the Department of Taxation to inspect any packages of cigarettes to determine if they have been properly marked as required by **section 12** of this bill. **Section 16** of this bill authorizes the Attorney General, the Executive Director of the Department and the State Fire Marshal, and their authorized representatives, and any law enforcement officer to examine the books, papers, invoices and other records of persons in possession, control or occupancy of any premises where cigarettes are placed, stored, sold or offered for sale in Nevada. **Section 17** of this bill creates the Cigarette Fire Safety Standard and Firefighter Protection Fund as a special revenue fund in the State Treasury.

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

Section 1. Chapter 477 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 19, inclusive, of this act.

Sec. 2. ***As used in sections 2 to 19, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 9, inclusive, of this act have the meanings ascribed to them in those sections.***

Sec. 3. ***"Agent" means a person authorized by the Department of Taxation to purchase and affix Nevada cigarette revenue stamps to packages of cigarettes.***

Sec. 4. ***"Cigarette" means any roll of tobacco:***

1. Wrapped in paper or any other substance not containing tobacco; or

2. Wrapped in any substance containing tobacco which, because of its appearance, its packaging and labeling or the type of tobacco used in the filler, is likely to be offered to or purchased by a person as a cigarette described in subsection 1.

Sec. 5. ***"Manufacturer" means:***

1. A person who manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced in any location and who intends the cigarettes to be sold in this State, including, without limitation, cigarettes intended to be sold in the United States through an importer; or

2. The successor in interest of any person described in subsection 1.

Sec. 6. ***"Retail dealer" means any person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or other tobacco products.***

Sec. 7. ***"Sale" means any transfer of title or possession, conditional or otherwise, in any manner or by any means or agreement. The term includes, without limitation, cash and credit sales, the giving of cigarettes as samples, prizes or gifts and the exchanging of cigarettes for consideration other than money.***

Sec. 8. ***"Sell" means to make a sale or to offer or agree to make a sale.***

Sec. 9. ***"Wholesale dealer" means:***

1. Any person other than a manufacturer who sells cigarettes or other tobacco products to retail dealers or other persons for purposes of resale; and

2. Any person who owns, operates or maintains one or more vending machines which dispense cigarettes or other tobacco products and which are located on premises owned or occupied by another person.

Sec. 10. ***1. Except as otherwise provided in this section, a person shall not sell or offer to sell any cigarettes in this State unless:***

(a) The cigarettes have been tested in accordance with this section and meet the performance standard required by this section;

(b) The manufacturer has submitted to the State Fire Marshal, pursuant to section 11 of this act, a written certification in which the cigarettes are listed; and

(c) The packages that contain the cigarettes have been marked pursuant to section 12 of this act.

2. Except as otherwise provided in this section, all cigarettes that are sold or offered for sale in this State must comply with the following method of testing and performance standard:

(a) The cigarettes must be tested in accordance with the ASTM International Standard ASTM E2187-04, "Standard Test Method for Measuring the Ignition Strength of Cigarettes."

(b) The testing must be conducted on 10 layers of filter paper.

(c) The testing must be conducted by a laboratory which has been accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization or which meets any other comparable accreditation standard required by the State Fire Marshal.

(d) The laboratory conducting the testing must have a program for quality control that includes a procedure for determining the repeatability of the test results. The repeatability value must not exceed 0.19.

(e) Not more than 25 percent of the cigarettes tested in a test trial may exhibit full-length burns in the test trial. Compliance with the performance standard required by this paragraph must be determined based on a complete test trial consisting of 40 replicate tests for each cigarette tested.

3. This section does not require additional testing if the cigarettes have been tested for any other purpose in a manner that is consistent with this section.

4. Any testing performed or caused to be performed by the State Fire Marshal to determine the compliance of a cigarette with the performance standard required by this section must be conducted in accordance with this section.

5. Any cigarette listed in a certification submitted to the State Fire Marshal pursuant to section 11 of this act which uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard required by this section must have not less than two nominally identical bands on the paper surrounding the tobacco column, at least one of which must be located not less than 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there must be at least two bands, one of which is located not less than 13 millimeters from the lighting end of the cigarette and one of which is located not less than 10 millimeters from:

(a) The filter end of the tobacco column if the cigarette is filtered; or

(b) The labeled end of the tobacco column if the cigarette is nonfiltered.

6. If the State Fire Marshal:

(a) Determines that a cigarette cannot be tested in accordance with the requirements of subsection 2, the manufacturer of the cigarette shall

propose an alternative method of testing and performance standard to the State Fire Marshal for approval and, if the State Fire Marshal approves the alternative method of testing and determines that the alternative performance standard proposed by the manufacturer is substantially equivalent to the performance standard set forth in paragraph (e) of subsection 2, the alternative method of testing and performance standard may be used to certify the cigarette pursuant to section 11 of this act; or

(b) Determines that:

(1) Another state has enacted requirements which are substantially similar to those set forth in this section for the fire safety of cigarettes and which include a method of testing and a performance standard that are substantially similar to those set forth in subsection 2; and

(2) The officials responsible for carrying out those requirements in the other state have approved the alternative method of testing and performance standard for a particular cigarette that the manufacturer has proposed as meeting the fire safety standards of the law of that state under a provision similar to this subsection,

➥ the State Fire Marshal shall authorize the manufacturer to use the alternative method of testing and performance standard to certify that cigarette for sale in this State, unless the State Fire Marshal has a reasonable basis for denying the authorization.

7. Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes sold or offered for sale in this State for a period of 3 years after the completion of the testing and shall make copies of the reports available to the State Fire Marshal and the Attorney General upon written request. Any manufacturer that fails to make such copies available to the State Fire Marshal or Attorney General within 60 days after receiving a written request therefor is subject to a civil penalty not to exceed $10,000 for each day after the 60th day that the manufacturer fails to make the copies available.

8. The State Fire Marshal may, by regulation, adopt by reference a subsequent ASTM International Standard Test Method for Measuring the Ignition Strength of Cigarettes if he determines that the subsequent method of testing does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with the ASTM International Standard ASTM E2187-04 and the performance standard set forth in paragraph (e) of subsection 2. If the State Fire Marshal adopts the subsequent method of testing, it may be used as an alternative method for the certification of cigarettes.

9. This section does not prohibit:

(a) A wholesale dealer or retail dealer from selling his existing inventory of cigarettes on or after the effective date of this section if the wholesale dealer or retail dealer can establish that Nevada cigarette revenue stamps were affixed to the packages of cigarettes before the effective date of this

section and the cigarettes were purchased by the wholesale dealer or retail dealer before the effective date of this section in a quantity comparable to the inventory purchased by the wholesale dealer or retail dealer during the same period of the immediately preceding year.

(b) The sale of cigarettes solely for the purpose of consumer testing. As used in this paragraph, "consumer testing" means an assessment of cigarettes that is conducted by a manufacturer, or under the control and direction of a manufacturer, to evaluate consumer acceptance of the cigarettes, using only the number of cigarettes that is reasonably necessary for that assessment.

10. As used in this section, unless the context otherwise requires:

(a) "Program for quality control" means a program pursuant to which laboratory procedures are established to ensure that:

(1) The test results are not affected by operator bias, systematic and nonsystematic methodological errors or equipment-related problems; and

(2) The repeatability of the test results remains within the required repeatability value set forth in paragraph (d) of subsection 2 for all test trials used to certify cigarettes.

(b) "Repeatability value" means the range of values within which the repeat results of cigarette test trials conducted by a single laboratory will fall 95 percent of the time.

Sec. 11. ***1. Each manufacturer shall submit to the State Fire Marshal a written certification of the cigarettes that the manufacturer intends to sell in this State attesting that each cigarette listed in the certification has been tested in accordance with and meets the applicable performance standard set forth in section 10 of this act.***

2. The description of each cigarette listed in the certification must include, without limitation:

(a) The brand or trade name on the package;

(b) The style, such as light or ultra light;

(c) The length in millimeters;

(d) The circumference in millimeters;

(e) The flavor, such as menthol or chocolate, if applicable;

(f) Whether the cigarette is filtered or nonfiltered;

(g) The package description, such as soft pack or box;

(h) The marking pursuant to section 12 of this act;

(i) The name, address and telephone number of the laboratory that conducted the testing of the cigarette; and

(j) The date that the testing occurred.

3. The State Fire Marshal shall make the certifications that are submitted to him pursuant to this section available to the Attorney General for purposes consistent with sections 2 to 19, inclusive, of this act and to the Executive Director of the Department of Taxation for the purpose of ensuring compliance with this section ~~.~~ ***and section 11.5 of this act.***

4. Each cigarette certified under this section must be recertified every 3 years.

5. A manufacturer shall pay to the State Fire Marshal a fee of $1,000 for each brand family of cigarettes listed in the certification. The fee paid ~~*[shall apply]*~~ ***applies to all cigarettes within the brand family certified and*** ~~*[shall]*~~ ***must include any new cigarettes certified within the brand family during the 3-year certification period. All fees collected pursuant to this section must be deposited in the Cigarette Fire Safety Standard and Firefighter Protection Fund created by section 17 of this act.***

6. If a manufacturer has certified a cigarette pursuant to this section and subsequently makes any change to the cigarette that is likely to alter its compliance with the performance standard required by section 10 of this act, the cigarette must not be sold or offered for sale in this State unless the manufacturer retests the cigarette pursuant to section 10 of this act and maintains the reports of the retesting in accordance with that section. Any altered cigarette that does not meet the applicable performance standard set forth in section 10 of this act must not be sold or offered for sale in this State.

Sec. 11.5. The Executive Director of the Department of Taxation shall establish a procedure to ensure that agents, wholesale dealers and retail dealers receive notice of the cigarettes that have been certified by manufacturers pursuant to section 11 of this act. The procedure may include, without limitation, listing the brands and styles of cigarettes which have been certified on an Internet website maintained by the Department.

Sec. 12. ***1. Packages that contain cigarettes which have been certified by a manufacturer in accordance with section 11 of this act must be marked to indicate compliance with section 10 of this act. The marking must be set forth in not less than 8-point type and consist of the letters "FSC," signifying "Fire Standard Compliant," and be permanently printed, stamped, engraved or embossed on the package at or near the UPC label.***

2. A manufacturer shall use only one marking and shall apply the marking uniformly for all packages, including, without limitation, packs, cartons, cases and brands marketed by that manufacturer.

3. A manufacturer that certifies a cigarette in accordance with section 11 of this act shall provide a copy of the certification to each wholesale dealer and agent to whom the manufacturer sells cigarettes. A wholesale dealer, retail dealer or agent shall allow the State Fire Marshal, the Executive Director of the Department of Taxation and the Attorney General, and their respective employees, to inspect the markings of cigarette packaging marked in accordance with this section.

Sec. 13. ***1. Any manufacturer, wholesale dealer, agent or other person that knowingly sells cigarettes in this State, other than through retail sale, in violation of section 10 of this act is subject to a civil penalty not to exceed $100 for each pack of such cigarettes sold, except that the***

penalty against the person must not exceed $100,000 during any 30-day period.

2. A retail dealer that knowingly sells cigarettes in this State in violation of section 10 of this act is subject to a civil penalty not to exceed $100 for each pack of such cigarettes sold, except that the penalty against the retail dealer must not exceed $25,000 during any 30-day period.

3. In addition to any other penalty prescribed by law, any manufacturer of cigarettes that knowingly makes a false certification pursuant to section 11 of this act is subject to a civil penalty of not less than $75,000 or more than $250,000 for each false certification.

4. A person who violates any other provision of sections 2 to 19, inclusive, of this act is subject to a civil penalty of not more than $1,000 for the first offense and not more than $5,000 for each subsequent offense.

5. A law enforcement officer, authorized representative of the Department of Taxation or authorized representative of the State Fire Marshal who discovers any cigarettes for sale in this State for which no certification has been submitted pursuant to section 11 of this act or which are not marked pursuant to section 12 of this act may seize the cigarettes. Cigarettes seized pursuant to this section must be destroyed after the true holder of the trademark rights in the cigarette brand is allowed to inspect the cigarettes.

6. Each violation of any provision of sections 2 to 19, inclusive, of this act or any regulation adopted pursuant thereto constitutes a separate civil violation for which the State Fire Marshal or the Attorney General may obtain relief. In addition to any other remedy provided by law, the Attorney General may file an action in a court of competent jurisdiction concerning a violation of any provision of sections 2 to 19, inclusive, of this act or any regulation adopted pursuant thereto, including, without limitation, petitioning for:

(a) Preliminary or permanent injunctive relief against any manufacturer, importer, wholesale dealer, retail dealer, agent or other person to enjoin the person from selling or affixing Nevada cigarette revenue stamps to any package of cigarettes that contains cigarettes which do not comply with the requirements of sections 2 to 19, inclusive, of this act. Upon obtaining judgment for injunctive relief, the State Fire Marshal or Attorney General shall provide a copy of the judgment to all wholesale dealers and agents to whom the cigarette has been sold.

(b) The recovery of any civil penalty authorized by the provisions of sections 2 to 19, inclusive, of this act.

(c) The recovery of any costs or damages incurred by this State because of a violation of sections 2 to 19, inclusive, of this act, including, without limitation, enforcement costs relating to a specific violation and attorney's fees.

7. All money collected pursuant to this section must be deposited in the Cigarette Fire Safety Standard and Firefighter Protection Fund created by section 17 of this act.

Sec. 14. ***The State Fire Marshal may adopt such regulations as he determines necessary to carry out the provisions of sections 2 to 19, inclusive, of this act.***

Sec. 15. ***The Department of Taxation, in the regular course of conducting inspections of wholesale dealers, retail dealers and agents pursuant to NRS 370.001 to 370.530, inclusive, may inspect any packages of cigarettes to determine if they have been marked in accordance with section 12 of this act. If the packages of cigarettes are not marked as required, the Executive Director of the Department of Taxation shall notify the State Fire Marshal*** ~~[.]~~ ***and may seize the packages of cigarettes pursuant to subsection 5 of section 13 of this act.***

Sec. 16. ***The Attorney General, the Executive Director of the Department of Taxation and the State Fire Marshal, and their authorized representatives, and any law enforcement officer may examine the books, papers, invoices and other records of any person in possession, control or occupancy of any premises where cigarettes are placed, stored, sold or offered for sale in this State, including, without limitation, any stock of cigarettes on the premises. Each person in possession, control or occupancy of any premises where cigarettes are placed, stored, sold or offered for sale in this State shall cooperate in any such examination.***

Sec. 17. ***1. The Cigarette Fire Safety Standard and Firefighter Protection Fund is hereby created in the State Treasury as a special revenue fund. All money received for the use of the Fund pursuant to sections 2 to 19, inclusive, of this act or from any other source must be deposited in the Fund.***

2. The interest and income earned on the money in the Fund, after deducting any applicable charges, must be credited to the Fund. All claims against the Fund must be paid as other claims against the State are paid.

3. The State Fire Marshal shall administer the Fund and may expend any money in the Fund to support fire safety and fire prevention programs.

Sec. 18. ***On or before January 30 of each odd-numbered year, the State Fire Marshal shall submit to the Director of the Legislative Counsel Bureau for transmittal to the next regular session of the Legislature a written report concerning the effectiveness of the provisions of sections 2 to 19, inclusive, of this act and any recommendations for legislation to improve the effectiveness of sections 2 to 19, inclusive, of this act.***

Sec. 19. ***1. The provisions of sections 2 to 19, inclusive, of this act must, to the extent practicable, be interpreted and construed to effectuate the general purpose of those provisions to make uniform the laws of those states that have enacted similar legislation.***

2. The provisions of sections 2 to 19, inclusive, of this act must not be construed to prohibit any person from manufacturing or selling cigarettes

that do not meet the requirements of section 10 of this act if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States and that person has taken reasonable steps to ensure that the cigarettes will not be sold or offered for sale in this State.

Sec. 20. 1. Any ordinance or regulation adopted by a local government which conflicts with any provision of sections 2 to 19, inclusive, of this act or any regulation adopted pursuant thereto is void and must not be given effect to the extent of the conflict.

2. Notwithstanding any specific statute to the contrary, no local government may adopt any ordinance or regulation which conflicts with any provision of sections 2 to 19, inclusive, of this act or any regulation adopted pursuant thereto.

3. As used in this section, "local government" means any political subdivision of this State, including, without limitation, a county, city or town.

Sec. 21. 1. This section and sections 1, 14 and 20 of this act become effective upon passage and approval.

2. Sections 2 to 13, inclusive, and 15 to 19, inclusive, of this act become effective 1 year after passage and approval.

3. This section and sections 2 to 16, inclusive, 18, 19 and 20 of this act expire by limitation on the date upon which a federal law establishing standards for fire-safe cigarettes becomes effective.

Assemblywoman Smith moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 271.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 210.

AN ACT relating to convicted persons; requiring the Office of Court Administrator to collect fines, administrative assessments, fees and restitution from a person convicted of certain offenses; providing that a person convicted of certain offenses may be placed on administrative probation under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that if a fine, administrative assessment, fee or restitution imposed upon a defendant is delinquent: (1) the defendant is liable for a collection fee; (2) the entity responsible for collecting the delinquent amount may report the delinquency to credit reporting agencies, may contract with a collection agency and may request that the court take appropriate action; and (3) the court may request that a prosecuting attorney undertake collection efforts, may order the suspension of the driver's license of the defendant and may, in the case of a delinquent fine or administrative

assessment, order that the defendant be confined in the appropriate prison, jail or detention facility. (NRS 176.064)

Sections 1, 3 and 6 of this bill provide that if a defendant is ordered to pay a fine, administrative assessment, fee or restitution for a felony or gross misdemeanor, the Office of Court Administrator is responsible for: (1) collecting the fine, administrative assessment, fee or restitution; and (2) distributing the fine, administrative assessment, fee or restitution to the entity entitled to receive it. **Section 1** also requires **: (1)** each district court, the Chief of the Division of Parole and Probation of the Department of Public Safety and the Director of the Department of Corrections to provide, upon request and in the manner prescribed by the Office of Court Administrator, necessary information to the Office of Court Administrator regarding the amount of any fine, administrative assessment, fee or restitution owed by a person convicted of a felony or gross misdemeanor ~~[.]~~ **; and (2) the Office of Court Administrator to collaborate with each judicial district, the Department of Public Safety, the Department of Corrections and any other state or local agency involved in the collection of fines, administrative assessments, fees or restitution.**

Existing law provides that a court may suspend the execution of the sentence of a person and grant probation to the person under certain circumstances. (NRS 176A.100) **Sections 2 and 5** of this bill provide that at the time of granting probation to a person convicted of a felony or gross misdemeanor ~~[.]~~ **or during or at the termination of the period of probation of such a person,** the court may also place the person on administrative probation, to commence after termination of the period of probation, if any fine, administrative assessment, fee or restitution is imposed against the person as part of his sentence. During the period of administrative probation: (1) the Office of Court Administrator is required to supervise the person to ensure the collection of any fine, administrative assessment, fee or restitution owed; (2) the person is not required to pay any fee for supervision; and (3) the person remains subject to certain statutory provisions that authorize the court to take action against the person, including suspending his driver's license **.** ~~[and ordering him to be imprisoned for willful failure to pay the amount owed.]~~

Section 4 of this bill authorizes the court to terminate the period of probation of a person and order that the person be placed on administrative probation if the person has satisfied all conditions of his probation other than the payment of any fines, administrative assessments, fees or restitution. (NRS 176A.500)

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

Section 1. NRS 176.064 is hereby amended to read as follows:

176.064 1. ***If a fine, administrative assessment, fee or restitution is imposed upon a defendant pursuant to this chapter for a felony or gross***

misdemeanor, the Office of Court Administrator shall ~~[:]~~ ***, in collaboration with the appropriate district court, the Department of Public Safety, the Department of Corrections and any other state or local agency involved in the collection of fines, administrative assessments, fees or restitution:***

(a) Collect the fine, administrative assessment, fee or restitution from each defendant through any lawful means, including, without limitation, taking any or all of the actions set forth in this section; and

(b) Distribute the fine, administrative assessment, fee or restitution collected to the entity that is entitled to receive the fine, administrative assessment, fee or restitution.

2. If a fine, administrative assessment, fee or restitution is imposed upon a defendant pursuant to this chapter, whether or not the fine, administrative assessment, fee or restitution is in addition to any other punishment, and the fine, administrative assessment, fee or restitution or any part of it remains unpaid after the time established by the court for its payment, the defendant is liable for a collection fee, to be imposed by the court at the time it finds that the fine, administrative assessment, fee or restitution is delinquent, of:

(a) Not more than $100, if the amount of the delinquency is less than $2,000.

(b) Not more than $500, if the amount of the delinquency is $2,000 or greater, but is less than $5,000.

(c) Ten percent of the amount of the delinquency, if the amount of the delinquency is $5,000 or greater.

~~[2. A state]~~

3. The Office of Court Administrator or ***a*** local entity that is responsible for collecting a delinquent fine, administrative assessment, fee or restitution may, in addition to attempting to collect the fine, administrative assessment, fee or restitution through any other lawful means, take any or all of the following actions:

(a) Report the delinquency to reporting agencies that assemble or evaluate information concerning credit.

(b) Request that the court take appropriate action pursuant to subsection ~~[3.]~~ ***4.***

(c) Contract with a collection agency licensed pursuant to NRS 649.075 to collect the delinquent amount and the collection fee. The collection agency must be paid as compensation for its services an amount not greater than the amount of the collection fee imposed pursuant to subsection ~~[1,]~~ ***2,*** in accordance with the provisions of the contract.

~~[3.]~~ ***4.*** The court may, on its own motion or at the request of ~~[a state]~~ ***the Office of Court Administrator*** or ***a*** local entity that is responsible for collecting the delinquent fine, administrative assessment, fee or restitution, take any or all of the following actions, in the following order of priority if practicable:

(a) Request that a prosecuting attorney undertake collection of the delinquency, including, without limitation, the original amount and the

collection fee, by attachment or garnishment of the defendant's property, wages or other money receivable.

(b) Order the suspension of the driver's license of the defendant. If the defendant does not possess a driver's license, the court may prohibit the defendant from applying for a driver's license for a specified period. If the defendant is already the subject of a court order suspending or delaying the issuance of his driver's license, the court may order the additional suspension or delay, as appropriate, to apply consecutively with the previous order. At the time the court issues an order suspending the driver's license of a defendant pursuant to this paragraph, the court shall require the defendant to surrender to the court all driver's licenses then held by the defendant. The court shall, within 5 days after issuing the order, forward to the Department of Motor Vehicles the licenses, together with a copy of the order. At the time the court issues an order pursuant to this paragraph delaying the ability of a defendant to apply for a driver's license, the court shall, within 5 days after issuing the order, forward to the Department of Motor Vehicles a copy of the order. The Department of Motor Vehicles shall report a suspension pursuant to this paragraph to an insurance company or its agent inquiring about the defendant's driving record, but such a suspension must not be considered for the purpose of rating or underwriting.

(c) For a delinquent fine or administrative assessment, order the confinement of the person in the appropriate prison, jail or detention facility, as provided in NRS 176.065 and 176.075.

~~[4.]~~ ***5.*** Money collected from a collection fee imposed pursuant to subsection ~~[1]~~ ***2*** must be distributed in the following manner:

(a) Except as otherwise provided in paragraph (d), if the money is collected by or on behalf of a municipal court, the money must be deposited in a special fund in the appropriate city treasury. The city may use the money in the fund only to develop and implement a program for the collection of fines, administrative assessments, fees and restitution.

(b) Except as otherwise provided in paragraph (d), if the money is collected by or on behalf of a Justice Court or district court, the money must be deposited in a special fund in the appropriate county treasury. The county may use the money in the special fund only to develop and implement a program for the collection of fines, administrative assessments, fees and restitution.

(c) Except as otherwise provided in paragraph (d), if the money is collected by ~~[a state entity,]~~ ***the Office of Court Administrator,*** the money must be deposited in an account, which is hereby created in the State Treasury. The ***Office of*** Court Administrator may use the money in the account ~~[only]~~ to develop and implement a program for the collection of fines, administrative assessments, fees and restitution ~~[in this State.]~~ ***and to pay any costs associated with the administrative probation of persons as set forth in section 2 of this act.***

(d) If the money is collected by a collection agency, after the collection agency has been paid its fee pursuant to the terms of the contract, any remaining money must be deposited in the state, city or county treasury, whichever is appropriate, to be used ~~[only]~~ for the purposes set forth in paragraph (a), (b) or (c) of this subsection.

6. To carry out the provisions of this section ~~[, each]~~ :

(a) Each district court, the Chief of the Division of Parole and Probation of the Department of Public Safety and the Director of the Department of Corrections shall, upon the request of and in the manner prescribed by the Office of Court Administrator, provide to the Office of Court Administrator such information in their possession regarding the amount of any fine, administrative assessment, fee or restitution owed by a person convicted of a felony or gross misdemeanor as determined necessary by the Office of Court Administrator.

(b) The Office of Court Administrator shall collaborate with each district court, the Department of Public Safety, the Department of Corrections and any other state or local agency involved in the collection of fines, administrative assessments, fees or restitution.

Sec. 2. Chapter 176A of NRS is hereby amended by adding thereto a new section to read as follows:

1. ~~[At the time of granting probation to]~~ If a person is convicted of a felony or gross misdemeanor and granted probation pursuant to this chapter, the court may , at the time of granting probation or, upon request of the Office of Court Administrator or the Chief Parole and Probation Officer, during or at the termination of the period of probation, also impose a period of administrative probation, to commence after termination of the period of probation, if any fine, administrative assessment, fee or restitution is imposed on the person as part of his judgment and sentence.

2. During the period of administrative probation, the Office of Court Administrator shall supervise the person placed on administrative probation to ensure the collection of any fine, administrative assessment, fee or restitution imposed on the person as part of his judgment and sentence.

3. The period of administrative probation must last for a fixed time as determined by the court, except that the court may terminate the administrative probation before the fixed time if the person placed on administrative probation has paid all required fines, administrative assessments, fees and restitution.

4. A person placed on administrative probation:

(a) Is not required to pay any fee for supervision pursuant to NRS 213.1076 or any other provision of law during the period of administrative probation; and

(b) ~~[Remains]~~ Except as otherwise provided in this paragraph, remains subject to the provisions of NRS 176.064 ~~[. The]~~ , and the Office of Court

Administrator may attempt to collect any fines, administrative assessments, fees and restitution owed by the person through any lawful means, including, without limitation, taking any or all of the actions set forth in NRS 176.064. A person placed on administrative probation is not subject to confinement in the appropriate prison, jail or detention facility, as provided in NRS 176.065 and 176.075, for a delinquent fine or administrative assessment.

5. Except as otherwise provided in this section, administrative probation pursuant to this section shall be deemed not to constitute a form of probation for the purposes of any other provision of law.

Sec. 3. NRS 176A.430 is hereby amended to read as follows:

176A.430 1. The court shall order as a condition of probation or suspension of sentence, in appropriate circumstances, that the defendant make full or partial restitution to the person or persons named in the order, at the times and in the amounts specified in the order unless the court finds that restitution is impracticable. Such an order may require payment for medical or psychological treatment of any person whom the defendant has injured. In appropriate circumstances, the court shall include as a condition of probation or suspension of sentence that the defendant execute an assignment of wages earned by him while on probation or subject to the conditions of suspension of sentence to the ~~[Division]~~ ***Office of Court Administrator*** for restitution.

2. All money received by the ~~[Division]~~ ***Office of Court Administrator*** for restitution for:

(a) One victim may; and

(b) More than one victim must,

➥ be deposited with the State Treasurer for credit to the Restitution Trust Fund. All payments from the Fund must be paid as other claims against the State are paid.

3. If restitution is not required, the court shall set forth the circumstances upon which it finds restitution impracticable in its order of probation or suspension of sentence.

4. Failure to comply with the terms of an order for restitution is a violation of a condition of probation or suspension of sentence unless the defendant's failure has been caused by economic hardship resulting in his inability to pay the amount due. The defendant is entitled to a hearing to show the existence of such a hardship.

5. If, within 3 years after the defendant has been discharged from probation, the ~~[Division]~~ ***Office of Court Administrator*** has not located the person to whom the restitution was ordered, the money paid by the defendant must be deposited with the State Treasurer for credit to the Fund for the Compensation of Victims of Crime.

Sec. 4. NRS 176A.500 is hereby amended to read as follows:

176A.500 1. The period of probation or suspension of sentence may be indeterminate or may be fixed by the court and may at any time be extended

or terminated by the court, but the period, including any extensions thereof, must not be more than:

(a) Three years for a:

(1) Gross misdemeanor; or

(2) Suspension of sentence pursuant to NRS 176A.260 or 453.3363; or

(b) Five years for a felony.

➥ ***At any time during the period of probation or suspension of sentence, if a probationer has satisfied all conditions of probation other than the payment of any fines, administrative assessments, fees or restitution, the court may terminate the period of probation and order that the person be placed on administrative probation as set forth in section 2 of this act. Any period of administrative probation ordered by the court pursuant to this subsection or section 2 of this act must not be counted or considered for the purposes of the limitation on the period of probation set forth in this subsection.***

2. At any time during probation or suspension of sentence, the court may issue a warrant for violating any of the conditions of probation or suspension of sentence and cause the defendant to be arrested. Except for the purpose of giving a dishonorable discharge from probation, and except as otherwise provided in this subsection, the time during which a warrant for violating any of the conditions of probation is in effect is not part of the period of probation. If the warrant is cancelled or probation is reinstated, the court may include any amount of that time as part of the period of probation.

3. Any parole and probation officer or any peace officer with power to arrest may arrest a probationer without a warrant, or may deputize any other officer with power to arrest to do so by giving him a written statement setting forth that the probationer has, in the judgment of the parole and probation officer, violated the conditions of probation. Except as otherwise provided in subsection 4, the parole and probation officer, or the peace officer, after making an arrest shall present to the detaining authorities, if any, a statement of the charges against the probationer. The parole and probation officer shall at once notify the court which granted probation of the arrest and detention or residential confinement of the probationer and shall submit a report in writing showing in what manner the probationer has violated the conditions of probation.

4. A parole and probation officer or a peace officer may immediately release from custody without any further proceedings any person he arrests without a warrant for violating a condition of probation if the parole and probation officer or peace officer determines that there is no probable cause to believe that the person violated the condition of probation.

5. An offender who is sentenced to serve a period of probation for a felony who has no serious infraction of the regulations of the Division, the terms and conditions of his probation or the laws of the State recorded against him, and who performs in a faithful, orderly and peaceable manner

the duties assigned to him, must be allowed for the period of his probation a deduction of 20 days from that period for each month he serves.

Sec. 5. NRS 213.1076 is hereby amended to read as follows:

213.1076 1. The Division shall:

(a) Except as otherwise provided in this section, charge each parolee, probationer or person supervised by the Division through residential confinement a fee to defray the cost of his supervision.

(b) Adopt by regulation a schedule of fees to defray the costs of supervision of a parolee, probationer or person supervised by the Division through residential confinement. The regulation must provide for a monthly fee of at least $30.

2. The Chief may waive the fee to defray the cost of supervision, in whole or in part, if he determines that payment of the fee would create an economic hardship on the parolee, probationer or person supervised by the Division through residential confinement.

3. Unless waived pursuant to subsection 2, the payment by a parolee, probationer or person supervised by the Division through residential confinement of a fee charged pursuant to subsection 1 is a condition of his parole, probation or residential confinement.

4. This section does not apply to a person who is subject to administrative probation pursuant to NRS 176A.500 or section 2 of this act.

Sec. 6. NRS 213.126 is hereby amended to read as follows:

213.126 1. Unless complete restitution was made while the parolee was incarcerated, the Board shall impose as a condition of parole, in appropriate circumstances, a requirement that the parolee make restitution to the person or persons named in the statement of parole conditions, including restitution to a governmental entity for expenses related to extradition, at the times specified in the statement unless the Board finds that restitution is impracticable. The amount of restitution must be the amount set by the court pursuant to NRS 176.033. In appropriate circumstances, the Board shall include as a condition of parole that the parolee execute an assignment of wages earned by him while on parole to the ~~[~~Division~~]~~ ***Office of Court Administrator*** for restitution.

2. All money received by the ~~[~~Division~~]~~ ***Office of Court Administrator*** for restitution for:

(a) One victim may; and

(b) More than one victim must,

➥ be deposited in the State Treasury for credit to the Restitution Trust Fund which is hereby created.

3. The ~~[~~Division~~]~~ ***Office of Court Administrator*** shall make pro rata payments from the money received from the parolee to each person to whom the restitution was ordered pursuant to NRS 176.033. Such a payment must be made:

(a) If the money received from the parolee in a single payment is $200 or more or if the total accumulated amount received from the parolee is $200 or more, whenever money is received from the parolee.

(b) If the money received from the parolee in a single payment is less than $200 or if the total accumulated amount received from the parolee is less than $200, at the end of each year until the parolee has paid the entire restitution owed.

➥ Any money received from the parolee that is remaining at the end of each year must be paid at that time in pro rata payments to each person to whom the restitution was ordered. A final pro rata payment must be made to such persons when the parolee pays the entire restitution owed.

4. A person to whom restitution was ordered pursuant to NRS 176.033 may at any time file an application with the ~~[~~Division~~]~~ ***Office of Court Administrator*** requesting the ~~[~~Division~~]~~ ***Office of Court Administrator*** to make a pro rata payment from the money received from the parolee. If the ~~[~~Division~~]~~ ***Office of Court Administrator*** finds that the applicant is suffering a serious financial hardship and is in need of financial assistance, the ~~[~~Division~~]~~ ***Office of Court Administrator*** shall pay to the applicant his pro rata share of the money received from the parolee.

5. All payments from the Fund must be paid as other claims against the State are paid.

6. If restitution is not required, the Board shall set forth the circumstances upon which it finds restitution impracticable in its statement of parole conditions.

7. Failure to comply with a restitution requirement imposed by the Board is a violation of a condition of parole unless the parolee's failure was caused by economic hardship resulting in his inability to pay the amount due. The defendant is entitled to a hearing to show the existence of that hardship.

8. If, within 3 years after the parolee is discharged from parole, the ~~[~~Division~~]~~ ***Office of Court Administrator*** has not located the person to whom the restitution was ordered, the money paid to the ~~[~~Division~~]~~ ***Office of Court Administrator*** by the parolee must be deposited in the fund for the compensation of victims of crime.

Sec. 7. This act becomes effective on ~~[July 1, 2009.]~~ **January 1, 2010.**

Assemblyman Segerblom moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 304.

Bill read second time.

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

Amendment No. 228.

AN ACT relating to land use regulation; making various changes pertaining to the preservation of ~~[existing]~~ **historic** neighborhoods**; ~~[~~,**

~~including historic neighborhoods; allowing certain providers of utility service to apply for and receive a rate adjustment to incorporate the costs of placing certain facilities underground;~~] and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, certain ~~[planning,]~~ **plans and** zoning ~~[and transportation plans and]~~ regulations must incorporate the consideration of certain policies, including the protection of existing neighborhoods and communities. (NRS 268.190, 278.02528, 278.0274, 278.150, 278.160, 278.170, 278.250 **) [**~~, 408.290) Sections 1, 3, 5-8, 13, 16 and 22 of this bill require certain state and~~] **This bill requires certain** local governmental entities to address the preservation of historic neighborhoods ~~[and the effect of proposed streets and highways upon existing neighborhoods~~] in those plans and regulations.

~~[Existing law prescribes certain requirements for the vacation or abandonment by a city or county of a street. (NRS 278.480) Section 17 of this bill prohibits a city from requiring agreement from more than 80 percent of the abutting property owners as a prerequisite to vacating a street.~~

~~Under existing law, certain local governments are authorized to establish a local improvement district to finance a project to convert certain service facilities to underground facilities. (NRS 271.800, 271.850) Existing law also allows certain property owners to petition for the creation of a service district to pay for the cost of converting certain overhead electric and communication facilities to underground locations. (Chapter 704A of NRS) Under existing law, the cost of converting both types of facilities is borne by benefited property owners. Sections 20, 21, 23 and 24 of this bill allow service providers and public utility corporations who are subject to the jurisdiction of the Public Utilities Commission of Nevada to apply to and receive approval from the Commission to include underground conversion costs within their rate base, in part to preserve existing neighborhoods, including historic neighborhoods. Assessments against property owners to pay for such costs are required to be reduced to the extent that the costs are paid by rate adjustments. (NRS 704A.312)~~]

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 a new section to read as follows:

"Historic neighborhood" means a subdivided or developed area:

1. Which consists of 10 or more residential dwelling units;

2. Where at least two-thirds of the residential dwelling units are 40 or more years of age; and

3. Which has been identified by ~~*[a]*~~ ***the governing body*** ~~*[, planning commission, regional planning commission, coalition or agency or other governmental entity]*~~ ***of the city or county within which the area is located***

as having a distinctive character or traditional quality that can be distinguished from surrounding areas or new developments in the vicinity. Distinguishing characteristics of a historic neighborhood may include, without limitation:

(a) Significance to the cultural, social, political or economic history of the area in which it is located;

(b) Association with a significant person, group or event in local, state or national history;

(c) Representation of an established and familiar visual feature of an area because of its location, design, architecture or singular physical appearance; or

(d) Meeting the criteria for eligibility for listing on the State or National Register of Historic Places.

Sec. 2. NRS 278.010 is hereby amended to read as follows:

278.010 As used in NRS 278.010 to 278.630, inclusive, ***and section 1 of this act,*** unless the context otherwise requires, the words and terms defined in NRS 278.0105 to 278.0195, inclusive, ***and section 1 of this act*** have the meanings ascribed to them in those sections.

Sec. 3. NRS 278.02528 is hereby amended to read as follows:

278.02528 1. The regional planning coalition shall develop a comprehensive regional policy plan for the balanced economic, social, physical, environmental and fiscal development and orderly management of the growth of the region for a period of at least 20 years. The comprehensive regional policy plan must contain recommendations of policy to carry out each part of the plan.

2. In developing the plan, the coalition:

(a) May consult with other entities that are interested or involved in regional planning within the county.

(b) Shall ensure that the comprehensive regional policy plan includes goals, policies, maps and other documents relating to:

(1) Conservation, including, without limitation, policies relating to the use and protection of natural resources.

(2) Population, including, without limitation, standardized projections for population growth in the region.

(3) Land use and development, including, without limitation, a map of land use plans that have been adopted by local governmental entities within the region, and that the plan addresses, if applicable:

(I) Mixed-use development, transit-oriented development, master-planned communities and gaming enterprise districts; and

(II) The coordination and compatibility of land uses with each military installation in the region, taking into account the location, purpose and stated mission of the military installation.

(4) Transportation ***.*** ~~*[, including, without limitation, policies addressing the effect of proposed streets and highways upon existing neighborhoods.]*~~

(5) The efficient provision of public facilities and services, including, without limitation, roads, water and sewer service, police and fire protection, mass transit, libraries and parks.

(6) Air quality.

(7) Strategies to promote and encourage:

(I) The interspersion of new housing and businesses in established neighborhoods; ~~[and]~~

(II) ***The preservation of historic neighborhoods; and***

(III) Development in areas in which public services are available.

3. The regional planning coalition shall not adopt or amend the comprehensive regional policy plan unless the adoption or amendment is by resolution of the regional planning coalition:

(a) Carried by the affirmative votes of not less than two-thirds of its total membership; and

(b) Ratified by the board of county commissioners of the county and the city council of each city that jointly established the regional planning coalition pursuant to NRS 278.02514.

Sec. 4. NRS 278.02556 is hereby amended to read as follows:

278.02556 Except as otherwise provided in this section, a governing body, regional agency, state agency or public utility that is located in whole or in part within the region shall not adopt a master plan, facilities plan or other similar plan, or an amendment thereto, after March 1, 2001, unless the regional planning coalition has been afforded an opportunity to make recommendations regarding the plan or amendment. A governing body, regional agency, state agency or public utility may adopt an amendment to a land use plan described in paragraph ~~[(f)]~~ ***(g)*** of subsection 1 of NRS 278.160 without affording the regional planning coalition the opportunity to make recommendations regarding the amendment.

Sec. 5. NRS 278.0274 is hereby amended to read as follows:

278.0274 The comprehensive regional plan must include goals, policies, maps and other documents relating to:

1. Population, including a projection of population growth in the region and the resources that will be necessary to support that population.

2. Conservation, including policies relating to the use and protection of air, land, water and other natural resources, ambient air quality, natural recharge areas, floodplains and wetlands, and a map showing the areas that are best suited for development based on those policies.

3. The limitation of the premature expansion of development into undeveloped areas, preservation of neighborhoods ***, including, without limitation, historic neighborhoods,*** and revitalization of urban areas, including, without limitation, policies that relate to the interspersion of new housing and businesses in established neighborhoods and set forth principles by which growth will be directed to older urban areas.

4. Land use and transportation, including the classification of future land uses by density or intensity of development based upon the projected

necessity and availability of public facilities, including, without limitation, schools, and services and natural resources, and the compatibility of development in one area with that of other areas in the region. This portion of the plan must:

(a) Address, if applicable:

(1) Mixed-use development, transit-oriented development, master-planned communities and gaming enterprise districts; and

(2) The coordination and compatibility of land uses with each military installation in the region, taking into account the location, purpose and stated mission of the military installation;

(b) Allow for a variety of uses;

(c) ~~*[Address the effect of proposed streets and highways upon existing neighborhoods;*~~

~~*(d)]*~~ Describe the transportation facilities that will be necessary to satisfy the requirements created by those future uses; and

(d) ~~*[(e)]*~~ Be based upon the policies and map relating to conservation that are developed pursuant to subsection 2, surveys, studies and data relating to the area, the amount of land required to accommodate planned growth, the population of the area projected pursuant to subsection 1, and the characteristics of undeveloped land in the area.

5. Public facilities and services, including provisions relating to sanitary sewer facilities, solid waste, flood control, potable water and groundwater aquifer recharge which are correlated with principles and guidelines for future land uses, and which specify ways to satisfy the requirements created by those future uses. This portion of the plan must:

(a) Describe the problems and needs of the area relating to public facilities and services and the general facilities that will be required for their solution and satisfaction;

(b) Identify the providers of public services within the region and the area within which each must serve, including service territories set by the Public Utilities Commission of Nevada for public utilities;

(c) Establish the time within which those public facilities and services necessary to support the development relating to land use and transportation must be made available to satisfy the requirements created by that development; and

(d) Contain a summary prepared by the regional planning commission regarding the plans for capital improvements that:

(1) Are required to be prepared by each local government in the region pursuant to NRS 278.0226; and

(2) May be prepared by the water planning commission of the county, the regional transportation commission and the county school district.

6. Annexation, including the identification of spheres of influence for each unit of local government, improvement district or other service district and specifying standards and policies for changing the boundaries of a sphere of influence and procedures for the review of development within each

sphere of influence. As used in this subsection, "sphere of influence" means an area into which a political subdivision may expand in the foreseeable future.

7. Intergovernmental coordination, including the establishment of guidelines for determining whether local master plans and facilities plans conform with the comprehensive regional plan.

8. Any utility project required to be reported pursuant to NRS 278.145.

Sec. 6. ~~[NRS 278.150 is hereby amended to read as follows:~~

~~278.150 1. The planning commission shall prepare and adopt a comprehensive, long-term general plan for the physical development of the city, county or region which in the commission's judgment bears relation to the planning thereof.~~

~~2. The plan must be known as the master plan, and must be so prepared that all or portions thereof, except as otherwise provided in subsections 3~~ ~~**,**~~ ~~**[**and**]** 4 **[**,**]** ***and 5,*** ~~may be adopted by the governing body, as provided in NRS 278.010 to 278.630, inclusive, as a basis for the development of the city, county or region for such reasonable period of time next ensuing after the adoption thereof as may practically be covered thereby.~~

~~3. ***In counties whose population is less than 100,000, if the governing body of the city or county adopts only a portion of the master plan, it shall include in that portion a plan to identify and inventory historic neighborhoods, which is part of the historic neighborhood preservation plan provided in NRS 278.160.***~~

~~***4.*** In counties whose population is 100,000 or more but less than 400,000, if the governing body of the city or county adopts only a portion of the master plan, it shall include in that portion a conservation plan, ***a historic neighborhood preservation plan,*** a housing plan and a population plan as provided in NRS 278.160.~~

~~**[**4.**]** ***5.*** In counties whose population is 400,000 or more, the governing body of the city or county shall adopt a master plan for all of the city or county that must address each of the subjects set forth in subsection 1 of NRS 278.160.~~**]** **(Deleted by amendment.)**

Sec. 7. NRS 278.160 is hereby amended to read as follows:

278.160 1. Except as otherwise provided in subsection 4 ~~*[5]*~~ of NRS 278.150 and subsection 3 ~~*[4]*~~ of NRS 278.170, the master plan, with the accompanying charts, drawings, diagrams, schedules and reports, may include such of the following subject matter or portions thereof as are appropriate to the city, county or region, and as may be made the basis for the physical development thereof:

(a) Community design. Standards and principles governing the subdivision of land and suggestive patterns for community design and development.

(b) Conservation plan. For the conservation, development and utilization of natural resources, including, without limitation, water and its hydraulic force, underground water, water supply, solar or wind energy, forests, soils,

rivers and other waters, harbors, fisheries, wildlife, minerals and other natural resources. The plan must also cover the reclamation of land and waters, flood control, prevention and control of the pollution of streams and other waters, regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan, prevention, control and correction of the erosion of soils through proper clearing, grading and landscaping, beaches and shores, and protection of watersheds. The plan must also indicate the maximum tolerable level of air pollution.

(c) Economic plan. Showing recommended schedules for the allocation and expenditure of public money in order to provide for the economical and timely execution of the various components of the plan.

(d) ***Historic neighborhood preservation plan. The plan*** ~~*[must]*~~ ***:***

(1) Must include, without limitation:

~~*[*~~ ~~*(1) A plan to identify and]*~~

(I) An inventory of historic neighborhoods.

~~*[(2)]*~~ ***(II) A statement of goals and methods to encourage the preservation of historic neighborhoods.***

~~*[*~~ ~~*(3) The]*~~

(2) May include, without limitation, the creation of a commission to monitor and promote the preservation of historic neighborhoods.

~~*[(4) A plan to convert existing overhead service facilities, as defined in NRS 271.152, and existing overhead electric and communication facilities, as defined in NRS 704A.090, to underground facilities along major thoroughfares in historic neighborhoods.]*~~

(e) Historical properties preservation plan. An inventory of significant historical, archaeological and architectural properties as defined by a city, county or region, and a statement of methods to encourage the preservation of those properties.

~~[(e)]~~ ***(f)*** Housing plan. The housing plan must include, without limitation:

(1) An inventory of housing conditions, needs and plans and procedures for improving housing standards and for providing adequate housing to individuals and families in the community, regardless of income level.

(2) An inventory of existing affordable housing in the community, including, without limitation, housing that is available to rent or own, housing that is subsidized either directly or indirectly by this State, an agency or political subdivision of this State, or the Federal Government or an agency of the Federal Government, and housing that is accessible to persons with disabilities.

(3) An analysis of projected growth and the demographic characteristics of the community.

(4) A determination of the present and prospective need for affordable housing in the community.

(5) An analysis of any impediments to the development of affordable housing and the development of policies to mitigate those impediments.

(6) An analysis of the characteristics of the land that is suitable for residential development. The analysis must include, without limitation:

(I) A determination of whether the existing infrastructure is sufficient to sustain the current needs and projected growth of the community; and

(II) An inventory of available parcels that are suitable for residential development and any zoning, environmental and other land-use planning restrictions that affect such parcels.

(7) An analysis of the needs and appropriate methods for the construction of affordable housing or the conversion or rehabilitation of existing housing to affordable housing.

(8) A plan for maintaining and developing affordable housing to meet the housing needs of the community for a period of at least 5 years.

~~[(f)]~~ ***(g)*** Land use plan. An inventory and classification of types of natural land and of existing land cover and uses, and comprehensive plans for the most desirable utilization of land. The land use plan:

(1) Must address, if applicable:

(I) Mixed-use development, transit-oriented development, master-planned communities and gaming enterprise districts; and

(II) The coordination and compatibility of land uses with any military installation in the city, county or region, taking into account the location, purpose and stated mission of the military installation.

(2) May include a provision concerning the acquisition and use of land that is under federal management within the city, county or region, including, without limitation, a plan or statement of policy prepared pursuant to NRS 321.7355.

~~[(g)]~~ ***(h)*** Population plan. An estimate of the total population which the natural resources of the city, county or region will support on a continuing basis without unreasonable impairment.

~~[(h)]~~ ***(i)*** Public buildings. Showing locations and arrangement of civic centers and all other public buildings, including the architecture thereof and the landscape treatment of the grounds thereof.

~~[(i)]~~ ***(j)*** Public services and facilities. Showing general plans for sewage, drainage and utilities, and rights-of-way, easements and facilities therefor, including, without limitation, any utility projects required to be reported pursuant to NRS 278.145.

~~[(j)]~~ ***(k)*** Recreation plan. Showing a comprehensive system of recreation areas, including, without limitation, natural reservations, parks, parkways, trails, reserved riverbank strips, beaches, playgrounds and other recreation areas, including, when practicable, the locations and proposed development thereof.

~~[(k)]~~ ***(l)*** Rural neighborhoods preservation plan. In any county whose population is 400,000 or more, showing general plans to preserve the character and density of rural neighborhoods.

~~[(l)]~~ ***(m)*** Safety plan. In any county whose population is 400,000 or more, identifying potential types of natural and man-made hazards, including,

without limitation, hazards from floods, landslides or fires, or resulting from the manufacture, storage, transfer or use of bulk quantities of hazardous materials. The plan may set forth policies for avoiding or minimizing the risks from those hazards.

~~[(m)]~~ ***(n)*** School facilities plan. Showing the general locations of current and future school facilities based upon information furnished by the appropriate local school district.

~~[(n)]~~ ***(o)*** Seismic safety plan. Consisting of an identification and appraisal of seismic hazards such as susceptibility to surface ruptures from faulting, to ground shaking or to ground failures.

~~[(o)]~~ ***(p)*** Solid waste disposal plan. Showing general plans for the disposal of solid waste.

~~[(p)]~~ ***(q)*** Streets and highways plan. Showing ~~*[The streets and highways plan must:*~~

~~*(1) Show]*~~ the general locations and widths of a comprehensive system of major traffic thoroughfares and other traffic ways and of streets and the recommended treatment thereof, building line setbacks, and a system of naming or numbering streets and numbering houses, with recommendations concerning proposed changes . ~~*[; and*~~

~~*(2) Address the effects of proposed streets and highways upon existing neighborhoods.]*~~

~~[(q)]~~ ***(r)*** Transit plan. Showing a proposed multimodal system of transit lines, including mass transit, streetcar, motorcoach and trolley coach lines, paths for bicycles and pedestrians, satellite parking and related facilities.

~~[(r)]~~ ***(s)*** Transportation plan. Showing a comprehensive transportation system, including, without limitation, locations of rights-of-way, terminals, viaducts and grade separations. The plan may also include port, harbor, aviation and related facilities.

2. The commission may prepare and adopt, as part of the master plan, other and additional plans and reports dealing with such other subjects as may in its judgment relate to the physical development of the city, county or region, and nothing contained in NRS 278.010 to 278.630, inclusive, prohibits the preparation and adoption of any such subject as a part of the master plan.

Sec. 8. ~~[NRS 278.170 is hereby amended to read as follows:~~

~~278.170 1. Except as otherwise provided in subsections 2 [~~and 3,~~] *3 and 4,* the commission may prepare and adopt all or any part of the master plan or any subject thereof for all or any part of the city, county or region. Master regional plans must be coordinated with similar plans of adjoining regions, and master county and city plans within each region must be coordinated so as to fit properly into the master plan for the region.~~

~~2. *In counties whose population is less than 100,000, if the commission prepares and adopts less than all the subjects of the master plan, as outlined in NRS 278.160, it shall include, in its preparation and adoption, a*~~

~~***plan to identify and inventory historic neighborhoods, which is part of the historic neighborhood preservation plan provided in NRS 278.160.***~~

~~***3.*** In counties whose population is 100,000 or more but less than 400,000, if the commission prepares and adopts less than all subjects of the master plan, as outlined in NRS 278.160, it shall include, in its preparation and adoption, the conservation, ***historic neighborhood preservation,*** housing and population plans described in that section.~~

~~**[**3.**]** ***4.*** In counties whose population is 400,000 or more, the commission shall prepare and adopt a master plan for all of the city or county that must address each of the subjects set forth in subsection 1 of NRS 278.160.**]**~~ **(Deleted by amendment.)**

Sec. 9. NRS 278.210 is hereby amended to read as follows:

278.210 1. Before adopting the master plan or any part of it in accordance with NRS 278.170, or any substantial amendment thereof, the commission shall hold at least one public hearing thereon, notice of the time and place of which must be given at least by one publication in a newspaper of general circulation in the city or county, or in the case of a regional planning commission, by one publication in a newspaper in each county within the regional district, at least 10 days before the day of the hearing.

2. Before a public hearing may be held pursuant to subsection 1 in a county whose population is 100,000 or more on an amendment to a master plan, including, without limitation, a gaming enterprise district, if applicable, the person who requested the proposed amendment must hold a neighborhood meeting to provide an explanation of the proposed amendment. Notice of such a meeting must be given by the person requesting the proposed amendment to:

(a) Each owner, as listed on the county assessor's records, of real property located within a radius of 750 feet of the area to which the proposed amendment pertains;

(b) The owner, as listed on the county assessor's records, of each of the 30 separately owned parcels nearest to the area to which the proposed amendment pertains, to the extent this notice does not duplicate the notice given pursuant to paragraph (a);

(c) Each tenant of a mobile home park if that park is located within a radius of 750 feet of the area to which the proposed amendment pertains; and

(d) If a military installation is located within 3,000 feet of the area to which the proposed amendment pertains, the commander of the military installation.

➥ The notice must be sent by mail at least 10 days before the neighborhood meeting and include the date, time, place and purpose of the neighborhood meeting.

3. Except as otherwise provided in NRS 278.225, the adoption of the master plan, or of any amendment, extension or addition thereof, must be by resolution of the commission carried by the affirmative votes of not less than two-thirds of the total membership of the commission. The resolution must

refer expressly to the maps, descriptive matter and other matter intended by the commission to constitute the plan or any amendment, addition or extension thereof, and the action taken must be recorded on the map and plan and descriptive matter by the identifying signatures of the secretary and chairman of the commission.

4. Except as otherwise provided in NRS 278.225, no plan or map, hereafter, may have indicated thereon that it is a part of the master plan until it has been adopted as part of the master plan by the commission as herein provided for the adoption thereof, whenever changed conditions or further studies by the commission require such amendments, extension or addition.

5. Except as otherwise provided in this subsection, the commission shall not amend the land use plan of the master plan set forth in paragraph **[**~~(f)~~**]** ***(g)*** of subsection 1 of NRS 278.160, or any portion of such a land use plan, more than four times in a calendar year. The provisions of this subsection do not apply to:

(a) A change in the land use designated for a particular area if the change does not affect more than 25 percent of the area; or

(b) A minor amendment adopted pursuant to NRS 278.225.

6. An attested copy of any part, amendment, extension of or addition to the master plan adopted by the planning commission of any city, county or region in accordance with NRS 278.170 must be certified to the governing body of the city, county or region. The governing body of the city, county or region may authorize such certification by electronic means.

7. An attested copy of any part, amendment, extension of or addition to the master plan adopted by any regional planning commission must be certified to the county planning commission and to the board of county commissioners of each county within the regional district. The county planning commission and board of county commissioners may authorize such certification by electronic means.

Sec. 10. **[**~~NRS 278.220 is hereby amended to read as follows:~~

~~278.220 Except as otherwise provided in subsection~~ **[**4**]** ***5*** ~~of NRS 278.150 and NRS 278.225:~~

~~1. Upon receipt of a certified copy of the master plan, or of any part thereof, as adopted by the planning commission, the governing body may adopt such parts thereof as may practicably be applied to the development of the city, county or region for a reasonable period of time next ensuing.~~

~~2. The parts must thereupon be endorsed and certified as master plans thus adopted for the territory covered, and are hereby declared to be established to conserve and promote the public health, safety and general welfare.~~

~~3. Before adopting any plan or part thereof, the governing body shall hold at least one public hearing thereon, notice of the time and place of which must be published at least once in a newspaper of general circulation in the city or counties at least 10 days before the day of hearing.~~

~~4. No change in or addition to the master plan or any part thereof, as adopted by the planning commission, may be made by the governing body in adopting the same until the proposed change or addition has been referred to the planning commission for a report thereon and an attested copy of the report has been filed with the governing body. Failure of the planning commission so to report within 40 days, or such longer period as may be designated by the governing body, after such reference shall be deemed to be approval of the proposed change or addition.~~ **] (Deleted by amendment.)**

Sec. 11. ~~[NRS 278.230 is hereby amended to read as follows:~~

~~278.230 1. Except as otherwise provided in subsection [4] 5 of NRS 278.150, whenever the governing body of any city or county has adopted a master plan or part thereof for the city or county, or for any major section or district thereof, the governing body shall, upon recommendation of the planning commission, determine upon reasonable and practical means for putting into effect the master plan or part thereof, in order that the same will serve as:~~

~~(a) A pattern and guide for that kind of orderly physical growth and development of the city or county which will cause the least amount of natural resource impairment and will conform to the adopted population plan, where required, and ensure an adequate supply of housing, including affordable housing; and~~

~~(b) A basis for the efficient expenditure of funds thereof relating to the subjects of the master plan.~~

~~2. The governing body may adopt and use such procedure as may be necessary for this purpose.~~ **] (Deleted by amendment.)**

Sec. 12. NRS 278.235 is hereby amended to read as follows:

278.235 1. If the governing body of a city or county is required to include a housing plan in its master plan pursuant to NRS 278.150, the governing body, in carrying out the plan for maintaining and developing affordable housing to meet the housing needs of the community, which is required to be included in the housing plan pursuant to subparagraph (8) of paragraph ~~[(e)]~~ ***(f)*** of subsection 1 of NRS 278.160, shall adopt at least six of the following measures:

(a) At the expense of the city or county, as applicable, subsidizing in whole or in part impact fees and fees for the issuance of building permits collected pursuant to NRS 278.580.

(b) Selling land owned by the city or county, as applicable, to developers exclusively for the development of affordable housing at not more than 10 percent of the appraised value of the land, and requiring that any such savings, subsidy or reduction in price be passed on to the purchaser of housing in such a development. Nothing in this paragraph authorizes a city or county to obtain land pursuant to the power of eminent domain for the purposes set forth in this paragraph.

(c) Donating land owned by the city or county to a nonprofit organization to be used for affordable housing.

(d) Leasing land by the city or county to be used for affordable housing.

(e) Requesting to purchase land owned by the Federal Government at a discounted price for the creation of affordable housing pursuant to the provisions of section 7(b) of the Southern Nevada Public Land Management Act of 1998, Public Law 105-263.

(f) Establishing a trust fund for affordable housing that must be used for the acquisition, construction or rehabilitation of affordable housing.

(g) Establishing a process that expedites the approval of plans and specifications relating to maintaining and developing affordable housing.

(h) Providing money, support or density bonuses for affordable housing developments that are financed, wholly or in part, with low-income housing tax credits, private activity bonds or money from a governmental entity for affordable housing, including, without limitation, money received pursuant to 12 U.S.C. § 1701q and 42 U.S.C. § 8013.

(i) Providing financial incentives or density bonuses to promote appropriate transit-oriented housing developments that would include an affordable housing component.

(j) Offering density bonuses or other incentives to encourage the development of affordable housing.

(k) Providing direct financial assistance to qualified applicants for the purchase or rental of affordable housing.

(l) Providing money for supportive services necessary to enable persons with supportive housing needs to reside in affordable housing in accordance with a need for supportive housing identified in the 5-year consolidated plan adopted by the United States Department of Housing and Urban Development for the city or county pursuant to 42 U.S.C. § 12705 and described in 24 C.F.R. Part 91.

2. On or before January 15 of each year, the governing body shall submit to the Housing Division of the Department of Business and Industry a report, in the form prescribed by the Division, of how the measures adopted pursuant to subsection 1 assisted the city or county in maintaining and developing affordable housing to meet the needs of the community for the preceding year. The report must include an analysis of the need for affordable housing within the city or county that exists at the end of the reporting period.

3. On or before February 15 of each year, the Housing Division shall compile the reports submitted pursuant to subsection 2 and transmit the compilation to the Legislature, or the Legislative Commission if the Legislature is not in regular session.

Sec. 13. NRS 278.250 is hereby amended to read as follows:

278.250 1. For the purposes of NRS 278.010 to 278.630, inclusive, the governing body may divide the city, county or region into zoning districts of such number, shape and area as are best suited to carry out the purposes of NRS 278.010 to 278.630, inclusive. Within the zoning district, it may

regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land.

2. The zoning regulations must be adopted in accordance with the master plan for land use and be designed:

(a) To preserve the quality of air and water resources.

(b) To promote the conservation of open space and the protection of other natural and scenic resources from unreasonable impairment.

(c) To consider existing views and access to solar resources by studying the height of new buildings which will cast shadows on surrounding residential and commercial developments.

(d) To reduce the consumption of energy by encouraging the use of products and materials which maximize energy efficiency in the construction of buildings.

(e) To provide for recreational needs.

(f) To protect life and property in areas subject to floods, landslides and other natural disasters.

(g) To conform to the adopted population plan, if required by NRS 278.170.

(h) To develop a timely, orderly and efficient arrangement of transportation and public facilities and services, including public access and sidewalks for pedestrians, and facilities and services for bicycles.

(i) To ensure that the development on land is commensurate with the character and the physical limitations of the land.

(j) To take into account the immediate and long-range financial impact of the application of particular land to particular kinds of development, and the relative suitability of the land for development.

(k) To promote health and the general welfare.

(l) To ensure the development of an adequate supply of housing for the community, including the development of affordable housing.

(m) To ensure the protection of existing neighborhoods and communities, including the protection of ~~*[historic neighborhoods and]*~~ rural preservation neighborhoods ~~**[.]**~~ ~~*[, with specific consideration of the effects of proposed streets and highways upon existing neighborhoods and communities.]*~~ ***and, in counties whose population is 400,000 or more, the protection of historic neighborhoods.***

(n) To promote systems which use solar or wind energy.

(o) To foster the coordination and compatibility of land uses with any military installation in the city, county or region, taking into account the location, purpose and stated mission of the military installation.

3. The zoning regulations must be adopted with reasonable consideration, among other things, to the character of the area and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the city, county or region.

4. In exercising the powers granted in this section, the governing body may use any controls relating to land use or principles of zoning that the governing body determines to be appropriate, including, without limitation, density bonuses, inclusionary zoning and minimum density zoning.

5. As used in this section:

(a) "Density bonus" means an incentive granted by a governing body to a developer of real property that authorizes the developer to build at a greater density than would otherwise be allowed under the master plan, in exchange for an agreement by the developer to perform certain functions that the governing body determines to be socially desirable, including, without limitation, developing an area to include a certain proportion of affordable housing.

(b) "Inclusionary zoning" means a type of zoning pursuant to which a governing body requires or provides incentives to a developer who builds residential dwellings to build a certain percentage of those dwellings as affordable housing.

(c) "Minimum density zoning" means a type of zoning pursuant to which development must be carried out at or above a certain density to maintain conformance with the master plan.

Sec. 14. NRS 278.4787 is hereby amended to read as follows:

278.4787 1. Except as otherwise provided in subsection 5, a person who proposes to divide land for transfer or development into four or more lots pursuant to NRS 278.360 to 278.460, inclusive, or chapter 278A of NRS, may, in lieu of providing for the creation of an association for a common-interest community, request the governing body of the jurisdiction in which the land is located to assume the maintenance of one or more of the following improvements located on the land:

(a) Landscaping;

(b) Public lighting;

(c) Security walls; and

(d) Trails, parks and open space which provide a substantial public benefit or which are required by the governing body for the primary use of the public.

2. A governing body shall establish by ordinance a procedure pursuant to which a request may be submitted pursuant to subsection 1 in the form of a petition, which must be signed by a majority of the owners whose property will be assessed and which must set forth descriptions of all tracts of land or residential units that would be subject to such an assessment.

3. The governing body may by ordinance designate a person to approve or disapprove a petition submitted pursuant to this section. If the governing body adopts such an ordinance, the ordinance must provide, without limitation:

(a) Procedures pursuant to which the petition must be reviewed to determine whether it would be desirable for the governing body to assume the maintenance of the proposed improvements.

(b) Procedures for the establishment of a maintenance district or unit of assessment.

(c) A method for:

(1) Determining the relative proportions in which the assumption of the maintenance of the proposed improvements by the governing body will:

(I) Benefit the development or subdivision in which the improvements are located; and

(II) Benefit the public;

(2) Assessing the tracts of land or residential units in the development or subdivision to pay the costs that will be incurred by the governing body in assuming the maintenance of the proposed improvements, in the proportion that such maintenance will benefit the development or subdivision in which the improvements are located; and

(3) Allocating an amount of public money to pay the costs that will be incurred by the governing body in assuming the maintenance of the proposed improvements, in the proportion that such maintenance will benefit the public.

(d) Procedures for a petitioner or other aggrieved person to appeal to the governing body a decision of the person designated by the governing body by ordinance adopted pursuant to this subsection to approve or disapprove a petition.

4. If the governing body does not designate by an ordinance adopted pursuant to subsection 3 a person to approve or disapprove a petition, the governing body shall, after receipt of a complete petition submitted at least 120 days before the approval of the final map for the land, hold a public hearing at least 90 days before the approval of the final map for the land, unless otherwise waived by the governing body, to determine the desirability of assuming the maintenance of the proposed improvements. If the governing body determines that it would be undesirable for the governing body to assume the maintenance of the proposed improvements, the governing body shall specify for the record its reasons for that determination. If the governing body determines that it would be desirable for the governing body to assume the maintenance of the proposed improvements, the governing body shall by ordinance:

(a) Determine the relative proportions in which the assumption of the maintenance of the proposed improvements by the governing body will:

(1) Benefit the development or subdivision in which the improvements are located; and

(2) Benefit the public.

(b) Create a maintenance district or unit of assessment consisting of the tracts of land or residential units set forth in the petition or include the tracts of land or residential units set forth in the petition in an existing maintenance district or unit of assessment.

(c) Establish the method or, if the tracts or units are included within an existing maintenance district or unit of assessment, apply an existing method for determining:

(1) The amount of an assessment to pay the costs that will be incurred by the governing body in assuming the maintenance of the proposed improvements. The amount of the assessment must be determined in accordance with the proportion to which such maintenance will benefit the development or subdivision in which the improvements are located.

(2) The time and manner of payment of the assessment.

(d) Provide that the assessment constitutes a lien upon the tracts of land or residential units within the maintenance district or unit of assessment. The lien must be executed, and has the same priority, as a lien for property taxes.

(e) Prescribe the levels of maintenance to be provided.

(f) Allocate to the cost of providing the maintenance the appropriate amount of public money to pay for that part of the maintenance which creates the public benefit.

(g) Address any other matters that the governing body determines to be relevant to the maintenance of the improvements, including, without limitation, matters relating to the ownership of the improvements and the land on which the improvements are located and any exposure to liability associated with the maintenance of the improvements.

5. If the governing body requires an owner of land to dedicate a tract of land as a trail identified in the recreation plan of the governing body adopted pursuant to paragraph ~~[(j)]~~ ***(k)*** of subsection 1 of NRS 278.160, the governing body shall:

(a) Accept ownership of the tract; and

(b) Assume the maintenance of the tract and any other improvement located on the land that is authorized in subsection 1.

6. The governing body shall record, in the office of the county recorder for the county in which the tracts of land or residential units included in a petition approved pursuant to this section are located, a notice of the creation of the maintenance district or unit of assessment that is sufficient to advise the owners of the tracts of land or residential units that the tracts of land or residential units are subject to the assessment. The costs of recording the notice must be paid by the petitioner.

7. The provisions of this section apply retroactively to a development or subdivision with respect to which:

(a) An agreement or agreements between the owners of tracts of land within the development or subdivision and the developer allow for the provision of services in the manner set forth in this section; or

(b) The owners of affected tracts of land or residential units agree to dissolve the association for their common-interest community in accordance with the governing documents of the common-interest community upon approval by the governing body of a petition filed by the owners pursuant to this section.

Sec. 15. NRS 279.608 is hereby amended to read as follows:

279.608 1. If, at any time after the adoption of a redevelopment plan by the legislative body, the agency desires to take an action that will constitute a material deviation from the plan or otherwise determines that it would be necessary or desirable to amend the plan, the agency must recommend the amendment of the plan to the legislative body. An amendment may include the addition of one or more areas to any redevelopment area.

2. Before recommending amendment of the plan, the agency shall hold a public hearing on the proposed amendment. Notice of that hearing must be published at least 10 days before the date of hearing in a newspaper of general circulation, printed and published in the community, or, if there is none, in a newspaper selected by the agency. The notice of hearing must include a legal description of the boundaries of the area designated in the plan to be amended and a general statement of the purpose of the amendment.

3. In addition to the notice published pursuant to subsection 2, the agency shall cause a notice of hearing on a proposed amendment to the plan to be sent by mail at least 10 days before the date of the hearing to each owner of real property, as listed in the records of the county assessor, whom the agency determines is likely to be directly affected by the proposed amendment. The notice must:

(a) Set forth the date, time, place and purpose of the hearing and a physical description of, or a map detailing, the proposed amendment; and

(b) Contain a brief summary of the intent of the proposed amendment.

4. If after the public hearing, the agency recommends substantial changes in the plan which affect the master or community plan adopted by the planning commission or the legislative body, those changes must be submitted by the agency to the planning commission for its report and recommendation. The planning commission shall give its report and recommendations to the legislative body within 30 days after the agency submitted the changes to the planning commission.

5. After receiving the recommendation of the agency concerning the changes in the plan, the legislative body shall hold a public hearing on the proposed amendment, notice of which must be published in a newspaper in the manner designated for notice of hearing by the agency. If after that hearing the legislative body determines that the amendments in the plan, proposed by the agency, are necessary or desirable, the legislative body shall adopt an ordinance amending the ordinance adopting the plan.

6. As used in this section, "material deviation" means an action that, if taken, would alter significantly one or more of the aspects of a redevelopment plan that are required to be shown in the redevelopment plan pursuant to NRS 279.572. The term includes, without limitation, the vacation of a street that is depicted in the streets and highways plan of the master plan described in paragraph ~~[(p)]~~ ***(q)*** of subsection 1 of NRS 278.160 which has been adopted for the community and the relocation of a public park. The term

does not include the vacation of a street that is not depicted in the streets and highways plan of the master plan described in paragraph ~~[(p)]~~ ***(q)*** of subsection 1 of NRS 278.160 which has been adopted for the community.

Sec. 16. NRS 268.190 is hereby amended to read as follows:

268.190 Except as otherwise provided by law, the city planning commission may:

1. Recommend and advise the city council and all other public authorities concerning:

(a) The laying out, widening, extending, paving, parking and locating of streets, sidewalks and boulevards.

(b) The betterment of housing and sanitary conditions, and the establishment of zones or districts within which lots or buildings may be restricted to residential use, or from which the establishment, conduct or operation of certain business, manufacturing or other enterprises may be excluded, and limiting the height, area and bulk of buildings and structures therein.

2. Recommend to the city council and all other public authorities plans and regulations for the future growth, development and beautification of the municipality in respect to its public and private buildings and works, streets, parks, grounds and vacant lots, which must include for each city a ~~*[plan to identify and inventory historic neighborhoods, and a historic neighborhood preservation plan and]*~~ population plan if required by NRS 278.170 **,** ~~[and]~~ a plan for the development of affordable housing ~~[.]~~ ***and, for each city located in a county whose population is 400,000 or more, a plan to inventory and preserve historic neighborhoods.***

3. Perform any other acts and things necessary or proper to carry out the provisions of NRS 268.110 to 268.220, inclusive, and in general to study and propose such measures as may be for the municipal welfare and in the interest of protecting the municipal area's natural resources from impairment.

Sec. 17. ~~[Chapter 270 of NRS is hereby amended by adding thereto a new section to read as follows:~~

~~***If the governing body of an incorporated city establishes by ordinance, regulation or rule a requirement that a street owned by the city may not be vacated unless the vacation is approved by a certain percentage of:***~~

~~***1. The property owners abutting the street; or***~~

~~***2. An association of property owners,***~~

~~***↵ the percentage required must not exceed 80 percent.]***~~ **(Deleted by amendment.)**

Sec. 18. ~~[NRS 270.180 is hereby amended to read as follows:~~

~~270.180~~ ***The provisions of*** NRS 270.160 and 270.170 ***and section 17 of this act*** ~~are intended to supplement and not to supersede the existing laws relating to the vacation of city and town plats and do not apply to land divided pursuant to NRS 278.010 to 278.630, inclusive.~~**]** **(Deleted by amendment.)**

Sec. 19. ~~[Chapter 271 of NRS is hereby amended by adding thereto the provisions set forth as sections 20 and 21 of this act.]~~ **(Deleted by amendment.)**

Sec. 20. ~~[*1. A service provider subject to the jurisdiction of the Public Utilities Commission of Nevada may apply to the Commission for an adjustment in its rates to allow its recovery of all or part of the cost of converting existing overhead service facilities to underground facilities.*~~

~~*2. Within 120 days after receipt of such an application, the Commission shall hold a public hearing to consider whether to authorize such an adjustment and, if authorized, the methods to be used to allow the recovery.*~~

~~*3. The Commission shall render its written decision within 180 days after receiving the application for such an adjustment.*~~

~~*4. The Commission shall render its decision based on the record and may grant the application, deny it or grant it according to such terms, conditions or modifications as the Commission finds appropriate.*~~

~~*5. The Commission may grant an application for such an adjustment if it determines that:*~~

~~*(a) The conversion of existing overhead service facilities to underground facilities will help preserve the character of existing neighborhoods, including, without limitation, historic neighborhoods, improve safety or efficiency or otherwise improve the quality of life of the service provider's customers; and*~~

~~*(b) The cost of the conversion will be reasonable in consideration of the likely benefits.*~~

~~*6. If the Commission grants the application, the service provider must, within a reasonable time specified by the Commission, file with the Commission a tariff which sets forth the adjustment in the rates authorized as a result of the conversion.*~~

~~*7. A service provider shall annually present to the Commission a certified accounting of the cost of conversion and an accounting of the revenues it has received in that year from the adjustment in its rates.*~~

~~*8. As used in this section, "historic neighborhood" has the meaning ascribed to it in section 1 of this act.]*~~ **(Deleted by amendment.)**

Sec. 21. ~~[*If a service provider subject to the jurisdiction of the Public Utilities Commission of Nevada has been granted an adjustment in rates pursuant to section 20 of this act, the amount of assessments against tracts of land within a district to finance an underground conversion project must be reduced to reflect the proportion of the cost of the project, if any, which will be defrayed by that adjustment.]*~~ **(Deleted by amendment.)**

Sec. 22. ~~[NRS 408.290 is hereby amended to read as follows:~~

~~408.290 *1.* The Department may establish new routes into or in the vicinity of municipalities and metropolitan areas with the approval of the board of county commissioners of the county in which an addition is proposed and with the approval of the city council of any incorporated city~~

~~directly affected.~~ ***~~In establishing such new routes, the Department shall consider the effect of the routes upon existing neighborhoods, including, without limitation, historic neighborhoods.~~***

~~2. As used in this section, "historic neighborhood" has the meaning ascribed to it in section 1 of this act.~~ **(Deleted by amendment.)**

Sec. 23. ~~[Chapter 704A of NRS is hereby amended by adding thereto a new section to read as follows:~~

~~1. A public utility corporation subject to the jurisdiction of the Public Utilities Commission of Nevada may apply to the Commission for an adjustment in its rates to allow its recovery of all or part of the cost of converting existing overhead electric and communication facilities to underground locations.~~

~~2. Within 120 days after receipt of such an application, the Commission shall hold a public hearing to consider whether to authorize such an adjustment and, if authorized, the methods to be used to allow the recovery.~~

~~3. The Commission shall render its written decision within 180 days after receiving the application for such an adjustment.~~

~~4. The Commission shall render its decision based on the record and may grant the application, deny it or grant it according to such terms, conditions or modifications as the Commission finds appropriate.~~

~~5. The Commission may grant an application for such an adjustment if it determines that:~~

~~(a) The conversion of existing overhead electric and communication facilities to underground locations will help to preserve the character of existing neighborhoods, including, without limitation, historic neighborhoods, improve safety or efficiency or otherwise improve the quality of life of the public utility corporation's customers; and~~

~~(b) The cost of the conversion will be reasonable in consideration of the likely benefits.~~

~~6. If the Commission grants the application, the public utility corporation must, within a reasonable time specified by the Commission, file with the Commission a tariff which sets forth the adjustment in the rates authorized as a result of the conversion.~~

~~7. A public utility corporation shall annually present to the Commission a certified accounting of the cost of conversion and an accounting of the revenues it has received in that year from the adjustment in its rates.~~

~~8. As used in this section, "historic neighborhood" has the meaning ascribed to it in section 1 of this act.~~ **(Deleted by amendment.)**

Sec. 24. ~~[NRS 704A.312 is hereby amended to read as follows:~~

~~704A.312 1. At any time after there occur the conditions stated in subsection 1 or in subsections 2 and 3 of NRS 704A.290, the governing body, by resolution, shall:~~

~~(a) Determine the total cost of the construction or conversion pertaining to the service district, including, without limitation, interest on any interim warrants relating thereto and all other incidental costs, based upon the actual costs known at the time of such determination of cost and otherwise upon the estimated costs stated in the joint report prepared under NRS 704A.180, as modified, if modified by the occurrence thereafter of factors affecting such costs and permitting their revision;~~

~~(b) *In the case of a conversion, determine and subtract the portion of the cost, if any, that will be paid by an adjustment in rates granted pursuant to section 23 of this act;*~~

~~*(c)* Determine the net cost of the construction or conversion to be defrayed by special assessments;~~

~~[(c)]~~ ~~*(d)* Order the municipal engineer to make out or to cause to be made out an assessment roll containing, among other matters:~~

~~(1) The name of each last known owner of each lot to be assessed, or if not known, a statement that the name is "unknown"; and~~

~~(2) A description of each tract to be assessed, and the amount of the proposed assessment thereon, apportioned upon the basis for assessments stated in the resolution of the governing body adopted pursuant to subsection 2 of NRS 704A.180, but subject to the provisions of subsections 5 and 6 of NRS 704A.240; and~~

~~[(d)]~~ ~~*(e)* Cause a copy of the resolution to be furnished by the municipal clerk to the municipal engineer.~~

~~2. If by mistake or otherwise any person is improperly designated in the assessment roll as the owner of any lot, or if the same is assessed without the name of the owner or each owner, as the case may be, or in the name of a person other than the owner, such assessment shall not for that reason be vitiated but shall, in all respects, be as valid upon and against such lot as though assessed in the name of the owner or each owner thereof, as the case may be; and when the assessment roll has been confirmed, such assessment shall become a lien on such lot and be collected as provided by law.~~

~~3. No assessment shall exceed the amount of the special benefits to the lot assessed nor exceed the amount of the reasonable market value of such lot for any one project for the construction or conversion of any one type of service facilities of a public utility corporation, as determined by the governing body.~~] **(Deleted by amendment.)**

Assemblyman Bobzien moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 309.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 337.

AN ACT relating to crimes; revising provisions relating to the crime of stalking; increasing the penalties for the crime of stalking; ~~[revising the provisions relating to orders for protection against stalking, aggravated stalking and harassment;]~~ and providing other matters properly relating thereto.

Legislative Counsel's Digest:

~~[This bill revises provisions relating to the crime of stalking.]~~ **Existing law prohibits stalking and authorizes the issuance of a temporary or extended order restricting certain conduct related to the crime of stalking, aggravated stalking or harassment.** (NRS 200.575 **, 200.591**) **Section 1** of this bill ~~[criminalizes]~~ **includes within the definition of the crime of stalking** a course of conduct which would cause a reasonable person to feel fearful for the safety of a third person ~~[or to suffer other emotional distress]~~ and which actually causes a victim to feel such fear **.** ~~[or to suffer such emotional distress.]~~ **Section 1** also increases the penalty for a first offense for the crime of stalking from a misdemeanor to a gross misdemeanor and makes a subsequent offense a category D felony. ~~[~~**]** Additionally, **section 1** ~~[of this bill]~~ adds text messaging to the existing crime of stalking with the use of a communication device, which is punishable as a category C felony. ~~[Finally, section 1 provides that it is not a defense to prosecution for stalking that the person was not given notice that the course of conduct was unwanted or that the person did not intend to cause the victim to feel terrorized, frightened, intimidated, harassed or fearful for the safety of a third person or to suffer other emotional distress.~~

~~Section 2 of this bill authorizes the issuance of a temporary or extended order to restrict conduct related to the crime of stalking, aggravated stalking or harassment without a hearing, unless a hearing is requested by the adverse party. (NRS 200.591)]~~

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

Section 1. NRS 200.575 is hereby amended to read as follows:

200.575 1. A person who, without lawful authority, willfully or maliciously engages in a course of conduct that would cause a reasonable person to feel terrorized, frightened, intimidated ***,*** ~~[or]~~ harassed ~~[,]~~ ***or fearful for the safety of a third person*** **,** ~~*[or to suffer other emotional distress,]*~~ and that actually causes the victim to feel terrorized, frightened, intimidated ***,*** ~~[or]~~ harassed ~~[,]~~ ***or fearful for the safety of a third person*** **,** ~~*[or to suffer other emotional distress,]*~~ commits the crime of stalking. Except where the provisions of subsection 2 or 3 are applicable, a person who commits the crime of stalking:

(a) For the first offense, is guilty of a ***gross*** misdemeanor.

(b) For any subsequent offense, is guilty of a ~~[gross misdemeanor.]~~ ***category D felony and shall be punished as provided in NRS 193.130.***

2. A person who commits the crime of stalking and in conjunction therewith threatens the person with the intent to cause him to be placed in reasonable fear of death or substantial bodily harm commits the crime of aggravated stalking. A person who commits the crime of aggravated stalking shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years, and may be further punished by a fine of not more than $5,000.

3. A person who commits the crime of stalking with the use of an Internet or network site **,** ~~[or]~~ electronic mail ***, text messaging*** or any other similar means of communication to publish, display or distribute information in a manner that substantially increases the risk of harm or violence to the victim shall be punished for a category C felony as provided in NRS 193.130.

4. Except as otherwise provided in subsection 2 of NRS 200.571, a criminal penalty provided for in this section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct or for any contempt of court arising from the same conduct.

5. The penalties provided in this section do not preclude the victim from seeking any other legal remedy available.

6. ~~*[In any prosecution under this section, it is not a defense that the person:*~~

~~*(a) Was not given actual notice that the course of conduct was unwanted; or*~~

~~*(b) Did not intend to cause the victim to feel terrorized, frightened, intimidated, harassed or fearful for the safety of a third person or to suffer other emotional distress.*~~

~~*7.]*~~ As used in this section:

(a) "Course of conduct" means a pattern of conduct which consists of a series of acts over time that evidences a continuity of purpose directed at a specific person.

(b) ~~*["Emotional distress" means significant mental or psychological suffering, whether or not medical or other professional treatment or counseling is required.*~~

~~*(c)]*~~ "Internet or network site" has the meaning ascribed to it in NRS 205.4744.

(c) ~~*[(d)]*~~ "Network" has the meaning ascribed to it in NRS 205.4745.

(d) ~~*[(e)]*~~ "Provider of Internet service" has the meaning ascribed to it in NRS 205.4758.

(e) ~~*[(f)]*~~ ***"Text messaging" means a communication in the form of electronic text or one or more electronic images sent*** ~~*[by the actor]*~~ ***from a telephone or computer to another person's telephone or computer by addressing the communication to the recipient's telephone number.***

~~*[(g)]*~~ ***(f)*** "Without lawful authority" includes acts which are initiated or continued without the victim's consent. The term does not include acts which

are otherwise protected or authorized by constitutional or statutory law, regulation or order of a court of competent jurisdiction, including, but not limited to:

(1) Picketing which occurs during a strike, work stoppage or any other labor dispute.

(2) The activities of a reporter, photographer, cameraman or other person while gathering information for communication to the public if that person is employed or engaged by or has contracted with a newspaper, periodical, press association or radio or television station and is acting solely within that professional capacity.

(3) The activities of a person that are carried out in the normal course of his lawful employment.

(4) Any activities carried out in the exercise of the constitutionally protected rights of freedom of speech and assembly.

Sec. 2. ~~[NRS 200.591 is hereby amended to read as follows:~~

~~200.591—1.—In addition to any other remedy provided by law, a person who reasonably believes that the crime of stalking, aggravated stalking or harassment is being committed against him by another person may petition any court of competent jurisdiction for a temporary or extended order directing the person who is allegedly committing the crime to:~~

~~(a) Stay away from the home, school, business or place of employment of the victim of the alleged crime and any other location specifically named by the court.~~

~~(b) Refrain from contacting, intimidating, threatening or otherwise interfering with the victim of the alleged crime and any other person named in the order, including, without limitation, a member of the family or the household of the victim of the alleged crime.~~

~~(c) Comply with any other restriction which the court deems necessary to protect the victim of the alleged crime or to protect any other person named in the order, including, without limitation, a member of the family or the household of the victim of the alleged crime.~~

~~2.—If a defendant charged with a crime involving harassment, stalking or aggravated stalking is released from custody before trial or is found guilty at the trial, the court may issue a temporary or extended order or provide as a condition of the release or sentence that the defendant:~~

~~(a) Stay away from the home, school, business or place of employment of the victim of the alleged crime and any other location specifically named by the court.~~

~~(b) Refrain from contacting, intimidating, threatening or otherwise interfering with the victim of the alleged crime and any other person named in the order, including, without limitation, a member of the family or the household of the victim of the alleged crime.~~

~~(c) Comply with any other restriction which the court deems necessary to protect the victim of the alleged crime or to protect any other person named~~

~~in the order, including, without limitation, a member of the family or the household of the victim of the alleged crime.~~

~~3. A temporary order may be granted with or without notice to the adverse party [.] *and without holding a hearing, unless a hearing is requested by the adverse party.* An extended order may be granted only after:~~

~~(a) Notice of the petition for the order and of the hearing thereon is served upon the adverse party pursuant to the Nevada Rules of Civil Procedure; and~~

~~(b) A hearing is held on the petition [.] *, if requested by the adverse party.*~~

~~4. If an extended order is issued by a justice court, an interlocutory appeal lies to the district court, which may affirm, modify or vacate the order in question. The appeal may be taken without bond, but its taking does not stay the effect or enforcement of the order.~~

~~5. Unless a more severe penalty is prescribed by law for the act that constitutes the violation of the order, any person who intentionally violates:~~

~~(a) A temporary order is guilty of a gross misdemeanor.~~

~~(b) An extended order is guilty of a category C felony and shall be punished as provided in NRS 193.130.~~

~~6. Any court order issued pursuant to this section must:~~

~~(a) Be in writing;~~

~~(b) Be personally served on the person to whom it is directed; and~~

~~(c) Contain the warning that violation of the order:~~

~~(1) Subjects the person to immediate arrest.~~

~~(2) Is a gross misdemeanor if the order is a temporary order.~~

~~(3) Is a category C felony if the order is an extended order.~~

~~7. A temporary or extended order issued pursuant to this section must provide notice that a person who is arrested for violating the order will not be admitted to bail sooner than 12 hours after his arrest if:~~

~~(a) The arresting officer determines that such a violation is accompanied by a direct or indirect threat of harm;~~

~~(b) The person has previously violated a temporary or extended order for protection; or~~

~~(c) At the time of the violation or within 2 hours after the violation, the person has:~~

~~(1) A concentration of alcohol of 0.08 or more in his blood or breath; or~~

~~(2) An amount of a prohibited substance in his blood or urine that is equal to or greater than the amount set forth in subsection 3 of NRS 484.379.]~~ **(Deleted by amendment.)**

Sec. 3. NRS 176A.413 is hereby amended to read as follows:

176A.413 1. Except as otherwise provided in subsection 2, if a defendant is convicted of stalking with the use of an Internet or network site **,** ~~[or]~~ electronic mail ***, text messaging*** or any other similar means of communication pursuant to subsection 3 of NRS 200.575, an offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive, or luring a child or a person with mental illness through the use of

a computer, system or network pursuant to paragraph (a) or (b) of subsection 4 of NRS 201.560 and the court grants probation or suspends the sentence, the court shall, in addition to any other condition ordered pursuant to NRS 176A.400, order as a condition of probation or suspension that the defendant not own or use a computer, including, without limitation, use electronic mail, a chat room or the Internet.

2. The court is not required to impose a condition of probation or suspension of sentence set forth in subsection 1 if the court finds that:

(a) The use of a computer by the defendant will assist a law enforcement agency or officer in a criminal investigation;

(b) The defendant will use the computer to provide technological training concerning technology of which the defendant has a unique knowledge; or

(c) The use of the computer by the defendant will assist companies that require the use of the specific technological knowledge of the defendant that is unique and is otherwise unavailable to the company.

3. Except as otherwise provided in subsection 1, if a defendant is convicted of an offense that involved the use of a computer, system or network and the court grants probation or suspends the sentence, the court may, in addition to any other condition ordered pursuant to NRS 176A.400, order as a condition of probation or suspension that the defendant not own or use a computer, including, without limitation, use electronic mail, a chat room or the Internet.

4. As used in this section:

(a) ”Computer” has the meaning ascribed to it in NRS 205.4735.

(b) ”Network” has the meaning ascribed to it in NRS 205.4745.

(c) ”System” has the meaning ascribed to it in NRS 205.476.

(d) ”Text messaging” has the meaning ascribed to it in NRS 200.575.

Sec. 4. NRS 213.1258 is hereby amended to read as follows:

213.1258 1. Except as otherwise provided in subsection 2, if the Board releases on parole a prisoner convicted of stalking with the use of an Internet or network site **,** ~~[or]~~ electronic mail ***, text messaging*** or any other similar means of communication pursuant to subsection 3 of NRS 200.575, an offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive, or luring a child or a person with mental illness through the use of a computer, system or network pursuant to paragraph (a) or (b) of subsection 4 of NRS 201.560, the Board shall, in addition to any other condition of parole, require as a condition of parole that the parolee not own or use a computer, including, without limitation, use electronic mail, a chat room or the Internet.

2. The Board is not required to impose a condition of parole set forth in subsection 1 if the Board finds that:

(a) The use of a computer by the parolee will assist a law enforcement agency or officer in a criminal investigation;

(b) The parolee will use the computer to provide technological training concerning technology of which the defendant has a unique knowledge; or

(c) The use of the computer by the parolee will assist companies that require the use of the specific technological knowledge of the parolee that is unique and is otherwise unavailable to the company.

3. Except as otherwise provided in subsection 1, if the Board releases on parole a prisoner convicted of an offense that involved the use of a computer, system or network, the Board may, in addition to any other condition of parole, require as a condition of parole that the parolee not own or use a computer, including, without limitation, use electronic mail, a chat room or the Internet.

4. As used in this section:

(a) "Computer" has the meaning ascribed to it in NRS 205.4735.

(b) "Network" has the meaning ascribed to it in NRS 205.4745.

(c) "System" has the meaning ascribed to it in NRS 205.476.

(d) "Text messaging" has the meaning ascribed to it in NRS 200.575.

Assemblyman Segerblom moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 326.

Bill read second time.

The following amendment was proposed by the Committee on Health and Human Services:

Amendment No. 471.

AN ACT relating to controlled substances; ~~[exempting certain contracts entered into by the State Board of Pharmacy from the State Purchasing Act;]~~ revising provisions governing the tracking of prescriptions for controlled substances; requiring the Legislative Committee on Health Care to conduct a study of the abuse of prescription narcotic drugs in this State; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

~~[Existing law requires the State Board of Pharmacy to administer the Uniform Controlled Substances Act. (NRS 453.011-453.348) Section 1 of this bill provides that the Board may enter into such professional services contracts as the Board determines necessary to obtain federal money in the maximum amount available to this State and exempts such contracts from the requirements of chapter 333 of NRS governing state purchasing.]~~

Existing law provides for the creation of a computerized program to track prescriptions for controlled substances listed in schedule II, III or IV. **Section 7** of this bill requires that the database of the computerized program be made available on the Internet to persons who are authorized to dispense controlled substances in this State. **Section 7** further requires that the computerized program contain the contact information of each practitioner and person authorized to dispense controlled substances who ~~[has access]~~ **elects** to **access** the database of the program. In addition, **section 7** requires the Board and the Investigation Division of the Department of Public Safety to establish

a course of training in the computerized program and further requires that a person complete the course of training before the Board provides the person with access to the database of the program. (NRS 453.1545)

Section 9 of this bill requires the Legislative Committee on Health Care to conduct a study of the abuse of prescription narcotic drugs and the manner of monitoring and addressing such abuse in this State and to submit a written report to the Director of the Legislative Counsel Bureau for transmittal to the next regular session of the Legislature on or before January 15, 2011.

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

Section 1. ~~[Chapter 453 of NRS is hereby amended by adding thereto a new section to read as follows:~~

~~***1. To carry out the provisions of this section and NRS 453.011 to 453.348, inclusive, the Board may enter into such professional services contracts as it determines necessary to obtain federal money in the maximum amount available to this State.***~~

~~***2. All contracts authorized by this section are exempt from the requirements of chapter 333 of NRS.]***~~ **(Deleted by amendment.)**

Sec. 2. ~~[NRS 453.011 is hereby amended to read as follows:~~

~~453.011 1. NRS 453.011 to 453.348, inclusive, ***and section 1 of this act*** may be cited as the Uniform Controlled Substances Act.~~

~~2. The Uniform Controlled Substances Act (1990) is substituted in a continuing way for the provisions of NRS 453.011 to 453.348, inclusive, ***and section 1 of this act,*** except as those provisions are specifically amended.]~~ **(Deleted by amendment.)**

Sec. 3. ~~[NRS 453.013 is hereby amended to read as follows:~~

~~453.013 NRS 453.011 to 453.348, inclusive, ***and section 1 of this act*** shall be so applied and construed as to effectuate its general purpose and to make uniform the law with respect to the subject of such sections among those states which enact it.]~~ **(Deleted by amendment.)**

Sec. 4. ~~[NRS 453.146 is hereby amended to read as follows:~~

~~453.146 1. The Board shall administer the provisions of NRS 453.011 to 453.552, inclusive, ***and section 1 of this act*** and may add substances to or delete or reschedule all substances enumerated in schedules I, II, III, IV and V by regulation.~~

~~2. In making a determination regarding a substance, the Board shall consider the following:~~

~~(a) The actual or relative potential for abuse;~~

~~(b) The scientific evidence of its pharmacological effect, if known;~~

~~(c) The state of current scientific knowledge regarding the substance;~~

~~(d) The history and current pattern of abuse;~~

~~(e) The scope, duration and significance of abuse;~~

~~(f) The risk to the public health;~~

~~(g) The potential of the substance to produce psychic or physiological dependence liability; and~~

~~(h) Whether the substance is an immediate precursor of a controlled substance.~~

~~3. The Board may consider findings of the federal Food and Drug Administration or the Drug Enforcement Administration as prima facie evidence relating to one or more of the determinative factors.~~

~~4. After considering the factors enumerated in subsection 2, the Board shall make findings with respect thereto and adopt a regulation controlling the substance if it finds the substance has a potential for abuse.~~

~~5. The Board shall designate as a controlled substance a steroid or other product which is used to enhance athletic performance, muscle mass, strength or weight without medical necessity. The Board may not designate as a controlled substance an anabolic steroid which is:~~

~~(a) Expressly intended to be administered through an implant to cattle, poultry or other animals; and~~

~~(b) Approved by the Food and Drug Administration for such use.~~**]** **(Deleted by amendment.)**

Sec. 5. ~~[NRS 453.153 is hereby amended to read as follows:~~

~~453.153 The Board and Division shall cooperate with each other in effectuating the purposes of NRS 453.011 to 453.552, inclusive~~ **[.]** ~~*, and section 1 of this act.]*~~ **(Deleted by amendment.)**

Sec. 6. ~~[NRS 453.154 is hereby amended to read as follows:~~

~~453.154 1. In this section, "diversion" means the transfer of a controlled substance from a lawful to an unlawful channel of distribution or use.~~

~~2. The Division shall regularly prepare and make available to other state regulatory, licensing and law enforcement agencies a report on the patterns and trends of distribution, diversion and abuse of controlled substances.~~

~~3. The Board and the Division may enter into written agreements with local, state and federal agencies to improve identification of sources of diversion and to improve enforcement of and compliance with NRS 453.011 to 453.348, inclusive, *and section 1 of this act* and other laws and regulations pertaining to unlawful conduct involving controlled substances. An agreement must specify the roles and responsibilities of each agency that has information or authority to identify, prevent or control diversion and abuse of controlled substances. The Board and the Division may convene periodic meetings to coordinate a state program to prevent and control diversion. The Board and the Division may arrange for cooperation and exchange of information among agencies and with other states and the Federal Government.~~

~~4. The Division shall report annually to the Governor and biennially to the presiding officer of each house of the Legislature on the outcome of the program with respect to its effect on distribution and abuse of controlled substances, including recommendations for improving control and prevention~~

~~of the diversion of controlled substances in this State.~~] **(Deleted by amendment.)**

Sec. 7. NRS 453.1545 is hereby amended to read as follows:

453.1545 1. The Board and the Division shall cooperatively develop a computerized program to track each prescription for a controlled substance listed in schedule II, III or IV that is filled by a pharmacy that is registered with the Board or that is dispensed by a practitioner who is registered with the Board. The program must:

(a) Be designed to provide information regarding:

(1) The inappropriate use by a patient of controlled substances listed in schedules II, III and IV to pharmacies, practitioners and appropriate state agencies to prevent the improper or illegal use of those controlled substances; and

(2) Statistical data relating to the use of those controlled substances that is not specific to a particular patient.

(b) Be administered by the Board, the Division, the Health Division of the Department and various practitioners, representatives of professional associations for practitioners, representatives of occupational licensing boards and prosecuting attorneys selected by the Board and the Division.

(c) Not infringe on the legal use of a controlled substance for the management of severe or intractable pain.

(d) Include the contact information of each person ~~*[to whom the Board has provided Internet access]*~~ ***who elects to access the database of the program pursuant to subsection 2, including, without limitation:***

(1) The name of the person;

(2) The physical address of the person;

(3) The telephone number of the person; and

(4) If the person maintains an electronic mail address, the electronic mail address of the person.

2. The Board shall provide ~~[each practitioner who is authorized to write prescriptions for and each person who is authorized to dispense controlled substances listed in schedule II, III or IV with~~] Internet access to the database of the program established pursuant to subsection 1 to ~~[carry out the provisions of NRS 639.23507.~~] ***each practitioner who is authorized to write prescriptions for and each person who is authorized to dispense controlled substances listed in schedule II, III or IV who:***

(a) Elects to access the database of the program; and

(b) Completes the course of instruction described in subsection 6.

3. The Board and the Division must have access to the program established pursuant to subsection 1 to identify any suspected fraudulent or illegal activity related to the dispensing of controlled substances.

4. The Board or the Division shall report any activity it reasonably suspects may be fraudulent or illegal to the appropriate law enforcement agency or occupational licensing board and provide the law enforcement

agency or occupational licensing board with the relevant information obtained from the program for further investigation.

5. Information obtained from the program relating to a practitioner or a patient is confidential and, except as otherwise provided by this section and NRS 239.0115, must not be disclosed to any person. That information must be disclosed:

(a) Upon the request of a person about whom the information requested concerns or upon the request on his behalf by his attorney; or

(b) Upon the lawful order of a court of competent jurisdiction.

6. ***The Board and the Division shall cooperatively develop a course of training for persons who*** ~~*[are provided with Internet access]*~~ ***elect to access the database of the program pursuant to subsection 2 and require each such person to complete the course of training before he is provided with Internet access to the database pursuant to subsection 2.***

7. The Board and the Division may apply for any available grants and accept any gifts, grants or donations to assist in developing and maintaining the program required by this section.

Sec. 8. ~~[NRS 453.159 is hereby amended to read as follows:~~

~~453.159 Any orders and regulations promulgated under any law affected by NRS 453.011 to 453.552, inclusive, *and section 1 of this act* and in effect on January 1, 1972, and not in conflict with it continue in effect until modified, superseded or repealed.]~~ **(Deleted by amendment.)**

Sec. 9. The Legislative Committee on Health Care shall:

1. In cooperation with the State Board of Pharmacy, the Board of Medical Examiners and the State Board of Osteopathic Medicine, conduct a study of the abuse of prescription narcotic drugs and the manner of monitoring and addressing the abuse of prescription narcotic drugs in this State; and

2. On or before January 15, 2011, submit to the Director of the Legislative Counsel Bureau for transmittal to the next regular session of the Legislature a written report concerning the abuse of prescription narcotic drugs and the manner of monitoring and addressing the abuse of prescription narcotic drugs in this State.

Sec. 10. This act becomes effective on July 1, 2009.

Assemblywoman Pierce moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 432.

Bill read second time.

The following amendment was proposed by the Committee on Taxation:

Amendment No. 414.

AN ACT relating to intoxicating liquors; revising provisions relating to alcoholic beverage awareness programs; providing for enforcement of certain provisions by peace officers; revising the distribution of civil fines paid for

certain violations; **requiring certain reports to be made to the Legislature;** and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, certain employees of certain establishments that sell alcohol must have successfully completed an alcoholic beverage awareness program. The owner of an establishment that is not in compliance must pay an administrative fine, to be imposed by the Department of Taxation. Money from the administrative fines must be divided equally into the Fund for the Compensation of Victims of Crime and the Alcoholic Beverage Awareness Program Account in the State General Fund. (NRS 369.630) ~~[This]~~ **Section 1 of this** bill provides that peace officers may enforce the requirements of the provision relating to employees having successfully completed the program by issuing a notice of a civil infraction for violations. ~~[This bill]~~ **Section 1** also revises the provision for distribution of the money received by the Department for fines from establishments found in violation, providing that ~~[25 percent of the money must be paid to the Fund for the Compensation of Victims of Crime and 75]~~ **instead of depositing 50 percent of the money in the Alcoholic Beverage Awareness Program Account, 50** percent of the money ~~[must be paid into the county treasury of the county where the establishment found in violation is located, and must be used for the purposes of law enforcement.]~~ **must be deposited in the account created in the State General Fund for the support of community juvenile justice programs and must be used only to enforce laws that prohibit the purchase, consumption or possession of alcoholic beverages by persons under the age of 21 years.**

Section 2 of this bill requires each recipient of money from the collection of fines for civil infractions to submit a report to the Legislature concerning the amount of money received and how the money was used. In addition, certain law enforcement agencies and the Department of Taxation are required to submit a report to the Legislature concerning the enforcement of the provisions requiring employees to participate in an alcoholic beverage awareness program.

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

Section 1. NRS 369.630 is hereby amended to read as follows:

369.630 1. Except as otherwise provided in subsection ~~[5,]~~ ***7,*** on and after July 1, 2007, a person who owns or operates an establishment shall not:

(a) Hire a person to sell or serve alcoholic beverages or perform the duties of a security guard at the establishment unless:

(1) The person hired to sell or serve alcoholic beverages or perform the duties of a security guard at the establishment has already successfully completed a certified program and already holds a valid alcohol education card; or

(2) The person who owns or operates the establishment ensures that the person hired to sell or serve alcoholic beverages or perform the duties of a security guard at the establishment, within 30 days after the date on which he is hired, successfully completes a certified program and obtains a valid alcohol education card; or

(b) Continue to employ a person who was hired before that date to sell or serve alcoholic beverages or perform the duties of a security guard at the establishment unless:

(1) The person who continues to be employed to sell or serve alcoholic beverages or perform the duties of a security guard at the establishment has already successfully completed a certified program and already holds a valid alcohol education card; or

(2) The person who owns or operates the establishment ensures that the person who continues to be employed to sell or serve alcoholic beverages or perform the duties of a security guard at the establishment, not later than July 31, 2007, successfully completes a certified program and obtains a valid alcohol education card.

2. ~~[The Department shall impose upon an owner or operator of an establishment who violates any of the provisions of this section an administrative fine of not more than:]~~ ***A violation of this section is a civil infraction, and when an owner or operator of an establishment is found in violation pursuant to subsection 3, a notice of infraction must be issued on a form prescribed by the Department, and must contain, without limitation, the following information:***

(a) The location at which the violation occurred;

(b) The date and time of the violation;

(c) The name of the establishment and the owner;

(d) The signature of the person who issued the notice of infraction;

(e) A copy of this section which allegedly is being violated;

(f) Information which advises of the manner in which, and the time within which, the notice of infraction must be answered; and

(g) Any other reasonable information which is prescribed by the Department.

3. The notice of infraction may be issued by any peace officer or by any person who is authorized by the Department to issue such a notice. A duplicate of the notice of infraction must be served on the person to whom it is issued either in person, by providing the notice to the person in charge of the establishment at the time the notice of infraction is issued, or by affixing the notice to the establishment in a conspicuous place.

4. The notice of infraction or a facsimile thereof must be filed with the Department and retained by the Department and is deemed to be a public record of matters which are observed pursuant to a duty imposed by law and is prima facie evidence of the facts which are alleged therein.

5. A person who responds to the notice of infraction must:

(a) ***Admit the commission of the infraction by paying to the Department the appropriate civil fine:***

(1) For the first violation within a 24-month period, $500.

~~[(b)]~~ ***(2)*** For the second violation within a 24-month period, $1,000.

~~[(c)]~~ ***(3)*** For the third and any subsequent violation within a 24-month period, $5,000.

~~[3.]~~ ***(b) Deny liability for the infraction by notifying the Department and requesting a hearing in the manner indicated on the notice of infraction. Upon receipt of such a request, the Department shall afford to the person making the request an opportunity for a hearing pursuant to the provisions of NRS 233B.121.***

6. Of the money collected by the Department from ~~[fines]~~ ***a civil fine*** pursuant to subsection ~~[2.]~~ ***5:***

(a) Fifty ~~*[Twenty-five]*~~ percent must be deposited with the State Treasurer for credit to the Fund for the Compensation of Victims of Crime created by NRS 217.260.

(b) Fifty ~~*[Seventy-five]*~~ percent must be deposited in the ~~[Alcoholic Beverage Awareness Program Account, which is hereby created in the State General Fund. The Account must be administered by the Commission. The interest and income earned on the money in the Account, after deducting any applicable charges, must be credited to the Account. The money in the Account must be used solely to reduce the costs for employees to complete programs certified by the Commission pursuant to subsection 3 of NRS 369.625.~~

~~4. Any law enforcement agency whose officer discovers a violation of this section shall report the violation to the Department.~~

~~5.]~~ ~~*[county treasury of the county in which the establishment is located, and must be used for the purposes of law enforcement.]*~~ ***account created in the State General Fund for the support of community juvenile justice programs and must be used only to enforce laws that prohibit the purchase, consumption or possession of alcoholic beverages by persons under the age of 21 years.***

7. The provisions of this section apply only in a jurisdiction that:

(a) Is located in a county whose population is 100,000 or more; or

(b) Is located in a county whose population is less than 100,000, if the governing body of the jurisdiction has, by the affirmative vote of a majority of its members, agreed to be bound by the provisions of this section.

~~[6.]~~ ***8.*** As used in this section:

(a) "Certified program" means an alcoholic beverage awareness program certified by the Commission pursuant to NRS 369.625.

(b) "Valid alcohol education card" means a card issued by a certified program which has been obtained or renewed within the immediately preceding 4 years.

Sec. 2. **1. Each recipient of money pursuant to subsection 6 of section 1 of this act shall submit a report to the Director of the**

Legislative Counsel Bureau on or before February 1, 2011, for distribution to the Legislature setting forth the amount of money received during the biennium, the manner in which the money was used and the amount of money that remains in the account of the recipient.

2. Each law enforcement agency in a county subject to the provisions of NRS 369.630 and the Department of Taxation shall prepare and submit a report to the Director of the Legislative Counsel Bureau on or before February 1, 2011, for distribution to the Legislature which sets forth the actions taken by the agency or the Department, as applicable, to enforce the provisions of NRS 369.600 to 369.635, inclusive, and the number of violations of those provisions that were discovered by them. The Department shall also include in the report the amount of money collected from fines imposed for such violations.

~~[Sec. 2.]~~ ***Sec. 3.*** This act becomes effective on July 1, 2009.

Assemblywoman McClain moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 454.

Bill read second time.

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

Amendment No. 442.

AN ACT relating to housing; revising certain provisions relating to the grounds of termination for certain rental or lease agreements affecting certain tenants in a manufactured home park; ~~[revising certain costs a landlord is required to pay in association with the closing or conversion of a manufactured home park;]~~ revising certain provisions relating to an appeal from a judgment in an unlawful detainer action; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

~~[Existing law requires a landlord to pay to a tenant the costs of moving the tenant or the fair market value of a manufactured home under certain circumstances during the closing or conversion of a manufactured home park. Existing law also authorizes a landlord to remove and dispose of a manufactured home and requires the landlord to pay to the tenant the fair market value of the manufactured home if the tenant chooses not to move the manufactured home under certain other circumstances. Sections 1-4 of this bill require a landlord, under those circumstances, to pay to the tenant the fair market value of the manufactured home minus the reasonable cost of removing and disposing of the manufactured home or $5,000, whichever amount is greater. (NRS 118B.130, 118B.177, 118B.180, 118B.183)]~~

Section 5 of this bill provides that a rental agreement between a landlord and a tenant for the rental or lease of certain lots in a manufactured home park in this State may only be terminated on one or more of the grounds listed in

existing law regardless of the fact that a notice of termination may have been served upon the tenant. (NRS 118B.190, 118B.200)

Existing law provides that an eviction may be initiated by filing an unlawful detainer action or by using the procedures for summary eviction. (NRS 40.215-40.425) Existing law also generally provides that a person may obtain a stay of execution upon an appeal from an order entered in an action: (1) for summary eviction by filing with the trial court a bond in the amount of $250; and (2) for unlawful detainer if the person is a defendant and, within 10 days after the judgment is rendered, he files with the court or justice a bond with two or more sureties in the amount determined by the court or justice but that is not less than twice the amount of the judgment and costs. (NRS 40.380, 40.385) Existing law further provides that the summary eviction process may not be used against certain tenants in mobile home parks. (NRS 40.253) **Section 6** of this bill changes the amount of the bond that certain defendants who are tenants in a mobile home park are required to file to obtain a stay of execution upon an appeal from an order entered in an action for unlawful detainer from twice the amount of the judgment and costs to $250. **Section 6 also: (1) requires certain tenants in a mobile home park who retain possession of the premises that are the subject of the appeal to pay the landlord the rent in the amount provided in the underlying contract as it becomes due; and (2) authorizes, under certain circumstances, the court or justice to vacate the stay of execution if such a tenant fails to pay the rent.** (NRS 40.380)

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

Section 1. ~~[NRS 118B.130 is hereby amended to read as follows:~~

~~118B.130 1. A landlord may not change:~~

~~(a) An existing park to a park for older persons pursuant to federal law unless the tenants who do not meet those restrictions and may lawfully be evicted are moved to other parks at the expense of the landlord; or~~

~~(b) The restriction of a park for older persons pursuant to federal law unless the tenants are given the option of remaining in their spaces or moving to other parks at the expense of the landlord.~~

~~2. A tenant who elects to move pursuant to a provision of subsection 1 shall give the landlord notice in writing of his election to move within 75 days after receiving notice of the change in restrictions in the park.~~

~~3. At the time of providing notice of the change in restrictions in the park, the landlord shall provide to each tenant:~~

~~(a) The address and telephone number of the Division;~~

~~(b) Any list published by the Division setting forth the names of licensed transporters of manufactured homes approved by the Division; and~~

~~(c) Any list published by the Division setting forth the names of mobile home parks within 100 miles that have reported having vacant spaces.~~

~~4. If a landlord is required to move a tenant to another park pursuant to subsection 1, he shall pay:~~

~~(a) The cost of moving the tenant's manufactured home and its appurtenances to a new location in this State or another state within 100 miles from the manufactured home park; or~~

~~(b) If the new location is more than 100 miles from the manufactured home park, the cost of moving the manufactured home for the first 100 miles, ~~*~~ including fees for inspection, any deposits for connecting utilities and the cost of taking down, moving, setting up and leveling his manufactured home and its appurtenances in the new lot or park.~~

~~5. If the landlord is unable to move a shed, due to its physical condition, that belongs to a tenant who has elected to have the landlord move his manufactured home, the landlord shall pay the tenant $250 as reimbursement for the shed. Each tenant may receive only one payment of $250 even if more than one shed is owned by the tenant.~~

~~6. If the tenant chooses not to move the manufactured home, the manufactured home cannot be moved without being structurally damaged or there is no manufactured home park within 100 miles that is willing to accept the manufactured home, the landlord:~~

~~(a) May remove and dispose of the manufactured home; and~~

~~(b) Shall pay to the tenant the fair market value of the manufactured home~~ **[**.**]** ~~**]*less the reasonable cost of removing and disposing of the manufactured home or $5,000, whichever is greater*.**~~

~~7. A landlord of a park in which restrictions have been or are being changed shall give written notice of the change to each:~~

~~(a) Tenant of the park who does not meet the new restrictions; and~~

~~(b) Prospective tenant before the commencement of the tenancy.~~

~~8. For the purposes of this section, the fair market value of a manufactured home and the reasonable cost of removing and disposing of a manufactured home must be determined by:~~

~~(a) A dealer licensed pursuant to chapter 489 of NRS who is agreed upon by the landlord and tenant; or~~

~~(b) If the landlord and tenant cannot agree pursuant to paragraph (a), a dealer licensed pursuant to chapter 489 of NRS who is selected for this purpose by the Division.~~

~~9. The landlord shall pay the costs associated with determining the fair market value of a manufactured home and the reasonable cost of removing and disposing of a manufactured home pursuant to subsection 6.~~**]** **(Deleted by amendment.)**

Sec. 2. **[**~~NRS 118B.177 is hereby amended to read as follows:~~

~~118B.177 1. If a landlord closes a manufactured home park, or if a landlord is forced to close a manufactured home park because of a valid order of a state or local governmental agency or court requiring the closure of the manufactured home park permanently for health or safety reasons, the landlord shall pay the amounts required by subsections 3, 4 and 5.~~

~~2. At the time of providing notice of the closure of the park, a landlord shall provide to each tenant:~~

~~(a) The address and telephone number of the Division;~~

~~(b) Any list published by the Division setting forth the names of licensed transporters of manufactured homes approved by the Division; and~~

~~(c) Any list published by the Division setting forth the names of mobile home parks within 100 miles that have reported having vacant spaces.~~

~~3. If the tenant chooses to move the manufactured home, the landlord shall pay to the tenant:~~

~~(a) The cost of moving each tenant's manufactured home and its appurtenances to a new location in this State or another state within 100 miles from the manufactured home park; or~~

~~(b) If the new location is more than 100 miles from the manufactured home park, the cost of moving the manufactured home for the first 100 miles, including fees for inspection, any deposits for connecting utilities, and the cost of taking down, moving, setting up and leveling the manufactured home and its appurtenances in the new lot or park.~~

~~4. If the landlord is unable to move a shed, due to its physical condition, that belongs to a tenant who has elected to have the landlord move his manufactured home, the landlord shall pay the tenant $250 as reimbursement for the shed. Each tenant may receive only one payment of $250 even if more than one shed is owned by the tenant.~~

~~5. If the tenant chooses not to move the manufactured home, the manufactured home cannot be moved without being structurally damaged or there is no manufactured home park within 100 miles that is willing to accept the manufactured home, the landlord:~~

~~(a) May remove and dispose of the manufactured home; and~~

~~(b) Shall pay to the tenant the fair market value of the manufactured home [.]~~ ***less the reasonable cost of removing and disposing of the manufactured home or $5,000, whichever is greater.***

~~6. Written notice of any closure must be served timely on each:~~

~~(a) Tenant in the manner provided in NRS 40.280, giving the tenant at least 180 days after the date of the notice before he is required to move his manufactured home from the lot.~~

~~(b) Prospective tenant by:~~

~~(1) Handing each prospective tenant or his agent a copy of the written notice; and~~

~~(2) Maintaining a copy of the written notice at the entrance of the manufactured home park.~~

~~7. For the purposes of this section, the fair market value of a manufactured home and the reasonable cost of removing and disposing of a manufactured home must be determined by:~~

~~(a) A dealer licensed pursuant to chapter 489 of NRS who is agreed upon by the landlord and tenant; or~~

~~(b) If the landlord and tenant cannot agree pursuant to paragraph (a), a dealer licensed pursuant to chapter 489 of NRS who is selected for this purpose by the Division.~~

~~8. The landlord shall pay the costs associated with determining the fair market value of a manufactured home and the reasonable cost of removing and disposing of a manufactured home pursuant to subsection 5.~~

~~9. A landlord shall not increase the rent of a tenant after notice is served on the tenant as required by subsection 6.~~

~~10. If a landlord begins the process of closing a manufactured home park, he shall comply with the provisions of NRS 118B.184 concerning the submission of a resident impact statement.~~

~~11. As used in this section, "timely" means not later than 3 days after the landlord learns of a closure.~~**]** **(Deleted by amendment.)**

Sec. 3. ~~[NRS 118B.180 is hereby amended to read as follows:~~

~~118B.180 1. A landlord may convert an existing manufactured home park into individual manufactured home lots for sale to manufactured home owners if the change is approved by the appropriate local zoning board, planning commission or governing body. In addition to any other reasons, a landlord may apply for such approval if the landlord is forced to close the manufactured home park because of a valid order of a state or local governmental agency or court requiring the closure of the manufactured home park for health or safety reasons.~~

~~2. The landlord may undertake a conversion pursuant to this section only if:~~

~~(a) The landlord gives notice in writing to the Division and each tenant within 5 days after he files his application for the change in land use with the local zoning board, planning commission or governing body;~~

~~(b) The landlord offers, in writing, to sell the lot to the tenant at the same price the lot will be offered to the public and holds that offer open for at least 90 days or until the landlord receives a written rejection of the offer from the tenant, whichever occurs earlier;~~

~~(c) The landlord does not sell the lot to a person other than the tenant for 90 days after the termination of the offer required pursuant to paragraph (b) at a price or on terms that are more favorable than the price or terms offered to the tenant;~~

~~(d) If a tenant does not exercise his option to purchase the lot pursuant to paragraph (b), the landlord pays:~~

~~(1) The cost of moving the tenant's manufactured home and its appurtenances to a comparable location in this State or another state within 100 miles from the manufactured home park; or~~

~~(2) If the new location is more than 100 miles from the manufactured home park, the cost of moving the manufactured home for the first 100 miles, including fees for inspection, any deposits for connecting utilities and the cost of taking down, moving, setting up and leveling his manufactured home and its appurtenances in the new lot or park;~~

~~(e) After the landlord is granted final approval of the change by the appropriate local zoning board, planning commission or governing body, notice in writing is served on each tenant in the manner provided in NRS 40.280, giving the tenant at least 180 days after the date of the notice before he is required to move his manufactured home from the lot; and~~

~~(f) The landlord complies with the provisions of NRS 118B.184 concerning the submission of a resident impact statement.~~

~~3. At the time of providing notice of the conversion of the park pursuant to this section, a landlord shall provide to each tenant:~~

~~(a) The address and telephone number of the Division;~~

~~(b) Any list published by the Division setting forth the names of licensed transporters of manufactured homes approved by the Division; and~~

~~(c) Any list published by the Division setting forth the names of mobile home parks within 100 miles that have reported having vacant spaces.~~

~~4. If the landlord is unable to move a shed, due to its physical condition, that belongs to a tenant who has elected to have the landlord move his manufactured home, the landlord shall pay the tenant $250 as reimbursement for the shed. Each tenant may receive only one payment of $250 even if more than one shed is owned by the tenant.~~

~~5. If a tenant chooses not to move the manufactured home, the manufactured home cannot be moved without being structurally damaged or there is no manufactured home park within 100 miles that is willing to accept the manufactured home, the landlord:~~

~~(a) May remove and dispose of the manufactured home; and~~

~~(b) Shall pay to the tenant the fair market value of the manufactured home~~ **[.]** ~~*less the reasonable cost of removing and disposing of the manufactured home or $5,000, whichever is greater.*~~

~~6. Notice sent pursuant to paragraph (a) of subsection 2 or an offer to sell a manufactured home lot to a tenant required pursuant to paragraph (b) of subsection 2 does not constitute notice of termination of the tenancy.~~

~~7. Upon the sale of a manufactured home lot and a manufactured home which is situated on that lot, the landlord shall indicate what portion of the purchase price is for the manufactured home lot and what portion is for the manufactured home.~~

~~8. For the purposes of this section, the fair market value of a manufactured home and the reasonable cost of removing and disposing of a manufactured home must be determined by:~~

~~(a) A dealer licensed pursuant to chapter 489 of NRS who is agreed upon by the landlord and tenant; or~~

~~(b) If the landlord and tenant cannot agree pursuant to paragraph (a), a dealer licensed pursuant to chapter 489 of NRS who is selected for this purpose by the Division.~~

~~9. The landlord shall pay the costs associated with determining the fair market value of a manufactured home and the reasonable cost of removing and disposing of a manufactured home pursuant to subsection 5.~~

~~10. The provisions of this section do not apply to a corporate cooperative park.~~] **(Deleted by amendment.)**

Sec. 4. [~~NRS 118B.183 is hereby amended to read as follows:~~

~~118B.183 1. A landlord may convert an existing manufactured home park to any other use of the land if the change is approved by the appropriate local zoning board, planning commission or governing body. In addition to any other reasons, a landlord may apply for such approval if the landlord is forced to close the manufactured home park because of a valid order of a state or local governmental agency or court requiring the closure of the manufactured home park for health or safety reasons.~~

~~2. The landlord may undertake a conversion pursuant to this section only if:~~

~~(a) The landlord gives notice in writing to the Division and each tenant within 5 days after he files his application for the change in land use with the local zoning board, planning commission or governing body;~~

~~(b) The landlord pays the amounts required by subsections 4, 5 and 6;~~

~~(c) After the landlord is granted final approval of the change by the appropriate local zoning board, planning commission or governing body, written notice is served on each tenant in the manner provided in NRS 40.280, giving the tenant at least 180 days after the date of the notice before he is required to move his manufactured home from the lot; and~~

~~(d) The landlord complies with the provisions of NRS 118B.184 concerning the submission of a resident impact statement.~~

~~3. At the time of providing notice of the conversion of the park pursuant to this section, a landlord shall provide to each tenant:~~

~~(a) The address and telephone number of the Division;~~

~~(b) Any list published by the Division setting forth the names of licensed transporters of manufactured homes approved by the Division; and~~

~~(c) Any list published by the Division setting forth the names of mobile home parks within 100 miles that have reported having vacant spaces.~~

~~4. If the tenant chooses to move the manufactured home, the landlord shall pay to the tenant:~~

~~(a) The cost of moving the tenant's manufactured home and its appurtenances to a new location in this State or another state within 100 miles from the manufactured home park; or~~

~~(b) If the new location is more than 100 miles from the manufactured home park, the cost of moving the manufactured home for the first 100 miles, ~~*~~ including fees for inspection, any deposits for connecting utilities and the cost of taking down, moving, setting up and leveling his manufactured home and its appurtenances in the new lot or park.~~

~~5. If the landlord is unable to move a shed, due to its physical condition, that belongs to a tenant who has elected to have the landlord move his manufactured home, the landlord shall pay the tenant $250 as reimbursement for the shed. Each tenant may receive only one payment of $250 even if more than one shed is owned by the tenant.~~

~~6. If the tenant chooses not to move the manufactured home, the manufactured home cannot be moved without being structurally damaged or there is no manufactured home park within 100 miles that is willing to accept the manufactured home, the landlord:~~

~~(a) May remove and dispose of the manufactured home; and~~

~~(b) Shall pay to the tenant the fair market value of the manufactured home~~ ~~[.]~~ ~~*less the reasonable cost of removing and disposing of the manufactured home or $5,000, whichever is greater.*~~

~~7. A landlord shall not increase the rent of any tenant:~~

~~(a) For 180 days before filing an application for a change in land use, permit or variance affecting the manufactured home park; or~~

~~(b) At any time after filing an application for a change in land use, permit or variance affecting the manufactured home park unless:~~

~~(1) The landlord withdraws the application or the appropriate local zoning board, planning commission or governing body denies the application; and~~

~~(2) The landlord continues to operate the manufactured home park after the withdrawal or denial.~~

~~8. For the purposes of this section, the fair market value of a manufactured home and the reasonable cost of removing and disposing of a manufactured home must be determined by:~~

~~(a) A dealer licensed pursuant to chapter 489 of NRS who is agreed upon by the landlord and tenant; or~~

~~(b) If the landlord and tenant cannot agree pursuant to paragraph (a), a dealer licensed pursuant to chapter 489 of NRS who is selected for this purpose by the Division.~~

~~9. The landlord shall pay the costs associated with determining the fair market value of a manufactured home and the reasonable cost of removing and disposing of a manufactured home pursuant to subsection 6.~~

~~10. The provisions of this section do not apply to a corporate cooperative park.~~ **(Deleted by amendment.)**

Sec. 5. NRS 118B.200 is hereby amended to read as follows:

118B.200 1. Notwithstanding the expiration of a period of a tenancy ~~[,]~~ ***or service of a notice pursuant to subsection 1 of NRS 118B.190,*** the rental agreement described in NRS 118B.190 may not be terminated except ~~[for:]~~ ***on one or more of the following grounds:***

(a) Failure of the tenant to pay rent, utility charges or reasonable service fees within 10 days after written notice of delinquency served upon the tenant in the manner provided in NRS 40.280;

(b) Failure of the tenant to correct any noncompliance with a law, ordinance or governmental regulation pertaining to manufactured homes or recreational vehicles or a valid rule or regulation established pursuant to NRS 118B.100 or to cure any violation of the rental agreement within a reasonable time after receiving written notification of noncompliance or violation;

(c) Conduct of the tenant in the manufactured home park which constitutes an annoyance to other tenants;

(d) Violation of valid rules of conduct, occupancy or use of park facilities after written notice of the violation is served upon the tenant in the manner provided in NRS 40.280;

(e) A change in the use of the land by the landlord pursuant to NRS 118B.180;

(f) Conduct of the tenant which constitutes a nuisance as defined in NRS 40.140 or which violates a state law or local ordinance, specifically including, without limitation:

(1) Discharge of a weapon;

(2) Prostitution;

(3) Illegal drug manufacture or use;

(4) Child molestation or abuse;

(5) Elder molestation or abuse;

(6) Property damage as a result of vandalism; and

(7) Operating a motor vehicle while under the influence of alcohol or any other controlled substance; or

(g) In a manufactured home park that is owned by a nonprofit organization or housing authority, failure of the tenant to meet qualifications relating to age or income which:

(1) Are set forth in the lease signed by the tenant; and

(2) Comply with federal, state and local law.

2. A tenant who is not a natural person and who has received three or more 10-day notices to quit for failure to pay rent in the preceding 12-month period may have his tenancy terminated by the landlord for habitual failure to pay timely rent.

Sec. 6. NRS 40.380 is hereby amended to read as follows:

40.380 ***1.*** Either party may, within 10 days, appeal from the judgment rendered. ~~[~~But~~]~~ ***Except as otherwise provided in subsection 2,*** an appeal by the defendant shall not stay the execution of the judgment, unless, within the 10 days, he ~~[~~shall execute and file~~]~~ ***executes and files*** with the court or justice his undertaking to the plaintiff, with two or more sureties, in an amount to be fixed by the court or justice, but which ~~[~~shall~~]~~ ***must*** not be less than twice the amount of the judgment and costs, to the effect that, if the judgment appealed from be affirmed or the appeal be dismissed, the appellant will pay the judgment and the cost of appeal, the value of the use and occupation of the property, and damages justly accruing to the plaintiff during the pendency of the appeal. Upon taking the appeal and filing the undertaking, all further proceedings in the case ~~[~~shall~~]~~ ***must*** be stayed.

2. If the appeal is by a defendant who is a tenant of a mobile home lot in a mobile home park or a tenant of a recreational vehicle lot in an area of a mobile home park in this State other than an area designated as a recreational vehicle lot pursuant to the provisions of subsection 6 of NRS 40.215, the total amount of the sureties required to be executed and

filed with the court or justice pursuant to subsection 1 is $250 except as otherwise provided in this subsection. In an action concerning a lease of a such a lot in a mobile home park for which the monthly rent exceeds $1,000, the court or justice may, upon its or his own motion or that of a party, and upon a showing of good cause, order an additional bond to be posted to cover the expected costs on appeal.

3. A tenant of a mobile home lot in a mobile home park or a tenant of a recreational vehicle lot in an area of a mobile home park in this State other than an area designated as a recreational vehicle lot pursuant to the provisions of subsection 6 of NRS 40.215 who retains possession of the premises that are the subject of the appeal during the pendency of the appeal shall pay to the landlord rent in the amount provided in the underlying contract between the tenant and the landlord as it becomes due. If such a tenant fails to pay rent within 10 days after the date on which the rent is due, the court or justice shall vacate the stay of execution upon proper motion by the landlord if the court or justice determines that the tenant has failed to pay the required rent for the applicable period. Any payment made by a tenant pursuant to this subsection must first be credited against the rent required for the current month.

Assemblyman Conklin moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 472.

Bill read second time.

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

Amendment No. 279.

AN ACT relating to credit cards; providing that ~~[subsequent purchasers of credit card debt may produce certain evidence to collect on the debt; requiring disclosure of certain information to collect credit card debt; requiring certain evidentiary standards to be met before entry of judgment under certain circumstances;]~~ **, in an action to collect credit card debt, a purchaser of credit card debt must include certain information in the complaint and satisfy certain evidentiary standards;** and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that an issuer of a credit card may establish liability for credit card debt by producing a written application for the credit card signed by the cardholder or by evidence that the cardholder incurred charges and made payments on the card. (NRS 97A.160) This bill provides that ~~[such evidence may also be established by]~~ **a judgment cannot be entered in favor of** a subsequent purchaser of credit card debt who attempts to collect on the debt ~~[.]~~ **unless the purchaser establishes liability for the debt in that manner.** ~~[~~

~~]~~ . This bill also requires certain information to be disclosed in any complaint **filed by a purchaser of credit card debt in an action** to collect credit card debt **.** ~~[, including: (1) the name of the issuer of the credit card; (2) the account numbers assigned to the original account and any subsequent account; and (3) the date of the last transaction. Finally, this bill clarifies that a judgment, including a judgment by default, may not be entered without satisfying the standards of proof required in this section.]~~

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

Section 1. Chapter 97A of NRS is hereby amended by adding thereto a new section to read as follows:

~~*[“Creditor” means an issuer or a person that subsequently]*~~

1. In an action brought to collect a credit card debt owed to a purchaser of credit card debt:

(a) The complaint must include, without limitation:

(1) The name of the issuer;

(2) The last four digits of the account number originally assigned by the issuer;

(3) All subsequent account numbers assigned to the credit card debt by all assignees of the credit card debt; and

(4) The date of the default on the credit card debt.

(b) No judgment in favor of the purchaser of credit card debt, including, without limitation, a default judgment, may be entered unless:

(1) The complaint includes the information required by paragraph (a) of subsection 1; and

(2) The purchaser of credit card debt has satisfied the standards of proof set forth in subsections 1 and 2 of NRS 97A.160.

2. As used in this section, “purchaser of credit card debt” means a person, other than a financial institution, that purchases any outstanding credit card debt.

Sec. 2. ~~[NRS 97A.010 is hereby amended to read as follows:~~

~~97A.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 97A.020 to 97A.130, inclusive, *and section 1 of this act* have the meanings ascribed to them in those sections.]~~ **(Deleted by amendment.)**

Sec. 3. ~~[NRS 97A.160 is hereby amended to read as follows:~~

~~97A.160 1. Notwithstanding the provisions of chapter 52 of NRS, in any action brought to collect a *credit card* debt owed to~~ **[**an issuer:~~]~~ ~~*a creditor:*~~

~~(a) The~~ **[**issuer~~]~~ ~~*creditor* may establish that the cardholder is contractually liable for the debt owed by submitting the written application for a credit card account submitted to the issuer by the cardholder or evidence that the cardholder incurred charges on the account and made payments thereon.~~

~~(b) The amount owed may be established by photocopies of:~~

~~(1) The periodic billing statements provided by the issuer; or~~

~~(2) Information stored by the issuer on a computer, microfilm, microfiche or optical disc which indicate the amount of the debt owed.~~

~~*(c) Any complaint filed in the action must include, without limitation:*~~

~~*(1) The name of the issuer;*~~

~~*(2) The account number originally assigned by the issuer;*~~

~~*(3) Any subsequent account number used by a creditor of such debt; and*~~

~~*(4) The date of the last transaction.*~~

~~2. The content of such records must be authenticated:~~

~~(a) Pursuant to the procedures set forth in NRS 52.450 to 52.480, inclusive; or~~

~~(b) By the submission of a written affidavit sufficient to establish:~~

~~(1) The affiant as the custodian of the written records offered as evidence;~~

~~(2) That the written records offered as evidence were made in the ordinary course of the issuer's business; and~~

~~(3) That the written records are true and correct copies of the records retained by the issuer.~~

~~3. The liability of a person other than the cardholder for the amount of any debt owed to an issuer may be established by evidence indicating that the person caused the charge to be incurred on the credit card account.~~

~~4. An issuer shall retain any record necessary to establish the existence and amount of any debt owed to the issuer for at least 24 months after the record is first published, issued or filed.~~

~~*5. No judgment, including by default, may be entered unless the standards of proof in this section have been met.]~~ **(Deleted by amendment.)**

Sec. 4. This act becomes effective on July 1, 2009.

Assemblyman Conklin moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 482.

Bill read second time.

The following amendment was proposed by the Committee on Transportation:

Amendment No. 250.

AN ACT relating to motor vehicles; transferring the authority for the regulation of trade practices of garages, garagemen and body shops from the Commissioner of Consumer Affairs to the Department of Motor Vehicles; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for regulation of garages, garagemen and body shops by the Commissioner of Consumer Affairs and for their registration or

licensure with the Department of Motor Vehicles. (NRS 487.530-487.570, 487.600-487.690, 597.480-597.590) **Sections 2-21** of this bill transfer authority for regulation to the Department and provide for enforcement of those provisions by the Director of the Department.

Section 1 of this bill allows the Department of Motor Vehicles to fine a person who engages in certain deceptive trade practices relating to the sale or lease of a vehicle regardless of whether the person has been fined for that act under the provisions of NRS 598.0903 to 598.0999, inclusive. (NRS 482.554)

Section 29.3 of this bill creates a revolving account for the Bureau of Consumer Protection, overseen by the Consumer's Advocate, to be used for the undercover investigation of alleged violations of sections 4-21 of this bill or deceptive trade practices.

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

Section 1. **NRS 482.554 is hereby amended to read as follows:**

482.554 1. The Department may impose an administrative fine of not more than $10,000 against any person who engages in a deceptive trade practice. The Department shall afford to any person so fined an opportunity for a hearing pursuant to the provisions of NRS 233B.121.

2. For the purposes of this section, a person shall be deemed to be engaged in a "deceptive trade practice" if, in the course of his business or occupation, he:

(a) Enters into a contract for the sale of a vehicle on credit with a customer, exercises a valid option to cancel the vehicle sale and then, after the customer returns the vehicle with no damage other than reasonable wear and tear, the seller:

(1) Fails to return any down payment or other consideration in full, including, returning a vehicle accepted in trade;

(2) Knowingly makes a false representation to the customer that the customer must sign another contract for the sale of the vehicle on less favorable terms; or

(3) Fails to use the disclosure as required in subsection 3.

(b) Uses a contract for the sale of the vehicle or a security agreement that materially differs from the form prescribed by law.

(c) Engages in any deceptive trade practice, as defined in NRS 598.0915 to 598.0925, inclusive, that involves the purchase and sale or lease of a motor vehicle.

(d) Engages in any other acts prescribed by the Department by regulation as a deceptive trade practice.

3. If a seller of a vehicle exercises a valid option to cancel the sale of a vehicle to a customer, the seller must provide a disclosure, and the customer must sign that disclosure, before the seller and customer may enter into a new agreement for the sale of the same vehicle on different terms, or for the sale

of a different vehicle. The Department shall prescribe the form of the disclosure by regulation.

4. All administrative fines collected by the Department pursuant to this section must be deposited with the State Treasurer to the credit of the State Highway Fund.

5. ~~[Except as otherwise provided in this subsection, the]~~ ***The*** administrative remedy provided in this section is not exclusive and is intended to supplement existing law. ~~[The Department may not impose a fine pursuant to this section against any person who engages in a deceptive trade practice if a fine has previously been imposed against that person pursuant to NRS 598.0903 to 598.0999, inclusive, for the same act.]~~ The provisions of this section do not deprive a person injured by a deceptive trade practice from resorting to any other legal remedy.

Sec. 1.5. Chapter 487 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 21, inclusive, of this act.

Sec. 2. ***"Body shop" means any place where the body of a motor vehicle is painted, fixed, repaired or replaced for compensation.***

Sec. 3. ***"Person authorizing repairs" means a person who uses the services of a garage. The term includes an insurance company, its agents or its representatives authorizing repairs to motor vehicles under a policy of insurance.***

Sec. 4. ***1. Each garageman shall display conspicuously in those areas of his place of business frequented by persons seeking repairs on motor vehicles a sign, not less than 22 inches by 28 inches in size, setting forth in boldface letters the following:***

STATE OF NEVADA
REGISTERED GARAGE
THIS GARAGE IS REGISTERED WITH THE DEPARTMENT OF MOTOR VEHICLES
NEVADA AUTOMOTIVE REPAIR CUSTOMER BILL OF RIGHTS
AS A CUSTOMER IN NEVADA:
YOU have the right to receive repairs from a business that is REGISTERED with the Department of Motor Vehicles that will ensure the proper repair of your vehicle. (cite to this section of this act)
YOU have the right to receive a WRITTEN ESTIMATE of charges for repairs made to your vehicle which exceed $50. (cite to section 6 of this act)
YOU have the right to read and understand all documents and warranties BEFORE YOU SIGN THEM. (cite to this section of this act)
YOU have the right to INSPECT ALL REPLACED PARTS and accessories that are covered by a warranty and for which a charge is made. (cite to section 11 of this act)
YOU have the right to request that all replaced parts and accessories that are not covered by a warranty BE RETURNED TO YOU AT THE TIME OF SERVICE. (cite to section 11 of this act)

YOU have the right to require authorization BEFORE any additional repairs are made to your vehicle if the charges for those repairs exceed 20% of the original estimate or $100, whichever is less. (cite to section 7 of this act)

YOU have the right to receive a COMPLETED STATEMENT OF CHARGES for repairs made to your vehicle. (cite to section 18 of this act)

~~*[YOU have the right to a FAIR RESOLUTION of any dispute that develops concerning the repair of your vehicle. (cite to this section of this act)]*~~

FOR MORE INFORMATION PLEASE CONTACT:

THE DEPARTMENT OF MOTOR VEHICLES

~~*[IN CLARK COUNTY: (702) 486-4368*~~

~~*ALL OTHER AREAS TOLL-FREE: 1-877-368-7828]*~~

2. Each body shop shall display conspicuously in those areas of its place of business frequented by persons seeking repairs on motor vehicles a sign, not less than 22 inches by 28 inches in size, setting forth in boldface letters the following:

STATE OF NEVADA

LICENSED BODY SHOP

THIS BODY SHOP IS LICENSED BY THE DEPARTMENT OF MOTOR VEHICLES

NEVADA AUTOMOTIVE REPAIR CUSTOMER BILL OF RIGHTS

AS A CUSTOMER IN NEVADA:

YOU have the right to receive repairs from a business that is LICENSED with the Department of Motor Vehicles that will ensure the proper repair of your vehicle. (cite to this section of this act)

YOU have the right to receive a WRITTEN ESTIMATE of charges for repairs made to your vehicle which exceed $50. (cite to section 6 of this act)

YOU have the right to read and understand all documents and warranties BEFORE YOU SIGN THEM. (cite to this section of this act)

YOU have the right to INSPECT ALL REPLACED PARTS and accessories that are covered by a warranty and for which a charge is made. (cite to section 11 of this act)

YOU have the right to request that all replaced parts and accessories that are not covered by a warranty BE RETURNED TO YOU AT THE TIME OF SERVICE. (cite to section 11 of this act)

YOU have the right to require authorization BEFORE any additional repairs are made to your vehicle if the charges for those repairs exceed 20% of the original estimate or $100, whichever is less. (cite to section 7 of this act)

YOU have the right to receive a COMPLETED STATEMENT OF CHARGES for repairs made to your vehicle. (cite to section 18 of this act)

~~*[YOU have the right to a FAIR RESOLUTION of any dispute that develops concerning the repair of your vehicle. (cite to this section of this act)]*~~

FOR MORE INFORMATION PLEASE CONTACT:

THE DEPARTMENT OF MOTOR VEHICLES

~~*[IN CLARK COUNTY: (702) 486-4368*~~
~~*ALL OTHER AREAS TOLL-FREE: 1-877-368-7828]*~~

3. The sign required pursuant to the provisions of subsection 1 or 2 must include a replica of the Great Seal of the State of Nevada. The Seal must be 2 inches in diameter and be centered on the face of the sign directly above the words "STATE OF NEVADA."

4. Any person who violates the provisions of this section is guilty of a misdemeanor.

Sec. 5. ***Whenever any body shop or garageman accepts or assumes control of a motor vehicle for the purpose of making or completing any repair, the body shop or garageman shall comply with the provisions of sections 6 to 19, inclusive, of this act.***

Sec. 6. ***1. Except as otherwise provided in section 8 of this act, a person requesting or authorizing the repair of a motor vehicle that is more than $50 must be furnished a written estimate or statement signed by the person making the estimate or statement on behalf of the body shop or garageman indicating the total charge for the performance of the work necessary to accomplish the repair, including the charge for labor and all parts and accessories necessary to perform the work.***

2. If the estimate is for the purpose of diagnosing a malfunction, the estimate must include the cost of:

(a) Diagnosis and disassembly; and

(b) Reassembly, if the person does not authorize the repair.

3. The provisions of this section do not require a body shop or garageman to reassemble a motor vehicle if the body shop or garageman determines that the reassembly of the motor vehicle would render the vehicle unsafe to operate.

Sec. 7. ***Except as otherwise provided in section 8 of this act, if it is determined that additional charges are required to perform the repair authorized, and those additional charges exceed, by 20 percent or $100, whichever is less, the amount set forth in the estimate or statement required to be furnished pursuant to the provisions of section 6 of this act, the body shop or garageman shall notify the owner and insurer of the motor vehicle of the amount of those additional charges.***

Sec. 8. ***The person authorizing the repairs may waive the estimate or statement required pursuant to the provisions of section 6 of this act or the notification required by section 7 of this act by executing a written waiver of that requirement or notification. The waiver must be executed by the person authorizing the repairs at the time he authorizes those repairs.***

Sec. 9. ***If a body shop or garage performs repairs on a motor vehicle, the body shop or garage shall perform the repairs in accordance with any specifications of the manufacturer of the motor vehicle and the written estimate or statement of the cost of the repairs that is most recently agreed upon by the body shop or garage and the person authorizing repairs.***

Sec. 10. ***1. An owner and the insurer of a motor vehicle who have been notified of additional charges pursuant to section 7 of this act shall:***

(a) Authorize the performance of the repair at the additional expense; or

(b) Without delay, and upon payment of the authorized charges, take possession of the motor vehicle.

2. Until the election provided for in subsection 1 has been made, the body shop or garageman shall not undertake any repair which would involve such additional charges.

3. If the owner or insurer of the motor vehicle elects to take possession of the motor vehicle but fails to take possession within a 24-hour period after the election, the body shop or garageman may charge for storage of the vehicle.

Sec. 11. ***1. Whenever the repair work performed on a motor vehicle requires the replacement of any parts or accessories, the body shop or garageman shall, at the request of the person authorizing the repairs or any person entitled to possession of the motor vehicle, deliver to the person all parts and accessories replaced as a result of the work done.***

2. The provisions of subsection 1 do not apply to parts or accessories which must be returned to a manufacturer or distributor under a warranty arrangement or which are subject to exchange, but the customer, on request, is entitled to be shown the warranty parts for which a charge is made.

Sec. 12. ***The body shop or garageman shall retain copies of any estimate, statement or waiver required by sections 6 to 19, inclusive, of this act as an ordinary business record of the body shop or garage, for a period of not less than 1 year after the date the estimate, statement or waiver is signed.***

Sec. 13. ***In every instance where charges are made for the repair of a motor vehicle by a garageman, the garageman making the repairs shall comply with the provisions of sections 6 to 19, inclusive, of this act. A garageman is not entitled to detain a motor vehicle by virtue of any common law or statutory lien, or otherwise enforce such a lien, or to sue on any contract for repairs made by him unless he has complied with the requirements of sections 6 to 19, inclusive, of this act.***

Sec. 14. ***A person shall be deemed to be engaged in a "deceptive trade practice" if, in the course of his business or occupation, he:***

1. Engages in any deceptive trade practice, as defined in NRS 598.0915 to 598.0925, inclusive, that involves the repair of a motor vehicle; or

2. Engages in any other acts prescribed by the Director by regulation as a deceptive trade practice.

Sec. 15. ~~***[1. There is hereby created a Revolving Account for the Department of Motor Vehicles in the sum of $7,500, which must be used for the payment of expenses relating to conducting an undercover investigation of a person who is allegedly engaging in a deceptive trade practice or violating the provisions of sections 4 to 21, inclusive, of this act.***~~

~~*2. The Director shall deposit the money in the Revolving Account in a bank or credit union qualified to receive deposits of public money as provided by law, and the deposit must be secured by a depository bond satisfactory to the State Board of Examiners.*~~

~~*3. The Director or his designee may:*~~

~~*(a) Sign all checks drawn upon the Revolving Account; and*~~

~~*(b) Make withdrawals of cash from the Revolving Account.*~~

~~*4. Payments made from the Revolving Account must be promptly reimbursed from the legislative appropriation, if any, to the Director for the expenses relating to conducting an undercover investigation of a person who is allegedly engaging in a deceptive trade practice or violating the provisions of sections 4 to 21, inclusive, of this act. The claim for reimbursement must be processed and paid as other claims against the State are paid.*~~

~~*5. The Director shall:*~~

~~*(a) Approve any disbursement from the Revolving Account; and*~~

~~*(b) Maintain records of any such disbursement.]*~~ **(Deleted by amendment.)**

Sec. 16. ***1. The Director may request an undercover investigation of a person who is allegedly engaging in a deceptive trade practice or violating the provisions of sections 4 to 21, inclusive, of this act.***

2. The Bureau of Consumer Protection in the Office of the Attorney General may conduct an undercover investigation of a person who is allegedly engaging in a deceptive trade practice or violating the provisions of sections 4 to 21, inclusive, of this act on its own motion or upon a request received pursuant to subsection 1. Nothing in this subsection requires the Bureau to conduct an undercover investigation.

Sec. 17. ***1. In addition to any other penalty, the Director may impose an administrative fine of not more than $10,000 against any person who engages in a deceptive trade practice as set forth in section 14 of this act. The Director shall provide to any person so fined an opportunity for a hearing pursuant to the provisions of NRS 233B.121.***

2. ~~*[The Director may negotiate the recovery of losses by a person aggrieved by a deceptive trade practice from the garageman who or body shop that engaged in the practice in lieu of imposing an administrative fine and may mediate any disputes between customers and garagemen or body shops.*~~

~~*2.]*~~ ***All administrative fines collected by the Director pursuant to this section must be deposited with the State Treasurer to the credit of the State Highway Fund.***

~~*[4. Except as otherwise provided in this subsection, the]*~~

3. The administrative remedy provided in this section is not exclusive and is intended to supplement existing law. ~~*[The Director may not impose a fine pursuant to this section against any person who engages in a deceptive trade practice if a fine has previously been imposed against that person*~~

~~*pursuant to NRS 598.0903 to 598.0999, inclusive, for the same act.]*~~ ***The provisions of this section do not deprive a person injured by a deceptive trade practice from resorting to any other legal remedy.***

Sec. 18. ***1. If charges are made for the repair of a motor vehicle, the garageman or body shop making the charges shall present to the person authorizing repairs or the person entitled to possession of the motor vehicle a statement of the charges setting forth the following information:***

(a) The name and signature of the person authorizing repairs;

(b) A statement of the total charges;

(c) An itemization and description of all parts used to repair the motor vehicle indicating the charges made for labor; and

(d) A description of all other charges.

2. Any person violating this section is guilty of a misdemeanor.

3. In the case of a motor vehicle registered in this State, no lien for labor or materials provided under NRS 108.265 to 108.367, inclusive, may be enforced by sale or otherwise unless a statement as described in subsection 1 has been given by delivery in person or by certified mail to the last known address of the registered and the legal owner of the motor vehicle. In all other cases, the notice must be made to the last known address of the registered owner and any other person known to have or to claim an interest in the motor vehicle.

Sec. 19. ***1. On or before January 1 of each year, the Director of the Department shall prepare a report concerning garages, garagemen and body shops. The report must include:***

(a) The number of complaints relating to garages, garagemen and body shops made to and acted upon by the Department during the year for which the report is prepared;

(b) The number of investigations conducted during that year by the Department relating to garages, garagemen and body shops; and

(c) The outcome of each investigation specified in paragraph (b) and the extent to which any information relating to each investigation is subject to disclosure to the members of the public.

2. On or before January 1 of each even-numbered year, the Director of the Department shall submit the report required pursuant to subsection 1 to the Legislative Commission. On or before January 1 of each odd-numbered year, the Director of the Department shall submit the report to the Director of the Legislative Counsel Bureau for transmittal to:

(a) The Senate Standing Committee on Energy, Infrastructure and Transportation; and

(b) The Assembly Standing Committee on Transportation.

Sec. 20. ***The Attorney General or any district attorney may bring an action in any court of competent jurisdiction in the name of the State of Nevada on the complaint of the Director, or of any person allegedly aggrieved by a violation of the provisions of sections 6 to 19, inclusive, of***

this act, to enjoin any violation of the provisions of sections 6 to 19, inclusive, of this act.

Sec. 21. ~~*[Except as otherwise provided in section 17 of this act, any]*~~ ***Any person who knowingly violates any provision of sections 5 to 19, inclusive, of this act is liable, in addition to any other penalty or remedy which may be provided by law, to a civil penalty of not more than $500 for each offense, which may be recovered by civil action on complaint of the Director or the district attorney.***

Sec. 21.5. **NRS 487.002 is hereby amended to read as follows:**

487.002 1. The Advisory Board on Automotive Affairs, consisting of seven members appointed by the Governor, is hereby created within the Department.

2. The Governor shall appoint to the Board:

(a) One representative of the Department;

(b) One representative of licensed operators of body shops;

(c) One representative of licensed automobile wreckers;

(d) One representative of registered garagemen;

(e) One representative of licensed operators of salvage pools; and

(f) Two representatives of the general public.

3. After the initial terms, each member of the Board serves a term of 4 years. The members of the Board shall annually elect from among their number a Chairman and a Vice Chairman. The Department shall provide secretarial services for the Board.

4. The Board shall meet regularly at least twice each year and may meet at other times upon the call of the Chairman. Each member of the Board is entitled to the per diem allowance and travel expenses provided for state officers and employees generally.

5. The Board shall:

(a) Study the regulation of garagemen, automobile wreckers and operators of body shops and salvage pools, including, without limitation, the registration or licensure of such persons and the methods of disciplinary action against such persons;

(b) Analyze and advise the Department relating to any consumer complaints ~~[provided to the Department by the Consumer Affairs Division of the Department of Business and Industry pursuant to NRS 598.985 or otherwise]~~ received by the Department concerning garagemen, automobile wreckers or operators of body shops or salvage pools;

(c) Make recommendations to the Department for any necessary regulations or proposed legislation pertaining to paragraph (a) or (b);

(d) On or before January 15 of each odd-numbered year, prepare and submit a report concerning its activities and recommendations to the Governor and to the Director of the Legislative Counsel Bureau for transmission to the Legislature; and

(e) Perform any other duty assigned by the Department.

Sec. 22. NRS 487.530 is hereby amended to read as follows:

487.530 As used in NRS 487.530 to ~~[487.570,]~~ ***487.690,*** inclusive, ***and sections 2 to 21, inclusive, of this act,*** unless the context otherwise requires, the words and terms defined in NRS ~~[487.535]~~ ***487.540*** to 487.550, inclusive, ***and sections 2 and 3 of this act*** have the meanings ascribed to them in those sections.

Sec. 23. NRS 487.555 is hereby amended to read as follows:

487.555 The provisions of NRS 487.530 to ~~[487.570,]~~ ***487.690,*** inclusive, ***and sections 2 to 21, inclusive, of this act*** do not apply to a service station that is exclusively engaged in the business of selling motor vehicle fuel, lubricants or goods unrelated to the repair of motor vehicles.

Sec. 24. NRS 487.563 is hereby amended to read as follows:

487.563 1. Each person who submits an application for registration pursuant to the provisions of NRS 487.560 shall file with the Department a bond in the amount of $5,000, with a corporate surety for the bond that is licensed to do business in this State. The form of the bond must be approved by the Attorney General and be conditioned upon whether the applicant conducts his business as an owner or operator of a garage without fraud or fraudulent representation and in compliance with the provisions of ***sections 4 to 21, inclusive, of this act and*** NRS 487.530 to ~~[487.570,]~~ ***487.567,*** inclusive **.** ~~[, and 597.480 to 597.590, inclusive.]~~

2. The bond must be continuous in form and the total aggregate liability on the bond must be limited to the payment of the total amount of the bond.

3. The bond must provide that any person injured by the action of the garageman may:

(a) Apply to the Director for compensation from the bond. The Director, for good cause shown and after notice and opportunity for hearing, may determine the amount of compensation and the person to whom it is to be paid. The surety shall then make payment.

(b) Present to the Director an order of a court requiring the Director to pay to the person an amount of compensation from the bond. The Director shall inform the surety, and the surety shall then make payment.

4. In lieu of a bond required to be filed pursuant to the provisions of subsection 1, a person may deposit with the Department, pursuant to the terms prescribed by the Department:

(a) A like amount of money or bonds of the United States or of the State of Nevada of an actual market value of not less than the amount fixed by the Department; or

(b) A savings certificate of a bank or savings and loan association located in this State, which must indicate an account of an amount equal to the amount of the bond that would otherwise be required pursuant to this section and that the amount is unavailable for withdrawal except upon order of the Department. Interest earned on the certificate accrues to the account of the applicant.

5. A deposit made pursuant to subsection 4 may be disbursed by the Director, for good cause shown and after notice and opportunity for hearing,

in an amount determined by him to compensate a person injured by an action of the garageman or released upon receipt of:

(a) An order of a court requiring the Director to release all or a specified portion of the deposit; or

(b) A statement signed by the person under whose name the deposit is made and acknowledged before any person authorized to take acknowledgments in this State, requesting that the Director release the deposit, or a specified portion thereof, and stating the purpose for which the release is requested.

6. If a person fails to comply with an order of a court that relates to the repair of a motor vehicle, or fails to pay or otherwise discharge any final judgment rendered and entered against him or any court order issued and arising out of the repair of a motor vehicle in the operation of a garage, the Department shall revoke or refuse to renew the certificate of registration of the person who failed to comply with the order or satisfy the judgment.

7. The Department may reinstate or renew a certificate of registration that is revoked pursuant to the provisions of subsection 6 if the person whose certificate of registration is revoked complies with the order of the court.

8. A garageman whose registration has been revoked pursuant to the provisions of subsection 6 shall furnish to the Department a bond in the amount specified in subsection 1 before the reinstatement of his registration.

Sec. 25. NRS 487.564 is hereby amended to read as follows:

487.564 1. The Department may refuse to issue a registration or may suspend, revoke or refuse to renew a registration to operate a garage upon any of the following grounds:

(a) A false statement of a material fact in a certification for a salvage vehicle required pursuant to NRS 487.800.

(b) A false statement or certification for an inspection pursuant to NRS 487.800 which attests to the mechanical fitness or safety of a salvage vehicle.

(c) The Director determines that the garage or garageman has engaged in a deceptive trade practice or violated the provisions of ~~[NRS 597.480 to 597.590, inclusive.]~~ ***sections 4 to 21, inclusive, of this act.***

(d) Evidence of unfitness of the applicant or registrant pursuant to NRS 487.165.

(e) A violation of any regulation adopted by the Department governing the operation of a garage.

(f) A violation of any statute or regulation that constitutes fraud in conjunction with the repair of a motor vehicle or operation of a garage.

2. A person for whom a certificate of registration has been suspended or revoked pursuant to the provisions of this section, subsection 6 of NRS 487.563 or similar provisions of the laws of any other state or territory of the United States shall not be employed by, or in any manner affiliated with, the operation of a garage subject to registration in this State.

3. As used in this section, "salvage vehicle" has the meaning ascribed to it in NRS 487.770.

Sec. 26. NRS 487.600 is hereby amended to read as follows:

487.600 As used in NRS 487.600 to **[**~~487.690,~~**]** ***487.687,*** inclusive, unless the context otherwise requires, the words and terms defined in NRS **[**~~487.602~~**]** ***487.604*** to 487.608, inclusive, have the meanings ascribed to them in those sections.

Sec. 27. NRS 487.640 is hereby amended to read as follows:

487.640 1. No license may be issued to an operator of a body shop until he procures and files with the Department a good and sufficient bond in the amount of $10,000, with a corporate surety thereon licensed to do business in the State of Nevada, approved as to form by the Attorney General, and conditioned that the applicant shall conduct his business as an operator of a body shop without fraud or fraudulent representation, and in compliance with the provisions of ***sections 4 to 21, inclusive, of this act and*** NRS 487.600 to **[**~~487.690,~~**]** ***487.687,*** inclusive **. [**~~, and 597.480 to 597.590, inclusive.~~**]** The Department may, by agreement with any operator of a body shop who has been licensed by the Department for 5 years or more, allow a reduction in the amount of the bond of the operator, if the business of the operator has been conducted satisfactorily for the preceding 5 years, but no bond may be in an amount less than $1,000.

2. The bond may be continuous in form and the total aggregate liability on the bond must be limited to the payment of the total amount of the bond.

3. The bond must provide that any person injured by the action of the operator of the body shop in violation of any of the provisions of ***sections 4 to 21, inclusive, of this act and*** NRS 487.600 to **[**~~487.690,~~**]** ***487.687,*** inclusive, **[**~~and 597.480 to 597.590, inclusive,~~**]** may apply to the Director for compensation from the bond. The Director, for good cause shown and after notice and opportunity for hearing, may determine the amount of compensation and the person to whom it is to be paid. The surety shall then make the payment.

4. In lieu of a bond an operator of a body shop may deposit with the Department, under the terms prescribed by the Department:

(a) A like amount of money or bonds of the United States or of the State of Nevada of an actual market value of not less than the amount fixed by the Department; or

(b) A savings certificate of a bank, credit union or savings and loan association situated in Nevada, which must indicate an account of an amount equal to the amount of the bond which would otherwise be required by this section and that this amount is unavailable for withdrawal except upon order of the Department. Interest earned on the certificate accrues to the account of the applicant.

5. A deposit made pursuant to subsection 4 may be disbursed by the Director, for good cause shown and after notice and opportunity for hearing,

in an amount determined by him to compensate a person injured by an action of the licensee, or released upon receipt of:

(a) An order of a court requiring the Director to release all or a specified portion of the deposit; or

(b) A statement signed by the person under whose name the deposit is made and acknowledged before any person authorized to take acknowledgments in this State, requesting the Director to release the deposit, or a specified portion thereof, and stating the purpose for which the release is requested.

6. When a deposit is made pursuant to subsection 4, liability under the deposit is in the amount prescribed by the Department. If the amount of the deposit is reduced or there is an outstanding judgment of a court for which the licensee is liable under the deposit, the license is automatically suspended. The license must be reinstated if the licensee:

(a) Files an additional bond pursuant to subsection 1;

(b) Restores the deposit with the Department to the original amount required under this section; or

(c) Satisfies the outstanding judgment for which he is liable under the deposit.

7. A deposit made pursuant to subsection 4 may be refunded:

(a) By order of the Director, 3 years after the date the licensee ceases to be licensed by the Department, if the Director is satisfied that there are no outstanding claims against the deposit; or

(b) By order of court, at any time within 3 years after the date the licensee ceases to be licensed by the Department, upon evidence satisfactory to the court that there are no outstanding claims against the deposit.

8. Any money received by the Department pursuant to subsection 4 must be deposited with the State Treasurer for credit to the Motor Vehicle Fund.

Sec. 28. NRS 487.650 is hereby amended to read as follows:

487.650 1. The Department may refuse to issue a license or may suspend, revoke or refuse to renew a license to operate a body shop upon any of the following grounds:

(a) Failure of the applicant or licensee to have or maintain an established place of business in this State.

(b) Conviction of the applicant or licensee or an employee of the applicant or licensee of a felony, or of a misdemeanor or gross misdemeanor for a violation of a provision of this chapter.

(c) Any material misstatement in the application for the license.

(d) Willful failure of the applicant or licensee to comply with the motor vehicle laws of this State and ***sections 4 to 21, inclusive, of this act or*** NRS 487.600 to **[**~~487.690,~~**]** ***487.687,*** inclusive **. [**~~, or 597.480 to 597.590, inclusive.~~**]**

(e) Failure or refusal by the licensee to pay or otherwise discharge any final judgment against him arising out of the operation of the body shop.

(f) Failure or refusal to provide to the Department an authorization for the disclosure of financial records for the business as required pursuant to subsection 2.

(g) A finding of guilty or guilty but mentally ill by a court of competent jurisdiction in a case involving a fraudulent inspection, purchase, sale or transfer of a salvage vehicle by the applicant or licensee or an employee of the applicant or licensee.

(h) An improper, careless or negligent inspection of a salvage vehicle pursuant to NRS 487.800 by the applicant or licensee or an employee of the applicant or licensee.

(i) A false statement of material fact in a certification of a salvage vehicle pursuant to NRS 487.800 or a record regarding a salvage vehicle by the applicant or licensee or an employee of the applicant or licensee.

(j) The display of evidence of unfitness for a license pursuant to NRS 487.165.

2. Upon the receipt of any report or complaint alleging that an applicant or a licensee has engaged in financial misconduct or has failed to satisfy financial obligations related to the operation of a body shop, the Department may require the applicant or licensee to submit to the Department an authorization for the disclosure of financial records for the business as provided in NRS 239A.090. The Department may use any information obtained pursuant to such an authorization only to determine the suitability of the applicant or licensee for initial or continued licensure. Information obtained pursuant to such an authorization may be disclosed only to those employees of the Department who are authorized to issue a license to an applicant pursuant to NRS 487.600 to ~~[~~487.690,~~]~~ ***487.687,*** inclusive, or to determine the suitability of an applicant or a licensee for licensure.

3. As used in this section, "salvage vehicle" has the meaning ascribed to it in NRS 487.770.

Sec. 29. NRS 487.690 is hereby amended to read as follows:

487.690 Any person who violates any of the provisions of ***sections 4 to 21, inclusive, of this act or*** NRS ~~[~~487.600~~]~~ ***487.530*** to 487.680, inclusive, is guilty of a misdemeanor.

Sec. 29.3. **Chapter 228 of NRS is hereby amended by adding thereto a new section to read as follows:**

1. There is hereby created a revolving account for the Bureau of Consumer Protection in the sum of $7,500, which must be used for the payment of expenses relating to conducting an undercover investigation of a person who is allegedly engaging in a deceptive trade practice or violating the provisions of sections 4 to 21, inclusive, of this act.

2. The Consumer's Advocate shall deposit the money in the revolving account in a bank or credit union qualified to receive deposits of public money as provided by law, and the deposit must be secured by a depository bond satisfactory to the State Board of Examiners.

3. The Consumer's Advocate or his designee may:

(a) Sign all checks drawn upon the revolving account; and

(b) Make withdrawals of cash from the revolving account.

4. Payments made from the revolving account must be promptly reimbursed from the legislative appropriation, if any, to the Consumer's Advocate for the expenses relating to conducting an undercover investigation of a person who is allegedly engaging in a deceptive trade practice or violating the provisions of sections 4 to 21, inclusive, of this act. The claim for reimbursement must be processed and paid as other claims against the State are paid.

5. The Consumer's Advocate shall:

(a) Approve any disbursement from the revolving account; and

(b) Maintain records of any such disbursement.

Sec. 29.7. **NRS 228.300 is hereby amended to read as follows:**

228.300 As used in NRS 228.300 to 228.390, inclusive, ***and section 29.3 of this act,*** unless the context otherwise requires, the words and terms defined in NRS 228.302 to 228.308, inclusive, have the meanings ascribed to them in those sections.

Sec. 30. ~~[NRS 598.985 is hereby amended to read as follows:~~

~~598.985 1. The Division and the Department shall cooperate to enhance the protection of persons who authorize the repair of motor vehicles by a garage that is registered with the Department pursuant to the provisions of NRS 487.530 to~~ [487.570,] ~~*487.567,* inclusive.~~

~~2. The Commissioner of Consumer Affairs may provide to the Department a copy of any complaint filed with the Division that alleges a deceptive trade practice pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive, or a violation of the provisions of~~ [NRS 597.480 to 597.590, inclusive,] ~~*sections 4 to 21, inclusive, of this act* by a garage or garageman registered pursuant to the provisions of NRS 487.530 to~~ [487.570,] ~~*487.567,* inclusive. If the Commissioner provides the Department with a copy of a complaint, the Department is subject to the provisions of NRS 598.098 with respect to the complaint.~~

~~3. The Department may provide assistance to the Division in carrying out the provisions of NRS 598.990.~~] **(Deleted by amendment.)**

Sec. 31. ~~[NRS 598.990 is hereby amended to read as follows:~~

~~598.990 The Division shall:~~

~~1. Establish and maintain a toll-free telephone number for persons to report to the Division information concerning alleged violations of *sections 4 to 21, inclusive, of this act,* NRS 487.530 to~~ [487.570,] ~~*487.567,* inclusive,~~ [597.480 to 597.590, inclusive,] ~~and 598.0903 to 598.0999, inclusive.~~

~~2. Develop a program to provide information to the public concerning:~~

~~(a) The duties imposed on a body shop by the provisions of *sections 4 to 21, inclusive, of this act and* NRS 487.610 to~~ [487.690,] ~~*487.687,* inclusive;~~ [, and 597.480 to 597.590, inclusive;]

~~(b) The duties imposed on a garageman by the provisions of *sections 4 to 21, inclusive, of this act and* NRS 487.530 to [487.570,] *487.567,* inclusive ; [, and 597.480 to 597.590, inclusive;]~~

~~(c) The rights and protections established for a person who uses the services of a garage or body shop;~~

~~(d) The repair of motor vehicles; and~~

~~(e) Deceptive trade practices relating to the repair of motor vehicles by a garage or body shop.]~~ **(Deleted by amendment.)**

Sec. 32. NRS 686A.300 is hereby amended to read as follows:

686A.300 1. An insurer who issues insurance covering damage to a motor vehicle shall not delay making payment for any claim involving damage to a motor vehicle after receiving a statement of charges, pursuant to the provisions of ~~[NRS 597.5705,]~~ ***section 18 of this act,*** from any garage or licensed body shop previously authorized by the insured to perform the repairs required by that claim.

2. A delay, within the meaning of this section, is failure to issue a check or draft, payable to the garage or licensed body shop or jointly to the insured and the garage or licensed body shop, within 30 days after the insurer's receipt of the statement of charges for repairs which have been satisfactorily completed.

3. If the damaged vehicle is subject to a security interest or the legal owner of the damaged vehicle is different from the registered owner, the vehicle must be repaired by a garage or licensed body shop unless:

(a) The insurer has declared the vehicle a total loss; or

(b) The total charge for the repair of the vehicle, as set forth in the statement of charges presented pursuant to ~~[NRS 597.5705,]~~ ***section 18 of this act,*** is $300 or less.

4. Except as otherwise provided in subsection 3, nothing in this section shall be deemed to prohibit an insurer and insured from settling a claim involving damage to a motor vehicle without providing for the repair of the vehicle.

5. As used in this section, "licensed body shop" means a body shop for which a license has been issued pursuant to chapter 487 of NRS.

Sec. 33. NRS 487.535, 487.568, 487.570, 487.602, 597.480, 597.490, 597.500, 597.510, 597.520, 597.530, 597.535, 597.540, 597.550, 597.560, 597.570, 597.5701, 597.5702, 597.5703, 597.5704, 597.5705, 597.5706, 597.580 **,** ~~[and]~~ 597.590 **, 598.971, 598.975, 598.981, 598.985 and 598.990** are hereby repealed.

LEADLINES OF REPEALED SECTIONS

487.535 "Division" defined.

487.568 Penalty.

487.570 Garageman to comply with certain provisions relating to trade practices.

487.602 "Body shop" defined.

597.480 Definitions.

597.490 Display of sign required; contents of sign; penalty.

597.500 Duties of body shop or garageman on acceptance of vehicle for repair.

597.510 Estimate of costs required for certain repairs.

597.520 Notice of additional charges over estimate required in certain cases.

597.530 Waiver of estimate of costs or notice of additional charges; execution of waiver.

597.535 Duty of body shop and garage to repair vehicle in accordance with manufacturer's specifications and estimate of costs required for repair.

597.540 Duties of owner and insurer upon receipt of notice of additional charges.

597.550 Replaced parts to be delivered to person authorizing repairs if requested; exception.

597.560 Records to be retained by body shop or garageman.

597.570 Compliance with NRS 597.510 to 597.5706, inclusive; enforcement of liens and contracts.

597.5701 Certain acts deemed to be deceptive trade practice.

597.5702 Revolving account for Bureau of Consumer Protection: Creation; use; deposits; claims.

597.5703 Commissioner or Director authorized to request undercover investigation of alleged deceptive trade practice; Bureau of Consumer Protection authorized to conduct such investigation.

597.5704 Administrative fine for engaging in deceptive trade practice; deposit and use of money collected as administrative fine.

597.5705 Statement of charges required for repair of vehicle; violation constitutes misdemeanor; statement required for enforcement of lien.

597.5706 Submission of annual report by Commissioner to Legislative Commission.

597.580 Violations: Injunctive relief.

597.590 Violations: Civil penalties.

598.971 Definitions.

598.975 "Department" defined.

598.981 "Division" defined.

598.985 Division and Department to cooperate to protect persons who authorize repair of motor vehicles.

598.990 Division to establish and maintain toll-free telephone number concerning alleged violations and develop program to provide certain information to public.

Assemblyman Atkinson moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 486.

Bill read second time.

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

Amendment No. 280.

AN ACT relating to mortgage lending; requiring escrow agencies and agents, mortgage brokers, mortgage agents and mortgage bankers to pay restitution under certain circumstances; authorizing additional remedies and penalties for conducting business as an escrow agency or agent, mortgage broker, mortgage agent or mortgage banker without a license; providing for the exercise of jurisdiction over a party to a civil action; increasing the fine imposed on escrow agencies and agents for certain violations; requiring a mortgage broker to deposit a surety bond or other security; providing for the payment of a claim against a surety bond; establishing fiduciary obligations of a mortgage broker and mortgage agent; increasing the fine imposed on a mortgage broker or mortgage agent for conducting business without a license; authorizing the Commissioner of Mortgage Lending to adopt regulations relating to mortgage lending and other such professions; requiring certain persons and institutions in the business of servicing mortgage loans to register with the Commissioner; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Sections 2, 13 and 19 of this bill authorize the Commissioner of Mortgage Lending to require escrow agencies, escrow agents, mortgage brokers, mortgage agents and mortgage bankers to pay restitution under certain circumstances. **Sections 3, 14 and 20** of this bill provide that if any person engages in the escrow business or the business of a mortgage broker, agent or banker without a license, the contract for the transaction in question may be voided by the other parties to the contract. **Sections 3, 17 and 20** of this bill authorize the Commissioner to impose an administrative fine of $50,000 under the same circumstances. **Sections 4, 5, 15, 16, 21 and 22** of this bill provide that parties to certain escrow and mortgage transactions may bring a civil suit against the person who has engaged in the escrow or mortgage business without a license and also establish provisions relating to the exercise of jurisdiction by a court of this State. **Section 6** of this bill increases the fine imposed on escrow agencies or agents from $500 to $10,000 for each occurrence of certain violations.

Sections 8 and 9 of this bill require a mortgage broker, as a condition to doing business in this State, to deposit with the Commissioner a corporate surety bond or other security in the amount of **[**~~$25,000~~**]** **$50,000** for the principal office and **[**~~$10,000~~**]** **$25,000** for each branch office, not to exceed

an aggregate amount of $75,000. **Section 10** of this bill allows a surety to cancel a bond with notice and requires the Commissioner to inform a mortgage broker or mortgage agent that his license will be revoked unless an equivalent bond or security is deposited before the cancellation. **Section 11** of this bill provides for the manner in which claims against a bond may be paid. **Section 12** of this bill provides that a mortgage broker or mortgage agent has a fiduciary obligation to his client.

Section 24 of this bill grants regulatory authority over mortgage lending and related professionals, including foreclosure consultants, to the Commissioner by requiring the Commissioner to adopt regulations relating to mortgage lending and other professionals.

Section 25 of this bill requires certain persons and institutions in the business of servicing mortgage loans **secured by a lien on real property located in this State** to register with the Commissioner.

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

Section 1. Chapter 645A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

Sec. 2. ~~*[In a manner consistent with the provisions of chapter 622A of NRS, the]*~~

1. The holder of a license as an escrow agent or escrow agency may be required by the Commissioner to pay restitution to any person who has suffered an economic loss as a result of a violation of the provisions of this chapter or any regulation adopted pursuant thereto.

2. Notwithstanding the provision of paragraph (m) of subsection 1 of NRS 622A.120, payment of restitution pursuant to subsection 1 shall be done in a manner consistent with the provisions of chapter 622A of NRS.

Sec. 3. ***If a person, or any general partner, director, officer, agent or employee of a person, violates the provisions of NRS 645A.210 or 645A.220:***

1. Any contracts entered into by that person for the escrow transaction are voidable by the other party to the contract; and

2. In addition to any other remedy or penalty, the Commissioner may impose an administrative fine of not more than $50,000.

Sec. 4. ***In addition to any other remedy or penalty, if a person violates the provisions of NRS 645A.210 or 645A.220, the respective parties to the escrow transaction may bring a civil action against the person for:***

1. Actual and consequential damages;

2. Punitive damages, which are subject to the provisions of NRS 42.005;

3. Reasonable attorney's fees and costs; and

4. Any other legal or equitable relief that the court deems appropriate.

Sec. 5. ***1. A court of this State may exercise jurisdiction over a party to a civil action arising under the provisions of this chapter on any basis***

not inconsistent with the Constitution of the State of Nevada or the Constitution of the United States.

2. Personal service of summons upon a party outside this State is sufficient to confer upon a court of this State jurisdiction over the party so served if the service is made by delivering a copy of the summons, together with a copy of the complaint, to the party served in the manner provided by statute or rule of court for service upon a person of like kind within this State.

3. In all cases of such service, the defendant has 40 days, exclusive of the day of service, within which to answer or plead.

4. This section provides an additional manner of serving process and does not invalidate any other service.

Sec. 6. NRS 645A.090 is hereby amended to read as follows:

645A.090 1. The Commissioner may refuse to license any escrow agent or agency or may suspend or revoke any license or impose a fine of not more than ~~[$500]~~ ***$10,000*** for each violation by entering an order to that effect, with his findings in respect thereto, if upon a hearing, it is determined that the applicant or licensee:

(a) In the case of an escrow agency, is insolvent;

(b) Has violated any provision of this chapter or any regulation adopted pursuant thereto or has aided and abetted another to do so;

(c) In the case of an escrow agency, is in such a financial condition that he cannot continue in business with safety to his customers;

(d) Has committed fraud in connection with any transaction governed by this chapter;

(e) Has intentionally or knowingly made any misrepresentation or false statement to, or concealed any essential or material fact from, any principal or designated agent of a principal in the course of the escrow business;

(f) Has intentionally or knowingly made or caused to be made to the Commissioner any false representation of a material fact or has suppressed or withheld from the Commissioner any information which the applicant or licensee possesses;

(g) Has failed without reasonable cause to furnish to the parties of an escrow their respective statements of the settlement within a reasonable time after the close of escrow;

(h) Has failed without reasonable cause to deliver, within a reasonable time after the close of escrow, to the respective parties of an escrow transaction any money, documents or other properties held in escrow in violation of the provisions of the escrow instructions;

(i) Has refused to permit an examination by the Commissioner of his books and affairs or has refused or failed, within a reasonable time, to furnish any information or make any report that may be required by the Commissioner pursuant to the provisions of this chapter;

(j) Has been convicted of a felony relating to the practice of escrow agents or agencies or any misdemeanor of which an essential element is fraud;

(k) In the case of an escrow agency, has failed to maintain complete and accurate records of all transactions within the last 6 years;

(l) Has commingled the money of others with his own or converted the money of others to his own use;

(m) Has failed, before the close of escrow, to obtain written escrow instructions concerning any essential or material fact or intentionally failed to follow the written instructions which have been agreed upon by the parties and accepted by the holder of the escrow;

(n) Has failed to disclose in writing that he is acting in the dual capacity of escrow agent or agency and undisclosed principal in any transaction; or

(o) In the case of an escrow agency, has:

(1) Failed to maintain adequate supervision of an escrow agent; or

(2) Instructed an escrow agent to commit an act which would be cause for the revocation of the escrow agent's license and the escrow agent committed the act. An escrow agent is not subject to disciplinary action for committing such an act under instruction by the escrow agency.

2. It is sufficient cause for the imposition of a fine or the refusal, suspension or revocation of the license of a partnership, corporation or any other association that any member of the partnership or any officer or director of the corporation or association has been guilty of any act or omission which would be cause for such action had the applicant or licensee been a natural person.

3. The Commissioner may suspend any license for not more than 30 days, pending a hearing, if upon examination into the affairs of the licensee it is determined that any of the grounds enumerated in subsection 1 or 2 exist.

4. The Commissioner may refuse to issue a license to any person who, within 10 years before the date of applying for a current license, has had suspended or revoked a license issued pursuant to this chapter or a comparable license issued by any other state, district or territory of the United States or any foreign country.

5. An order that imposes discipline and the findings of fact and conclusions of law supporting that order are public records.

Sec. 7. Chapter 645B of NRS is hereby amended by adding thereto the provisions set forth as sections 8 to 16, inclusive, of this act.

Sec. 8. ***1. Except as otherwise provided in section 9 of this act, as a condition to doing business in this State, each mortgage broker shall deposit with the Commissioner and keep in full force and effect a corporate surety bond payable to the State of Nevada, in the amount set forth in subsection 4, which is executed by a corporate surety satisfactory to the Commissioner and which names as principals the mortgage broker and all mortgage agents employed by or associated with the mortgage broker.***

2. At the time of filing an application for a license as a mortgage agent ~~[,]~~ ***and at the time of filing an application for the renewal of a license as a mortgage agent, the applicant shall file with the Commissioner proof that the applicant is named as a principal on the corporate surety bond***

deposited with the Commissioner by the mortgage broker with whom he is associated or employed.

3. The bond must be in substantially the following form:

Know All Men by These Presents, that ....., as principal, and ....., as surety, are held and firmly bound unto the State of Nevada for the use and benefit of any person who suffers damages because of a violation of any of the provisions of chapter 645B of NRS, in the sum of ....., lawful money of the United States, to be paid to the State of Nevada for such use and benefit, for which payment well and truly to be made, and that we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of that obligation is such that: Whereas, the principal has been issued a license as a mortgage broker or mortgage agent by the Commissioner of Mortgage Lending and is required to furnish a bond, which is conditioned as set forth in this bond:

Now, therefore, if the principal, his agents and employees, strictly, honestly and faithfully comply with the provisions of chapter 645B of NRS, and pay all damages suffered by any person because of a violation of any of the provisions of chapter 645B of NRS, or by reason of any fraud, dishonesty, misrepresentation or concealment of material facts growing out of any transaction governed by the provisions of chapter 645B of NRS, then this obligation is void; otherwise it remains in full force.

This bond becomes effective on the .....(day) of .....(month) of ...(year), and remains in force until the surety is released from liability by the Commissioner of Mortgage Lending or until this bond is cancelled by the surety. The surety may cancel this bond and be relieved of further liability hereunder by giving 60 days' written notice to the principal and to the Commissioner of Mortgage Lending.

In Witness Whereof, the seal and signature of the principal hereto is affixed, and the corporate seal and the name of the surety hereto is affixed and attested by its authorized officers at ....., Nevada, this .....(day) of .....(month) of ..….(year).

(Seal) .....
Principal.....
(Seal) .....
Surety.....
By.....
Attorney-in-fact.....

Licensed resident agent

4. Each mortgage broker shall deposit a corporate surety bond that complies with the provisions of this section or a substitute form of security that complies with the provisions of section 9 of this act in the following amounts:

(a) For the principal office, ~~[$25,000.]~~ $50,000.

(b) For each branch office, ~~[$10,000.]~~ $25,000.

➥ The total amount required for the corporate surety bond may not exceed $75,000, without regard to the number of branch offices, if any.

Sec. 9. ***1. As a substitute for the surety bond required by section 8 of this act, a mortgage broker may, in accordance with the provisions of this section, deposit with any bank or trust company authorized to do business in this State, in a form approved by the Commissioner:***

(a) An obligation of a bank, savings and loan association, thrift company or credit union licensed to do business in this State;

(b) Bills, bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States; or

(c) Any obligation of this State or any city, county, town, township, school district or other instrumentality of this State, or guaranteed by this State.

2. The obligations of a bank, savings and loan association, thrift company or credit union must be held to secure the same obligation as would the surety bond. With the approval of the Commissioner, the depositor may substitute other suitable obligations for those deposited which must be assigned to the State of Nevada and are negotiable only upon approval by the Commissioner.

3. Any interest or dividends earned on the deposit accrue to the account of the depositor.

4. The deposit must be in an amount at least equal to the required surety bond and must state that the amount may not be withdrawn except by direct and sole order of the Commissioner. The value of any item deposited pursuant to this section must be based upon principal amount or market value, whichever is lower.

Sec. 10. ***1. The surety may cancel a bond upon giving 60 days' notice to the Commissioner by certified mail. Upon receipt by the Commissioner of such a notice, the Commissioner immediately shall notify the licensee who is the principal on the bond of the effective date of cancellation of the bond, and that his license will be revoked unless he furnishes an equivalent bond or a substitute form of security authorized by section 9 of this act before the effective date of the cancellation. The notice must be sent to the licensee by certified mail to his last address of record filed in the office of the Division.***

2. If the licensee does not comply with the requirements set out in the notice from the Commissioner, his license must be revoked on the date the bond is cancelled.

Sec. 11. ***1. Any person claiming against a bond may bring an action in a court of competent jurisdiction on the bond for damages to the extent covered by the bond. A person who brings an action on a bond shall notify the Commissioner in writing upon filing the action. An action may not be***

commenced after the expiration of 3 years following the commission of the act on which the action is based.

2. Upon receiving a request from a person for whose benefit a bond is required, the Commissioner shall notify the person:

(a) That a bond is in effect and of the amount of the bond; and

(b) If there is an action against the bond, the title, court and case number of the action and the amount sought by the plaintiff.

3. If a surety wishes to make payment without awaiting action by a court, the amount of the bond must be reduced to the extent of any payment made by the surety in good faith under the bond. Any payment must be based on written claims received by the surety before any action is taken by a court.

4. The surety may bring an action for interpleader against all claimants upon the bond. If it does so, it shall publish notice of the action at least once each week for 2 weeks in every issue of a newspaper of general circulation in the county where the mortgage broker has its principal place of business. The surety may deduct its costs of the action, including attorney's fees and publication, from its liability under the bond.

5. Claims against a bond have equal priority, and if the bond is insufficient to pay all claims in full, they must be paid on a pro rata basis. Partial payment of claims is not full payment, and any claimant may bring an action against the mortgage broker for the unpaid balance.

Sec. 12. ***1. In addition to any other duties set forth in this chapter, any person licensed pursuant to this chapter has a fiduciary obligation to a client.***

2. For the purposes of this section, a person's fiduciary obligation does not impose a requirement to offer or obtain access to loan products or services for a client other than those that are ~~[available to]~~ offered by the person at the time of the transaction.

3. As used in this section, "fiduciary obligation" means a duty of good faith and fair dealing, including, without limitation, the duty to:

(a) Act in the client's best interest;

(b) Conduct only those mortgage transactions which are suitable for the client's needs;

(c) Disclose any financial, business, professional or personal interest the person has in conducting a mortgage transaction for the client;

(d) Disclose any material fact that the person knows or should know may affect the client's rights or interests or the ability to obtain the intended benefit from the mortgage transaction;

(e) Provide an accounting to the client that lists all money and property received from the client;

(f) Not accept or collect any fee for services rendered unless the fee was disclosed to the client before the service is provided; and

(g) Exercise reasonable care in performing any other duty relating to a mortgage transaction.

Sec. 13. ~~*[In a manner consistent with the provisions of chapter 622A of NRS, the]*~~

1. The holder of a license as a mortgage broker or mortgage agent may be required by the Commissioner to pay restitution to any person who has suffered an economic loss as a result of a violation of the provisions of this chapter or any regulation adopted pursuant thereto.

2. Notwithstanding the provision of paragraph (m) of subsection 1 of NRS 622A.120, payment of restitution pursuant to subsection 1 shall be done in a manner consistent with the provisions of chapter 622A of NRS.

Sec. 14. ***If a person, or any general partner, director, officer, agent or employee of a person violates the provisions of NRS 645B.900 or 645B.910, any contracts entered into by that person for the mortgage transaction are voidable by the other party to the contract.***

Sec. 15. ***In addition to any other remedy or penalty, if a person violates the provisions of NRS 645B.900 or 645B.910, the client may bring a civil action against the person for:***

1. Actual and consequential damages;

2. Punitive damages, which are subject to the provisions of NRS 42.005;

3. Reasonable attorney's fees and costs; and

4. Any other legal or equitable relief that the court deems appropriate.

Sec. 16. ***1. A court of this State may exercise jurisdiction over a party to a civil action arising under the provisions of this chapter on any basis not inconsistent with the Constitution of the State of Nevada or the Constitution of the United States.***

2. Personal service of summons upon a party outside this State is sufficient to confer upon a court of this State jurisdiction over the party so served if the service is made by delivering a copy of the summons, together with a copy of the complaint, to the party served in the manner provided by statute or rule of court for service upon a person of like kind within this State.

3. In all cases of such service, the defendant has 40 days, exclusive of the day of service, within which to answer or plead.

4. This section provides an additional manner of serving process and does not invalidate any other service.

Sec. 17. NRS 645B.690 is hereby amended to read as follows:

645B.690 1. If a person offers or provides any of the services of a mortgage broker or mortgage agent or otherwise engages in, carries on or holds himself out as engaging in or carrying on the business of a mortgage broker or mortgage agent and, at the time:

(a) The person was required to have a license pursuant to this chapter and the person did not have such a license; or

(b) The person's license was suspended or revoked pursuant to this chapter,

➥ the Commissioner shall impose upon the person an administrative fine of not more than ~~[$10,000]~~ ***$50,000*** for each violation and, if the person has a license, the Commissioner shall revoke it.

2. If a mortgage broker violates any provision of subsection 1 of NRS 645B.080 and the mortgage broker fails, without reasonable cause, to remedy the violation within 20 business days after being ordered by the Commissioner to do so or within such later time as prescribed by the Commissioner, or if the Commissioner orders a mortgage broker to provide information, make a report or permit an examination of his books or affairs pursuant to this chapter and the mortgage broker fails, without reasonable cause, to comply with the order within 20 business days or within such later time as prescribed by the Commissioner, the Commissioner shall:

(a) Impose upon the mortgage broker an administrative fine of not more than $10,000 for each violation;

(b) Suspend or revoke the license of the mortgage broker; and

(c) Conduct a hearing to determine whether the mortgage broker is conducting business in an unsafe and injurious manner that may result in danger to the public and whether it is necessary for the Commissioner to take possession of the property of the mortgage broker pursuant to NRS 645B.630.

Sec. 18. Chapter 645E of NRS is hereby amended by adding thereto the provisions set forth as sections 19 to 22, inclusive, of this act.

Sec. 19. ~~*[In a manner consistent with the provisions of chapter 622A of NRS, the]*~~

1. The holder of a license as a mortgage banker may be required by the Commissioner to pay restitution to any person who has suffered an economic loss as a result of a violation of the provisions of this chapter or any regulation adopted pursuant thereto.

2. Notwithstanding the provision of paragraph (m) of subsection 1 of NRS 622A.120, payment of restitution pursuant to subsection 1 shall be done in a manner consistent with the provisions of chapter 622A of NRS.

Sec. 20. ***If a person, or any general partner, director, officer, agent or employee of a person violates the provisions of NRS 645E.900 or 645E.910:***

1. Any contracts entered into by that person for the mortgage transaction are voidable by the other party to the contract; and

2. In addition to any other remedy or penalty, the Commissioner may impose an administrative fine of not more than $50,000.

Sec. 21. ***In addition to any other remedy or penalty, if a person, or any general partner, director, officer, agent or employee of a person violates the provisions of NRS 645E.900 or 645E.910, the client may bring a civil action against the person for:***

1. Actual and consequential damages;

2. Punitive damages, which are subject to the provisions of NRS 42.005;

3. Reasonable attorney's fees and costs; and

4. Any other legal or equitable relief that the court deems appropriate.

Sec. 22. ***1. A court of this State may exercise jurisdiction over a party to a civil action arising under the provisions of this chapter on any basis not inconsistent with the Constitution of the State of Nevada or the Constitution of the United States.***

2. Personal service of summons upon a party outside this State is sufficient to confer upon a court of this State jurisdiction over the party so served if the service is made by delivering a copy of the summons, together with a copy of the complaint, to the party served in the manner provided by statute or rule of court for service upon a person of like kind within this State.

3. In all cases of such service, the defendant has 40 days, exclusive of the day of service, within which to answer or plead.

4. This section provides an additional manner of serving process and does not invalidate any other service.

Sec. 23. Chapter 645F of NRS is hereby amended by adding thereto the provisions set forth as sections 24 and 25 of this act.

Sec. 24. ***In addition to the other duties imposed upon him by law, the Commissioner shall adopt any regulations that are necessary to carry out the provisions of this chapter.***

Sec. 25. ***A person or institution engaged in the business of servicing mortgage loans that intends to conduct business in this State for the purpose of servicing mortgage loans secured by a lien on real property located in this State shall register with the Commissioner on a form prescribed by the Commissioner. The form must:***

1. Identify the state in which the institution is domiciled;

2. Identify the principal place of business of the institution; and

3. Provide such other information as the Commissioner may require.

Sec. 26. **The amendatory provisions of section 3 of this act apply to contracts entered into before, on or after October 1, 2009.**

Assemblyman Conklin moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 491.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 336.

AN ACT relating to civil actions; providing that a certain amount of money held in a bank that is likely to be exempt from execution is not subject to a writ of execution or garnishment; providing a procedure to execute on property held in a safe-deposit box; revising the procedure for claiming an exemption from execution on certain property; making various other changes

to provisions governing writs of execution, attachment and garnishment; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law allows a judgment creditor to obtain a writ of execution, attachment or garnishment to levy on the property of a judgment debtor or defendant in certain circumstances. (Chapters 21 and 31 of NRS) Certain property, however, is exempt from execution and therefore cannot be the subject of such a writ. (NRS 21.090) **Section 2** of this bill provides that a certain amount of money held in the bank account of a judgment debtor which is likely to be exempt from execution is not subject to a writ of execution or garnishment and must remain accessible to the judgment debtor. **Section 3** of this bill provides that a separate writ must be issued to levy on a safe-deposit box and provides a procedure for executing on such a writ. **Section 5** of this bill revises the exemptions from execution so that the exemption for certain plans and accounts for deferred payments applies not only to the money that is held in the account, but also to the proceeds paid from those accounts. **Section 5** also adds a new exemption for proceeds from a private disability ~~[pension]~~ **insurance** plan.

Section 6 of this bill revises the procedures for claiming an exemption from execution, and for objecting to such a claim of exemption. **Sections 4 and 7** of this bill revise the notice that is provided to a judgment debtor or defendant when a writ of execution, attachment or garnishment is levied on the property of the judgment debtor so that the procedures listed in the notice reflect the changes made in **section 6**. **Sections 4 and 7** further revise the notice to provide additional information concerning the claiming of exemptions.

~~[Section 8 of this bill requires a sheriff to prepare an accounting every 90 days concerning the activity related to a writ of attachment or garnishment and provide the accounting to the judgment debtor. Section 12 of this bill similarly requires the judgment creditor to prepare an accounting every 90 days of the amount still owed by the judgment debtor and provide a copy of the report to the judgment debtor, the sheriff and any garnishee.]~~

Section 9 of this bill ~~[provides that not]~~ **prohibits a judgment creditor from submitting** more than ~~[one]~~ **two applications for a** writ of garnishment ~~[may be issued to a garnishee]~~ with respect to the same judgment for the same type of property ~~[, and not more than two writs of garnishment may be issued in any calendar year to levy on the same bank account of the judgment debtor. Sections 10 and 12 of this bill remove references to a writ of garnishment for 120 days and instead require that the writ continue until the debt is paid.]~~ **if the property is held in a financial institution.**

Section 11 of this bill revises the interrogatories that are used with a writ of execution, attachment or garnishment to clarify the manner of determining the earnings which must be identified as subject to execution and to provide specific questions for a bank to conform to the new provisions in **section 2** of

this bill. **Section 12 of this bill requires the judgment creditor who caused a writ of attachment to issue to prepare an accounting and provide a report to the judgment debtor, the sheriff and each garnishee every 120 days providing information about the debt and the rights of the debtor. The accounting must also be submitted with each subsequent application for a writ filed by the judgment creditor concerning the same judgment.** ~~[Sections 13 and]~~ **Section 14** of this bill ~~[provide]~~ **provides** that ~~[a constable must not collect a]~~ **the** fee for receiving and taking property on execution, attachment or court order ~~[unless the property is subsequently released to the judgment creditor.]~~ **collected by a constable is not payable in advance. Section 15** of this bill provides that certain benefits are exempt from execution regardless of whether they are mingled with other money. **Section 16 of this bill repeals NRS 21.114 concerning the submission of sureties to the jurisdiction of the court because the requirement for an undertaking requiring a surety is removed in section 6 of this bill.**

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

Section 1. Chapter 21 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. ***1. If a writ of execution or garnishment is levied on the bank account of the judgment debtor and money has been deposited into the account electronically within the immediately preceding 45 days from the date on which the writ was served which is reasonably identifiable as exempt from execution, notwithstanding any other deposits of money into the account, $2,500 or the entire amount in the account, whichever is less, is not subject to execution and must remain accessible to the judgment debtor. Money which is reasonably identifiable as exempt from execution includes, without limitation:***

(a) Benefits provided pursuant to the Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits;

(b) Veterans' benefits; and

(c) Benefits provided pursuant to any other federal law.

2. If a writ of execution or garnishment is levied on the bank account of the judgment debtor and the provisions of subsection 1 do not apply, $1,000 or the entire amount in the account, whichever is less, is not subject to execution and must remain accessible to the judgment debtor.

3. If a judgment debtor has more than one account with the bank to which a writ is issued, the amount that is not subject to execution must not in the aggregate exceed the amount specified in subsection 1 or 2, as applicable.

4. A judgment debtor may apply to a court to claim an exemption for any amount subject to a writ levied on a bank account which exceeds the amount that is not subject to execution pursuant to subsection 1 or 2.

5. If money in an account of the judgment debtor which exceeds the amount that is not subject to execution pursuant to subsection 1 or 2 includes exempt and nonexempt money, to determine whether the money in the account is exempt, the judgment creditor must use the method of accounting which applies the standard that the first money deposited in the account is the first money withdrawn from the account. The court may require a judgment debtor to provide an accounting of all deposits into and withdrawals from the account for the immediately preceding 90 days.

6. If a writ of execution or garnishment that is levied on the bank account of a judgment debtor is determined to be unenforceable [,] because all of the money in the account is exempt from execution pursuant to subsection 1 or invalid or in violation of the provisions of this chapter or chapter 31 of NRS, the bank must not charge a fee to the judgment debtor regardless of any agreement with or policy of the bank to the contrary.

Sec. 3. ***1. If a writ of execution or garnishment is levied on property in a safe-deposit box maintained at a financial institution, a separate writ must be issued from any writ that is issued to levy on an account of the judgment debtor with the financial institution. Notice of the writ must be served personally on the financial institution and promptly thereafter on any third person who is named on the safe-deposit box.***

2. During the period in which the writ of execution or garnishment is in effect, the financial institution must not allow the contents of the safe-deposit box to be removed other than as directed by the sheriff or by court order.

3. The sheriff may allow the person in whose name the safe-deposit box is held to open the safe-deposit box so that the contents may be removed pursuant to the levy. The financial institution may refuse to allow the forcible opening of the safe-deposit box to allow the removal of the property levied upon unless the judgment creditor pays in advance the cost of forcibly opening the safe-deposit box and of repairing any damage caused thereby.

Sec. 4. 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 pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.

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

3. Payments for public assistance granted through the Division of Welfare and Supportive Services of the Department of Health and Human Services 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 $550,000, 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. All money reasonably deposited with a landlord by you to secure an agreement to rent or lease a dwelling that is used by you as your primary residence, except that such money is not exempt with respect to a landlord or his successor in interest who seeks to enforce the terms of the agreement to rent or lease the dwelling.

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

12. Seventy-five percent of the take-home pay for any workweek, unless the weekly take-home pay is less than 50 times the federal minimum hourly wage, in which case the entire amount may be exempt.

13. 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 section 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A;

(b) A written simplified employee pension plan which conforms with the applicable limitations and requirements of section 408 of the Internal Revenue Code, 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.

14. 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.

15. 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.

16. 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.

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

18. 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.

19. 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.

20. 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.

21. Payments received as restitution for a criminal act.

22. Personal property, not to exceed $1,000 in total value, if the property is not otherwise exempt from execution.

23. A tax refund received from the earned income credit provided by federal law or a similar state law.

24. Stock of a corporation described in subsection 2 of NRS 78.746 except as set forth in that section.

➥ 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). ***If you do not wish to consult an attorney or receive legal services from an organization that provides assistance to persons who qualify, you may obtain the form to be used to claim an exemption from the clerk of the court.***

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]~~ ***an executed claim of*** exemption. A copy of the ~~[affidavit]~~ ***claim of exemption*** must be served upon the sheriff ~~[and]~~ ***, the garnishee and*** the judgment creditor within ~~[8]~~ ***20 calendar*** days after the notice of execution ***or garnishment*** is ~~[mailed.]~~ ***served on you by mail pursuant to NRS 21.076 which identifies the specific property that is being levied on.*** The property must be returned to you within ~~[5]~~ ~~*[8]*~~ ***9*** days after you ~~[file]~~ ***serve*** the ~~[affidavit]~~ ***claim of exemption upon the sheriff, garnishee and judgment creditor,*** unless ~~[you or the judgment creditor files a motion]~~ ***the sheriff or garnishee receives a copy of an objection to the claim of exemption and a notice*** 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]~~ ***objection to the claim of exemption and notice*** for the hearing to determine the issue of exemption must be filed within ~~[10]~~ ~~*[5]*~~ ***8*** days after the ~~[affidavit claiming]~~ ***claim of*** exemption is ~~[filed.]~~ ***served on the judgment creditor by mail or in person and served on the judgment debtor, the sheriff and any garnishee not less than 5 days before the date set for the hearing.*** The hearing to determine whether the property or money is exempt must be held within ~~[10]~~ ***7*** days after the ~~[motion]~~ ***objection to the claim of exemption and notice*** for the hearing is filed. ***You may be able to have your property released more quickly if you mail to the judgment creditor or the attorney of the judgment creditor written proof that the property is exempt. Such proof may include, without limitation, a letter from the government, an annual statement from a pension fund, receipts for payment, copies of checks, records from financial institutions or any other document which demonstrates that the money in your account is exempt.***

IF YOU DO NOT FILE THE ~~[AFFIDAVIT]~~ ***EXECUTED CLAIM OF EXEMPTION*** 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. 5. 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 or required by federal law:

(a) Private libraries, works of art, musical instruments and jewelry not to exceed $5,000 in value, belonging to the judgment debtor or a dependent of the judgment debtor, to be selected by the judgment debtor, and all family pictures and keepsakes.

(b) Necessary household goods, furnishings, electronics, wearing apparel, other personal effects and yard equipment, not to exceed $12,000 in value, belonging to the judgment debtor or a dependent of the judgment debtor, to be selected by the judgment debtor.

(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, equipment, supplies, and the tools, inventory, instruments and materials used to carry on the trade or business of the judgment debtor for the support of himself and his family not to exceed $10,000 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 (p), 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 workweek, 75 percent of the disposable earnings of a judgment debtor during that week, or 50 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 (o), (s) and (t), 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:

(1) "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.

(2) "Earnings" means compensation paid or payable for personal services performed by a judgment debtor in the regular course of business, including, without limitation, compensation designated as income, wages, tips, a salary, a commission or a bonus. The term includes compensation received by a judgment debtor that is in the possession of the judgment debtor, compensation held in accounts maintained in a bank or any other financial institution or, in the case of a receivable, compensation that is due the judgment debtor.

(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 $15,000. 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 $15,000 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 $550,000 in value and the dwelling is situated upon lands not owned by him.

(n) All money reasonably deposited with a landlord by the judgment debtor to secure an agreement to rent or lease a dwelling that is used by the judgment debtor as his primary residence, except that such money is not exempt with respect to a landlord or his successor in interest who seeks to enforce the terms of the agreement to rent or lease the dwelling.

(o) 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.

(p) 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.

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

(r) Money, not to exceed $500,000 in present value, held in ~~[:]~~ ***and any proceeds paid from:***

(1) An individual retirement arrangement which conforms with the applicable limitations and requirements of section 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A;

(2) A written simplified employee pension plan which conforms with the applicable limitations and requirements of section 408 of the Internal Revenue Code, 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.

(s) 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.

(t) 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.

(u) 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.

(v) 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.

(w) 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.

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

(y) Payments received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.

(z) Any personal property not otherwise exempt from execution pursuant to this subsection belonging to the judgment debtor, including, without limitation, the judgment debtor's equity in any property, money, stocks,

bonds or other funds on deposit with a financial institution, not to exceed $1,000 in total value, to be selected by the judgment debtor.

(aa) Any tax refund received by the judgment debtor that is derived from the earned income credit described in section 32 of the Internal Revenue Code, 26 U.S.C. § 32, or a similar credit provided pursuant to a state law.

(bb) Stock of a corporation described in subsection 2 of NRS 78.746 except as set forth in that section.

(cc) Proceeds received from a private disability ~~[*pension]*~~ ***insurance plan.***

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. 6. NRS 21.112 is hereby amended to read as follows:

21.112 1. In order to claim exemption of any property levied on, the judgment debtor must, within ~~[8]~~ ***20*** days after the notice ~~[prescribed in NRS 21.075 is mailed,]~~ ***of a writ of execution or garnishment is served on him by mail pursuant to NRS 21.076 which identifies the specific property that is being levied on,*** serve on the sheriff ***, the garnishee*** and ***the*** judgment creditor and file with the clerk of the court issuing the writ of execution ~~[an affidavit setting out]~~ his claim of exemption ~~[.]~~ ***which is executed in the manner set forth in NRS 53.045. If the property that is levied on is the earnings of the judgment debtor, the judgment debtor must file the claim of exemption pursuant to this subsection within 20 days after the date of each withholding of his earnings.***

2. The clerk of the court shall provide the form for the ~~[affidavit.~~

~~2.]~~ ***claim of exemption and must further provide with the form instructions concerning the manner in which to claim an exemption, a checklist and description of the most commonly claimed exemptions and an order to be used by the court to grant or deny an exemption. No fee may be charged for providing such a form*** ~~[.]~~ ***or for filing the form with the court.***

3. When the ~~[affidavit]~~ ***claim of exemption*** is served, the sheriff ***or garnishee*** shall release the property ***and make the property available to the judgment debtor by not later than the end of business on the ninth day following such service*** if the ~~[judgment creditor,]~~ ***sheriff or garnishee has not received*** within ~~[5]~~ ***8*** days ~~[after written demand by the sheriff:~~

~~(a) Fails to give the sheriff an undertaking executed by two good and sufficient sureties which:~~

~~(1) Is in a sum equal to double the value of the property levied on; and~~

~~(2) Indemnifies the judgment debtor against loss, liability, damages, costs and attorney's fees by reason of the taking, withholding or sale of the property by the sheriff; or~~

~~(b) Fails to file a motion~~] ***a copy of the objection to the claim of exemption and notice*** for a hearing ***from the judgment creditor*** to determine whether the property or money is exempt.

[~~.~~] The clerk of the court shall provide the form for the [~~motion.~~

~~3. At the time of giving the sheriff the undertaking provided for in subsection 2, the judgment creditor shall give notice of the undertaking to the judgment debtor.~~] ***objection to the claim of exemption and notice for a hearing to determine whether the property or money is exempt.***

4. ***An objection to the claim of exemption and notice for a hearing must be filed with the court within*** ~~*[5]*~~ ***8 days after the claim of exemption is served on the judgment creditor by mail or in person and served on the judgment debtor, the sheriff and any garnishee. The judgment creditor shall also serve notice of the date of the hearing on the judgment debtor, the sheriff and any garnishee not less than 5 days before the date set for the hearing.***

5. The sheriff is not liable to the judgment debtor for damages by reason of the taking, withholding or sale of any property [~~,~~] where [~~:~~

~~(a) No affidavit claiming~~] ***a claim of*** exemption is ***not*** served on him ***.*** [~~;~~ ~~or~~

~~(b) An affidavit claiming exemption is served on him, but the sheriff fails to release the property in accordance with this section.~~

~~5.~~] ***6.*** Unless the court continues the hearing for good cause shown, the hearing ***on an objection to a claim of exemption*** to determine whether the property or money is exempt must be held within [~~10~~] ***7*** days after the [~~motion~~] ***claim of objection and notice*** for [~~the~~] ***a*** hearing is filed.

[~~6. The judgment creditor shall give the judgment debtor at least 5 days' notice of the hearing.~~] ***The judgment creditor has the burden to prove that the judgment debtor is not entitled to the claimed exemption at such a hearing.*** ~~*[The court shall issue a decision regarding the exemption within 5 days after the hearing by completing the order submitted with the judgment debtor's claim of exemption. The]*~~ ***After determining whether the judgment debtor is entitled to an exemption, the court shall mail a copy of the order to the judgment debtor, the judgment creditor, any other named party, the sheriff and any garnishee.***

7. If the sheriff or garnishee does not receive a copy of a claim of exemption from the judgment debtor within 25 days after the property is levied on, the garnishee shall release the property to the sheriff or, if the property is held by the sheriff, the sheriff shall release the property to the judgment creditor.

8. At any time after:

(a) An exemption is claimed pursuant to this section, the judgment debtor may withdraw the claim of exemption and direct that the property be released to the judgment creditor.

(b) An objection to a claim of exemption is filed pursuant to this section, the judgment creditor may withdraw the objection and direct that the property be released to the judgment debtor.

9. If a court determines after a hearing that an objection to a claim of exemption was claimed in bad faith ~~[,]~~ ***or if the judgment creditor had reason to know that the property was exempt from execution or submitted more than two applications for a writ of execution for the same judgment on the same property or account of the judgment debtor in violation of subsection 2 of NRS 31.249, the court shall award to the judgment debtor reasonable costs, attorney fees, actual damages and an amount not to exceed $1,000.***

10. The provisions of this section do not limit or prohibit any other remedy provided by law.

11. In addition to any other procedure or remedy authorized by law, a person other than the judgment debtor whose property is the subject of a writ of execution or garnishment may follow the procedures set forth in this section for claiming an exemption to have the property released.

12. Regardless of whether the judgment debtor claims an exemption, any exemption to which the debtor is entitled may not be waived.

Sec. 7. 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 pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.

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

3. Payments for public assistance granted through the Division of Welfare and Supportive Services of the Department of Health and Human Services 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 $550,000, 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. All money reasonably deposited with a landlord by you to secure an agreement to rent or lease a dwelling that is used by you as your primary residence, except that such money is not exempt with respect to a landlord or his successor in interest who seeks to enforce the terms of the agreement to rent or lease the dwelling.

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

12. Seventy-five percent of the take-home pay for any workweek, unless the weekly take-home pay is less than 50 times the federal minimum hourly wage, in which case the entire amount may be exempt.

13. 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 section 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A;

(b) A written simplified employee pension plan which conforms with the applicable limitations and requirements of section 408 of the Internal Revenue Code, 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.

14. 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.

15. 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.

16. 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.

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

18. 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.

19. 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.

20. 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.

21. Payments received as restitution for a criminal act.

22. Personal property, not to exceed $1,000 in total value, if the property is not otherwise exempt from execution.

23. A tax refund received from the earned income credit provided by federal law or a similar state law.

24. Stock of a corporation described in subsection 2 of NRS 78.746 except as set forth in that section.

➥ 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). ***If you do not wish to consult an attorney or receive legal services from an organization that provides assistance to persons who qualify, you may obtain the form to be used to claim an exemption from the clerk of the court.***

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]~~ ***an executed claim of*** exemption. A copy of the ~~[affidavit]~~ ***claim of exemption*** must be served upon the sheriff ~~[and]~~ ***, the garnishee and*** the judgment creditor within ~~[8]~~ ***20 calendar*** days after the notice of execution ***or garnishment*** is ~~[mailed.]~~ ***served on you by mail pursuant to NRS 21.076 which identifies the specific property that is being levied on.*** The property must be returned to you within ~~[5]~~ ~~*[8]*~~ ***9*** days after you ~~[file]~~ ***serve*** the ~~[affidavit]~~ ***claim of exemption upon the sheriff, garnishee and judgment creditor,*** unless the ~~[judgment creditor files a motion]~~ ***sheriff or garnishee receives a copy of an objection to the claim of exemption and a notice*** 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 objection to the claim of exemption and notice for the hearing to determine the issue of exemption must be filed within 8 days after the claim of exemption is served on the judgment creditor by mail or in person and served on the judgment debtor, the sheriff and any garnishee not less than 5 days before the date set for the hearing.*** The hearing must be held within ~~[10]~~ ***7*** days after the ~~[motion]~~ ***objection to the claim of exemption and notice*** for a hearing is filed. ***You may be able to have your property released more quickly if you mail to the judgment creditor or the attorney of the judgment creditor written proof that the property is exempt. Such proof may include, without limitation, a letter from the government, an annual statement from a pension fund, receipts for payment, copies of checks, records from financial institutions or any other document which demonstrates that the money in your account is exempt.***

IF YOU DO NOT FILE THE ~~[AFFIDAVIT]~~ ***EXECUTED CLAIM OF EXEMPTION*** 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. 8. ~~[NRS 31.110 is hereby amended to read as follows:~~

~~31.110 1. The sheriff shall return the writ of attachment within 25 days after its receipt, with a certificate of his proceeding endorsed thereon or attached thereto. The certificate must contain the date, time and place of each levy upon real or personal property, a full inventory of the personal property attached, a description of all real property attached, and the date, time and place where each writ of garnishment was served. The sheriff shall also attach to the writ of attachment a true and correct copy of each writ of garnishment served.~~

~~2. Every 90 days thereafter the sheriff shall prepare an accounting and provide a report to the judgment debtor which sets forth any activity related to the writ of attachment and any writ of garnishment since the last report, including, without limitation, payments made by garnishees, the date and description of property received, any amount paid to satisfy the debt and the remaining amount owed.]~~ **(Deleted by amendment.)**

Sec. 9. NRS 31.249 is hereby amended to read as follows:

31.249 1. No writ of garnishment in aid of attachment may issue except on order of the court. The court may order the writ of garnishment to be issued:

(a) In the order directing the clerk to issue a writ of attachment; or

(b) If the writ of attachment has previously issued without notice to the defendant and the defendant has not appeared in the action, by a separate order without notice to the defendant.

2. The plaintiff's application to the court for an order directing the issuance of a writ of garnishment must be by affidavit made by or on behalf of the plaintiff to the effect that the affiant is informed and believes that the named garnishee:

(a) Is the employer of the defendant; or

(b) Is indebted to or has property in his possession or under his control belonging to the defendant,

➥ and that to the best of the knowledge and belief of the affiant, the defendant's future wages, the garnishee's indebtedness or the property possessed is not by law exempt from execution. If the named garnishee is the State of Nevada, the writ of garnishment must be served upon the State Controller. ~~*[Not more than one writ of garnishment may be issued to the garnishee with respect to the same judgment for the same type of property, and not more than two writs of garnishment may be issued in any calendar year to levy on the same account of the judgment debtor in a bank.]*~~ ***A judgment creditor shall not submit more than two applications for a writ of***

garnishment with respect to the same judgment for the same type of property in any calendar year upon the same account of a judgment debtor if the property is held in a financial institution. A judgment creditor who submits more than two applications may be subject to the penalties set forth in subsection 9 of NRS 21.112.

3. The affidavit by or on behalf of the plaintiff may be contained in the application for the order directing the writ of attachment to issue or may be filed and submitted to the court separately thereafter.

4. Except as otherwise provided in this section, the grounds and procedure for a writ of garnishment are identical to those for a writ of attachment.

5. If the named garnishee is the subject of more than one writ of garnishment regarding the defendant, the court shall determine the priority and method of satisfying the claims, except that any writ of garnishment to satisfy a judgment for the collection of child support must be given first priority.

Sec. 10. ~~[NRS 31.260 is hereby amended to read as follows:~~

~~31.260 1. The writ of garnishment must:~~

~~(a) Be issued by the sheriff.~~

~~(b) Contain the name of the court and the names of the parties.~~

~~(c) Be directed to the garnishee defendant.~~

~~(d) State the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address.~~

~~(e) Require each person the court directs, as garnishees, to submit to the sheriff an answer to the interrogatories within 20 days after service of the writ upon the person.~~

~~2. The writ of garnishment must also notify the garnishee defendant that, if he fails to answer the interrogatories, a judgment by default will be rendered against him for:~~

~~(a) The amount demanded in the writ of garnishment or the value of the property described in the writ, as the case may be; or~~

~~(b) If the garnishment is pursuant to NRS 31.291, the amount of the lien created pursuant to that section,~~

~~→ which amount or property must be clearly set forth in the writ of garnishment.~~

~~3. Execution on the writ of garnishment may occur only if the sheriff mails a copy of the writ with a copy of the notice of execution to the defendant in the manner and within the time prescribed in NRS 21.076. In the case of a writ of garnishment that continues for 120 days or until the amount demanded in the writ is satisfied, a copy of the writ and the notice of execution need only be mailed once to the defendant.~~**]** **(Deleted by amendment.)**

Sec. 11. NRS 31.290 is hereby amended to read as follows:

31.290 1. The interrogatories to ***be submitted with any writ of execution, attachment or garnishment to*** the garnishee may be in substance as follows:

INTERROGATORIES

Are you in any manner indebted to the defendants, or either of them, either in property or money, and is the debt now due? If not due, when is the debt to become due? State fully all particulars.

Answer:

Are you an employer of one or all of the defendants? If so, state the length of your pay period and the amount ***of disposable earnings, as defined in NRS 31.295, that*** each defendant presently earns during a pay period. ***State the minimum amount of disposable earnings that is exempt from this garnishment, which is the federal 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), in effect at the time the earnings are payable multiplied by 50 for each week of the pay period, after deducting any amount required by law to be withheld. The minimum amount of disposable earnings may be determined, if the pay period is:***

Weekly: By multiplying 50 times the federal minimum hourly wage;

Biweekly: By multiplying 50 times the federal minimum hourly wage, times 2;

Semimonthly: By multiplying 50 times the federal minimum hourly wage, times 52, divided by 24; or

Monthly: By multiplying 50 times the federal minimum hourly wage, times 52, divided by 12.

State the amount that is subject to garnishment, which must not exceed 25 percent of the disposable earnings.

Answer:

Did you have in your possession, in your charge or under your control, on the date the writ of garnishment was served upon you, any money, property, effects, goods, chattels, rights, credits or choses in action of the defendants, or either of them, or in which .....is interested? If so, state its value, and state fully all particulars.

Answer:

Do you know of any debts owing to the defendants, whether due or not due, or any money, property, effects, goods, chattels, rights, credits or choses in action, belonging to ..... or in which .....is interested, and now in the possession or under the control of others? If so, state particulars.

Answer:

Are you a financial institution with an account held by one or all of the defendants? If so, state the account number and the amount of money in the account which is subject to garnishment. As set forth in section 1 of this act, $2,500 or the amount in the account, whichever is less, is not subject to garnishment if the financial institution reasonably identifies that ~~*[a]*~~ ***an electronic deposit of money has been made into the account within the immediately preceding 45 days which is exempt from execution, including, without limitation, payments of money described in section 1 of this act or, if no such deposit has been made, $1,000 or the amount in the account, whichever is less, is not subject to garnishment. The amount which is not subject to garnishment does not apply to each account of the judgment debtor, but rather is an aggregate amount that is not subject to garnishment.***

Answer:

State your correct name and address, or the name and address of your attorney upon whom written notice of further proceedings in this action may be served.

Answer:

Garnishee

I (insert the name of the garnishee), do solemnly swear (or affirm) that the answers to the foregoing interrogatories by me subscribed are true.

(Signature of garnishee)

SUBSCRIBED and SWORN to before me this .... day of the month of .... of the year ....

2. The garnishee shall answer the interrogatories in writing upon oath or affirmation and submit his answers to the sheriff within the time required by the writ. ***The garnishee shall submit his answers to the judgment debtor within the same time.*** If the garnishee fails to do so, he shall be deemed in default.

Sec. 12. NRS 31.296 is hereby amended to read as follows:

31.296 1. Except as otherwise provided in subsection 3, if the garnishee indicates in his answer to garnishee interrogatories that he is the employer of the defendant, the writ of garnishment served on the garnishee shall be deemed to continue for 120 days or until the amount demanded in the writ is satisfied, whichever occurs earlier.

2. In addition to the fee set forth in NRS 31.270, a garnishee is entitled to a fee from the plaintiff of $3 per pay period, not to exceed $12 per month, for each withholding made of the defendant's earnings. This subsection does not apply to the first pay period in which the defendant's earnings are garnished.

3. If the defendant's employment by the garnishee is terminated before the writ of garnishment is satisfied, the garnishee:

(a) Is liable only for the amount of earned but unpaid, disposable earnings that are subject to garnishment.

(b) Shall provide the plaintiff or the plaintiff's attorney with the last known address of the defendant and the name of any new employer of the defendant, if known by the garnishee.

4. The judgment creditor who caused the writ of attachment to issue pursuant to NRS 31.013 shall prepare an accounting and provide a report to the judgment debtor, the sheriff and each garnishee every ~~[90]~~ 120 days which sets forth , without limitation, the amount ~~[still]~~ owed by the judgment debtor , the costs and fees allowed pursuant to NRS 18.160 and ~~[which lists]~~ any accrued interest and costs ~~[.]~~ on the judgment. The report must advise the judgment debtor of his right to request a hearing pursuant to NRS 18.110 to dispute any accrued interest, fee or other charge. The judgment creditor must submit this accounting with each subsequent application for writ made by the judgment creditor concerning the same debt.

Sec. 13. ~~[NRS 258.125 is hereby amended to read as follows:~~

~~258.125 1. Constables are entitled to the following fees for their services:~~

~~For serving a summons or other process by which a suit is commenced in civil cases $17~~

~~For summoning a jury before a justice of the peace 7~~

~~For taking a bond or undertaking 5~~

~~For serving an attachment against the property of a defendant 9~~

~~For serving subpoenas, for each witness 15~~

~~For a copy of any writ, process or order or other paper, when demanded or required by law, per folio 3~~

~~For drawing and executing every constable's deed, to be paid by the grantee, who must also pay for the acknowledgment thereof 20~~

~~For each certificate of sale of real property under execution 5~~

~~For levying any writ of execution or writ of garnishment, or executing an order of arrest in civil cases, or order for delivery of personal property, with traveling fees as for summons 9~~

~~For serving one notice required by law before the commencement of a proceeding for any type of eviction 26~~

~~For serving not fewer than 2 nor more than 10 such notices to the same location, each notice 20~~

~~For serving not fewer than 11 nor more than 24 such notices to the same location, each notice 17~~

~~For serving 25 or more such notices to the same location, each notice 15~~

~~For mileage in serving such a notice, for each mile necessarily and actually traveled in going only 2~~

~~But if two or more notices are served at the same general location during the same period, mileage may only be charged for the service of one notice.~~

~~For each service in a summary eviction, except service of any notice required by law before commencement of the proceeding, and for serving notice of and executing a writ of restitution 21~~
~~For making and posting notices, and advertising property for sale on execution, not to include the cost of publication in a newspaper 9~~
~~For each warrant lawfully executed 48~~
~~For mileage in serving summons, attachment, execution, order, venire, subpoena, notice, summary eviction, writ of restitution or other process in civil suits, for each mile necessarily and actually traveled, in going only $2~~
~~But when two or more persons are served in the same suit, mileage may only be charged for the most distant, if they live in the same direction.~~
~~For mileage in making a diligent but unsuccessful effort to serve a summons, attachment, execution, order, venire, subpoena or other process in civil suits, for each mile necessarily and actually traveled, in going only 2~~
~~But mileage may not exceed $20 for any unsuccessful effort to serve such process.~~

~~2. [A]~~ ***Except as otherwise provided in this section, a*** ~~constable is also entitled to receive:~~

~~(a) For receiving and taking care of property on execution, attachment or order, his actual necessary expenses, to be allowed by the court which issued the writ or order, upon the affidavit of the constable that the charges are correct and the expenses necessarily incurred.~~ ***Such expenses must not be allowed by the court unless the property is subsequently released to the judgment creditor.***

~~(b) For collecting all sums on execution or writ, to be charged against the defendant, on the first $3,500, 2 percent thereof, and on all amounts over that sum, one-half of 1 percent.~~

~~(c) For service in criminal cases, except for execution of warrants, the same fees as are allowed sheriffs for like services, to be allowed, audited and paid as are other claims against the county.~~

~~(d) For removing or causing the removal of, pursuant to NRS 487.230, a vehicle that has been abandoned on public property, $50.~~

~~3. Deputy sheriffs acting as constables are not entitled to retain for their own use any fees collected by them, but the fees must be paid into the county treasury on or before the fifth working day of the month next succeeding the month in which the fees were collected.~~

~~4. Constables shall, on or before the fifth working day of each month, account for and pay to the county treasurer all fees collected during the preceding month, except fees which may be retained as compensation.]~~ **(Deleted by amendment.)**

Sec. 14. NRS 258.230 is hereby amended to read as follows:

258.230 Except with respect to the ~~[fee]~~ ***fees*** described in ~~[paragraph]~~ ***paragraphs (a) and*** (d) of subsection 2 of NRS 258.125, all fees prescribed in this chapter shall be payable in advance, if demanded. If a constable shall not have received any or all of his fees, which may be due him for services rendered by him in any suit or proceedings, he may have execution therefor in his own name against the party or parties from whom they are due, to be issued from the court where the action is pending, upon the order of the justice of the peace or court upon affidavit filed.

Sec. 15. NRS 612.710 is hereby amended to read as follows:

612.710 Except as otherwise provided in NRS 31A.150:

1. Any assignment, pledge or encumbrance of any right to benefits which are or may become due or payable under this chapter is void, except for a voluntary assignment of benefits to satisfy an obligation to pay support for a child.

2. Benefits are exempt from levy, execution, attachment, or any other remedy provided for the collection of debt. Benefits received by any person ~~[, if they are not mingled with other money of the recipient,]~~ are exempt from any remedy for the collection of all debts, except debts incurred for necessaries furnished to the person or his spouse or dependents during the time when the person was unemployed.

3. Any other waiver of any exemption provided for in this section is void.

Sec. 16. NRS 21.114 is hereby repealed.

TEXT OF REPEALED SECTION

21.114 Sureties: Submission to jurisdiction of court; exceptions to sufficiency and justification.

1. By entering into any undertaking provided for in NRS 21.112, the sureties thereunder submit themselves to the jurisdiction of the court and irrevocably appoint the clerk of the court as agent upon whom any papers affecting liability on the undertaking may be served. Liability on such undertaking may be enforced on motion to the court without the necessity of an independent action. The motion and such reasonable notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known.

2. Exceptions to the sufficiency of the sureties and their justification may be had and taken in the same manner as upon an undertaking given in other cases under titles 2 and 3 of NRS. If they, or others in their place, fail to justify at the time and place appointed, the sheriff must release the property; but if no exception is taken within 5 days after notice of receipt of the undertaking, the judgment debtor shall be deemed to have waived any and all objections to the sufficiency of the sureties.

Assemblyman Segerblom moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 497.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 225.

AN ACT relating to the criminal justice system; providing for the collection and sharing of certain statistical data and information relating to the criminal justice system; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Department of Corrections and the Division of Parole and Probation of the Department of Public Safety to provide certain information to the Advisory Commission on the Administration of Justice and to assist the Commission in carrying out its statutory duties. (NRS 176.0127) **Section 1** of this bill requires the Central Repository for Nevada Records of Criminal History to: (1) compile and maintain records, reports and compilations of statistical data and information submitted by agencies of criminal justice within this State; (2) facilitate the efficient and timely exchange of necessary data, information, records, reports and compilations among the various agencies of criminal justice within this State; and (3) provide the Commission with any available statistical data, information and research requested by the Commission **.** ~~[and assist the Commission in the development of policies concerning criminal justice within this State.]~~

Section 3 of this bill requires the Department of Corrections to provide information and research to the Commission concerning rates of recidivism and the effectiveness of educational and vocational programs. **Section 4** of this bill requires each agency of criminal justice within this State that has such data or information in its possession to: (1) maintain records, reports and compilations of statistical data and information regarding domestic violence, specialty court programs, rates of recidivism, and the effectiveness and operation of educational and vocational programs for criminal offenders; and (2) submit such data and information to the Central Repository, which will provide the data and information to the Commission pursuant to **section 1** of this bill.

Section 5 of this bill: (1) requires the Court Administrator to assist the State Court System in collecting statistical data and other information and making reports relating to the operation of the criminal justice system in this State; and (2) deletes obsolete statutory language referring to a report that was required to be made to the Legislature in 2007.

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

Section 1. Chapter 176 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The Central Repository for Nevada Records of Criminal History shall:

(a) Compile and maintain ~~[all]~~ records, reports and compilations of statistical data and information submitted pursuant to NRS 179A.075.

(b) To facilitate the efficient and timely exchange of necessary data, information, records, reports and compilations, coordinate with ~~[all]~~ agencies of criminal justice within this State, including :~~[, without limitation:]~~

(1) State and local law enforcement agencies;

(2) Prosecutors ; ~~[and public defenders;]~~

(3) The Office of the Attorney General;

(4) The Judicial Branch of State Government;

(5) The Department of Corrections; and

(6) The Division.

(c) Provide the Commission with any available statistical data, information and research requested by the Commission . ~~[and assist the Commission in the development of policies concerning criminal justice within this State.]~~

Sec. 2. NRS 176.0121 is hereby amended to read as follows:

176.0121 As used in NRS 176.0121 to 176.0129, inclusive, ***and section 1 of this act,*** "Commission" means the Advisory Commission on the Administration of Justice.

Sec. 3. NRS 176.0127 is hereby amended to read as follows:

176.0127 1. ~~[The]~~ ***In addition to providing the statistical data and information required to be submitted pursuant to NRS 179A.075, the*** Department of Corrections shall:

(a) Provide the Commission with any available statistical information or research requested by the Commission and assist the Commission in the compilation and development of information requested by the Commission, including, but not limited to, information or research concerning the facilities and institutions of the Department of Corrections, the offenders who are or were within those facilities or institutions ***, rates of recidivism, the effectiveness of educational and vocational programs*** and the sentences which are being served or were served by those offenders;

(b) If requested by the Commission, make available to the Commission the use of the computers and programs which are owned by the Department of Corrections; and

(c) Provide the independent contractor retained by the Department of Administration pursuant to NRS 176.0129 with any available statistical information requested by the independent contractor for the purpose of performing the projections required by NRS 176.0129.

2. ~~[The]~~ ***In addition to providing the statistical data and information required to be submitted pursuant to NRS 179A.075, the*** Division shall:

(a) Provide the Commission with any available statistical information or research requested by the Commission and assist the Commission in the

compilation and development of information concerning sentencing, probation, parole and any offenders who are or were subject to supervision by the Division;

(b) If requested by the Commission, make available to the Commission the use of the computers and programs which are owned by the Division; and

(c) Provide the independent contractor retained by the Department of Administration pursuant to NRS 176.0129 with any available statistical information requested by the independent contractor for the purpose of performing the projections required by NRS 176.0129.

Sec. 4. NRS 179A.075 is hereby amended to read as follows:

179A.075 1. The Central Repository for Nevada Records of Criminal History is hereby created within the Records and Technology Division of the Department.

2. Each agency of criminal justice and any other agency dealing with crime or delinquency of children shall:

(a) Collect and maintain records, reports and compilations of statistical data required by the Department **.** ~~[; and]~~

(b) ***To the extent that the agency has such statistical data and information in its possession, maintain records, reports and compilations of statistical data and information concerning the following:***

(1) ~~*[Cases and reports involving domestic]*~~ ***Domestic violence as described in NRS 33.018;***

(2) ~~*[Cases referred to specialty]*~~ ***Specialty court programs as defined in NRS 176.0613;***

(3) Rates of recidivism of criminal offenders; and

(4) The effectiveness and operation of educational and vocational programs for criminal offenders, including ~~*[, without limitation,]*~~ ***any such programs for probationers, inmates in state and local correctional facilities, and parolees.***

(c) Submit the ***statistical data and*** information collected ***pursuant to paragraphs (a) and (b)*** to the Central Repository in the manner approved by the Director of the Department.

3. Each agency of criminal justice shall submit the information relating to records of criminal history that it creates or issues, and any information in its possession relating to the genetic markers of a biological specimen of a person who is convicted of an offense listed in subsection 4 of NRS 176.0913, to the Division. The information must be submitted to the Division:

(a) Through an electronic network;

(b) On a medium of magnetic storage; or

(c) In the manner prescribed by the Director of the Department,

➥ within the period prescribed by the Director of the Department. If an agency has submitted a record regarding the arrest of a person who is later determined by the agency not to be the person who committed the particular crime, the agency shall, immediately upon making that determination, so

notify the Division. The Division shall delete all references in the Central Repository relating to that particular arrest.

4. The Division shall, in the manner prescribed by the Director of the Department:

(a) Collect, maintain and arrange all information submitted to it relating to:

(1) Records of criminal history; and

(2) The genetic markers of a biological specimen of a person who is convicted of an offense listed in subsection 4 of NRS 176.0913.

(b) When practicable, use a record of the personal identifying information of a subject as the basis for any records maintained regarding him.

(c) Upon request, provide the information that is contained in the Central Repository to the State Disaster Identification Team of the Division of Emergency Management of the Department.

5. The Division may:

(a) Disseminate any information which is contained in the Central Repository to any other agency of criminal justice;

(b) Enter into cooperative agreements with federal and state repositories to facilitate exchanges of information that may be disseminated pursuant to paragraph (a); and

(c) Request of and receive from the Federal Bureau of Investigation information on the background and personal history of any person whose record of fingerprints the Central Repository submits to the Federal Bureau of Investigation and:

(1) Who has applied to any agency of the State of Nevada or any political subdivision thereof for a license which it has the power to grant or deny;

(2) With whom any agency of the State of Nevada or any political subdivision thereof intends to enter into a relationship of employment or a contract for personal services;

(3) Who has applied to any agency of the State of Nevada or any political subdivision thereof to attend an academy for training peace officers approved by the Peace Officers' Standards and Training Commission;

(4) For whom such information is required to be obtained pursuant to NRS 426.335 and 449.179; or

(5) About whom any agency of the State of Nevada or any political subdivision thereof has a legitimate need to have accurate personal information for the protection of the agency or the persons within its jurisdiction.

➥ To request and receive information from the Federal Bureau of Investigation concerning a person pursuant to this subsection, the Central Repository must receive the person's complete set of fingerprints from the agency or political subdivision and submit the fingerprints to the Federal Bureau of Investigation for its report.

6. The Central Repository shall:

(a) Collect and maintain records, reports and compilations of statistical data submitted by any agency pursuant to subsection 2.

(b) Tabulate and analyze all records, reports and compilations of statistical data received pursuant to this section.

(c) Disseminate to federal agencies engaged in the collection of statistical data relating to crime information which is contained in the Central Repository.

(d) Investigate the criminal history of any person who:

(1) Has applied to the Superintendent of Public Instruction for a license;

(2) Has applied to a county school district, charter school or private school for employment; or

(3) Is employed by a county school district, charter school or private school,

➥ and notify the superintendent of each county school district, the governing body of each charter school and the Superintendent of Public Instruction, or the administrator of each private school, as appropriate, if the investigation of the Central Repository indicates that the person has been convicted of a violation of NRS 200.508, 201.230, 453.3385, 453.339 or 453.3395, or convicted of a felony or any offense involving moral turpitude.

(e) Upon discovery, notify the superintendent of each county school district, the governing body of each charter school or the administrator of each private school, as appropriate, by providing the superintendent, governing body or administrator with a list of all persons:

(1) Investigated pursuant to paragraph (d); or

(2) Employed by a county school district, charter school or private school whose fingerprints were sent previously to the Central Repository for investigation,

➥ who the Central Repository's records indicate have been convicted of a violation of NRS 200.508, 201.230, 453.3385, 453.339 or 453.3395, or convicted of a felony or any offense involving moral turpitude since the Central Repository's initial investigation. The superintendent of each county school district, the governing body of a charter school or the administrator of each private school, as applicable, shall determine whether further investigation or action by the district, charter school or private school, as applicable, is appropriate.

(f) Investigate the criminal history of each person who submits fingerprints or has his fingerprints submitted pursuant to NRS 426.335, 449.176 or 449.179.

(g) On or before July 1 of each year, prepare and present to the Governor a printed annual report containing the statistical data relating to crime received during the preceding calendar year. Additional reports may be presented to the Governor throughout the year regarding specific areas of crime if they are approved by the Director of the Department.

(h) On or before July 1 of each year, prepare and submit to the Director of the Legislative Counsel Bureau for submission to the Legislature, or to the

Legislative Commission when the Legislature is not in regular session, a report containing statistical data about domestic violence in this State.

(i) Identify and review the collection and processing of statistical data relating to criminal justice and the delinquency of children by any agency identified in subsection 2, and make recommendations for any necessary changes in the manner of collecting and processing statistical data by any such agency.

7. The Central Repository may:

(a) In the manner prescribed by the Director of the Department, disseminate compilations of statistical data and publish statistical reports relating to crime or the delinquency of children.

(b) Charge a reasonable fee for any publication or special report it distributes relating to data collected pursuant to this section. The Central Repository may not collect such a fee from an agency of criminal justice, any other agency dealing with crime or the delinquency of children which is required to submit information pursuant to subsection 2 or the State Disaster Identification Team of the Division of Emergency Management of the Department. All money collected pursuant to this paragraph must be used to pay for the cost of operating the Central Repository.

(c) In the manner prescribed by the Director of the Department, use electronic means to receive and disseminate information contained in the Central Repository that it is authorized to disseminate pursuant to the provisions of this chapter.

8. As used in this section:

(a) ”Personal identifying information” means any information designed, commonly used or capable of being used, alone or in conjunction with any other information, to identify a person, including, without limitation:

(1) The name, driver’s license number, social security number, date of birth and photograph or computer-generated image of a person; and

(2) The fingerprints, voiceprint, retina image and iris image of a person.

(b) ”Private school” has the meaning ascribed to it in NRS 394.103.

Sec. 5. NRS 1.360 is hereby amended to read as follows:

1.360 Under the direction of the Supreme Court, the Court Administrator shall:

1. Examine the administrative procedures employed in the offices of the judges, clerks, court reporters and employees of all courts of this State and make recommendations, through the Chief Justice, for the improvement of those procedures;

2. Examine the condition of the dockets of the courts and determine the need for assistance by any court;

3. Make recommendations to and carry out the directions of the Chief Justice relating to the assignment of district judges where district courts are in need of assistance;

4. Develop a uniform system for collecting and compiling statistics and other data regarding the operation of the State Court System and transmit that

information to the Supreme Court so that proper action may be taken in respect thereto;

5. Prepare and submit a budget of state appropriations necessary for the maintenance and operation of the State Court System and make recommendations in respect thereto;

6. Develop procedures for accounting, internal auditing, procurement and disbursement for the State Court System;

7. Collect statistical and other data and make reports relating to the expenditure of all public money for the maintenance and operation of the State Court System and the offices connected therewith;

8. Compile statistics from the information required to be maintained by the clerks of the district courts pursuant to NRS 3.275 and make reports as to the cases filed in the district courts;

9. Formulate and submit to the Supreme Court recommendations of policies or proposed legislation for the improvement of the State Court System;

10. ***Assist the State Court System in collecting statistical data and other information and making reports relating to the operation of the criminal justice system in this State;***

11. On or before January 1 of each year, submit to the Director of the Legislative Counsel Bureau a written report compiling the information submitted to the Court Administrator pursuant to NRS 3.243, 4.175 and 5.045 during the immediately preceding fiscal year;

~~[11.]~~ ***12.*** On or before January 1 of each odd-numbered year, submit to the Director of the Legislative Counsel Bureau a written report concerning:

(a) The distribution of money deposited in the special account created pursuant to NRS 176.0613 to assist with funding and establishing specialty court programs;

(b) The current status of any specialty court programs to which money from the account was allocated since the last report; and

(c) Such other related information as the Court Administrator deems appropriate;

~~[12.]~~ ***13.*** On or before February 15 of each odd-numbered year, submit to the Governor and to the Director of the Legislative Counsel Bureau for transmittal to the next regular session of the Legislature a written report compiling the information submitted by clerks of courts to the Court Administrator pursuant to NRS 630.307 and 633.533 which includes only aggregate information for statistical purposes and excludes any identifying information related to a particular person;

~~[13. On or before February 15, 2007, submit to the Director of the Legislative Counsel Bureau for transmittal to the next regular session of the Legislature a written report concerning the effectiveness of participation in counseling sessions in a program for the treatment of persons who commit domestic violence ordered by a court pursuant to NRS 200.485 and the effect~~

~~of such counseling sessions on recidivism of the offenders who commit battery which constitutes domestic violence pursuant to NRS 33.018;]~~ and

14. Attend to such other matters as may be assigned by the Supreme Court or prescribed by law.

Sec. 6. **This act becomes effective on July 1, 2010.**

Assemblyman Segerblom moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Horne moved that Assembly Bill No. 502 be taken from the Second Reading File and placed on the Chief Clerk's desk.

Motion carried.

SECOND READING AND AMENDMENT

Assembly Bill No. 508.

Bill read second time.

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

Amendment No. 357.

AN ACT relating to housing; prohibiting the Housing Division of the Department of Business and Industry from adopting regulations that restrict or defer **more than a certain percentage of** the payment of profit and overhead to developers of certain projects under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law prohibits the Housing Division of the Department of Business and Industry from financing any low-income residential housing unless the Administrator of the Division makes certain findings. (NRS 319.260) ~~[This]~~ **Section 1 of this** bill provides that if the Division adopts regulations establishing a program for the financing of the lease, purchase or development of low-income multifamily housing, the regulations may establish the maximum amount of pro forma profit and overhead for a developer of a project, but the regulations must not restrict or require the deferral of **more than 50 percent of** the payment of profits and overhead to a developer of a project that is: (1) constructed, developed, financed or insured in whole or in part through any program established by the United States Department of Housing and Urban Development; and (2) secured by a performance bond. **Section 2 of this bill deletes a provision which requires that any remaining balance of a certain appropriation from the State General Fund to the Housing Division must be reverted to the State General Fund on or before September 18, 2009.**

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

Section 1. Chapter 319 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If the Division adopts regulations which establish a program for the financing of projects, the regulations must not include any provision which restricts or requires the deferral of more than 50 percent of the payment of profits and overhead to a developer of a project that is:

(a) Constructed, developed, financed or insured in whole or in part through any program established by the United States Department of Housing and Urban Development; and

(b) Secured by a performance bond,

➥ except that such regulations may establish the maximum amount of pro forma profit and overhead for a developer of a project as a percentage of the appraised value of the project.

2. As used in this section, "project" means a housing facility for residential use which consists of two or more dwelling units for occupancy by eligible tenants on a rental basis. The term includes property which is to be leased, purchased or developed for sites for multifamily housing and upon which the Division takes a security interest and records a regulatory agreement, whether the Division issues bonds, a mortgage loan or a letter of credit for the lease, purchase or development of the multifamily housing.

Sec. 2. **Section 3 of chapter 348, Statutes of Nevada 2007, at page 1657, is hereby amended to read as follows:**

Sec. 3. 1. There is hereby appropriated from the State General Fund to the Housing Division of the Department of Business and Industry the sum of $1,000,000 to provide grants to encourage the creation of employer-assisted housing programs.

2. The Housing Division shall adopt regulations to govern the provision of grants pursuant to subsection 1, which must include, without limitation, criteria for determining eligibility for such programs.

3. ~~[Any remaining balance of the appropriation made by subsection 1 must not be committed for expenditure after June 30, 2009, by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 18, 2009, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September 18, 2009.~~

~~4.]~~ As used in this section, "employer-assisted housing program" means a program for the provision of down-payment assistance, closing-cost assistance, reduced-interest mortgages, mortgage guarantees, rental subsidies or individual development account savings plans, or any combination thereof, to assist employees in securing affordable housing in this State.

Sec. 3. **1. This section and section 2 of this act become effective upon passage and approval.**

2. Section 1 of this act becomes effective on October 1, 2009.

Assemblyman Bobzien moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 513.

Bill read second time.

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

Amendment No. 281.

AN ACT relating to mortgage lending; requiring the licensing of a construction control as an escrow agent or agency; establishing education requirements for an escrow agent or agency; revising provisions relating to the jurisdiction of the Commissioner of Mortgage Lending; revising subpoena powers of the Commissioner; revising provisions relating to holders of a beneficial interest in a loan; eliminating the exemption of consumer finance companies from provisions relating to mortgage brokers, mortgage agents and mortgage bankers; revising provisions for the issuance of a certificate of exemption to a mortgage broker, mortgage agent or mortgage banker; requiring a mortgage broker to make additional disclosures under certain circumstances; revising provisions for the revocation of the license of a mortgage broker or mortgage agent; ~~[establishing provisions relating to hard money lenders;]~~ and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill requires a construction control to be licensed as an escrow agent or agency. **Sections 3 and 4** of this bill establish educational prerequisites and continuing education requirements for an escrow agent or agency. **Sections 5, 9 and 15** of this bill provide that the jurisdiction and authority of the Commissioner of Mortgage Lending is unaffected by the expiration or voluntary surrender of a license as an escrow agent or agency, mortgage broker, mortgage agent or mortgage banker.

Sections 6, 12 and 18 of this bill provide that the Commissioner may subpoena documents without also subpoenaing the custodian of such documents. (NRS 645A.060, 645B.070, 645E.310)

Section 8 of this bill provides that if the beneficial interest in a loan for real property belongs to more than one natural person, the holders of 51 percent or more of the ~~[beneficial interests of record]~~ **outstanding principal balance** may act on behalf of all the holders of the beneficial interests of record.

Sections 10 and 16 of this bill eliminate the exemption of consumer finance companies from licensing and other requirements governing mortgage brokers, mortgage agents and mortgage bankers. (NRS 645B.015, 645E.150) **Sections 11 and 17 of this bill** revise existing law by requiring proof of the right to transact mortgage loans, if applicable, in another

jurisdiction as a condition to obtaining an exemption to licensing and other provisions governing mortgage brokers, agents and bankers. (NRS 645B.016, 645E.160)

Existing law requires a mortgage broker to include a servicing fee in any loan for which he engages in activity as a mortgage broker. (NRS 645B.305) **Section 13** of this bill limits the requirement to only such loans in which a private investor has acquired a beneficial interest. **Section 13** also requires a mortgage broker to make additional disclosures pertaining to fees earned by the mortgage broker and any impact such fees may have on the terms of the loan.

Section 14 of this bill revises existing law to provide that the Commissioner has the discretionary authority, rather than a mandatory obligation, to revoke the license of a mortgage broker or mortgage agent under certain circumstances. (NRS 645B.690)

~~[Section 19 of this bill prohibits hard money lenders from engaging in certain activities.]~~

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

Section 1. Chapter 627 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A construction control must be licensed pursuant to chapter 645A of NRS as an escrow agent or agency.

2. The Division of Mortgage Lending of the Department of Business and Industry may adopt regulations as are necessary to carry out the provisions of this section.

Sec. 2. Chapter 645A of NRS is hereby amended by adding thereto the provisions set forth as sections 3, 4 and 5 of this act.

Sec. 3. ***1. In addition to any other requirement, an applicant for an original license as an escrow agent or agency must furnish proof satisfactory to the Commissioner of the successful completion of a course of instruction in the principles, practices, procedures, law and ethics of escrows, which course may be an extension or correspondence course offered by the Nevada System of Higher Education, by any other accredited college or university or by any other college or school approved by the Commissioner.***

2. An applicant for a license as an escrow agent or agency pursuant to NRS 645A.020 must meet the educational prerequisites required pursuant to this section not later than the date on which his application is received by the Office of the Commissioner.

3. The Commissioner shall adopt regulations setting forth standards for the educational prerequisites required pursuant to this section. The regulations must address standards for instructors, the scope and content of the instruction, required hours of instruction and such other criteria as the Commissioner considers necessary.

Sec. 4. ***1. The Commissioner shall adopt regulations that prescribe standards for the continuing education of persons licensed pursuant to this chapter.***

2. The standards adopted pursuant to subsection 1 must:

(a) Permit alternative subject material appropriate for specialized areas of practice and alternative sources of programs to ensure availability throughout the State and throughout the year;

(b) Set forth procedures pursuant to which the Commissioner may qualify providers to offer courses of continuing education, including, without limitation, generally accredited educational institutions, private vocational schools, educational programs and seminars of professional societies and organizations and other organized educational programs on technical subjects;

(c) Set forth procedures pursuant to which the Commissioner may qualify those continuing education courses that he determines address the appropriate subject matter; and

(d) Set forth required hours of instruction and such other criteria as the Commissioner considers necessary.

3. Subject to the provisions of this section, the Commissioner has exclusive authority to determine which providers and courses may qualify for the purposes of continuing education under this chapter.

Sec. 5. ***The expiration or revocation of a license of an escrow agent or agency by operation of law or by order or decision of the Commissioner or a court of competent jurisdiction, or the voluntary surrender of a license, does not:***

1. Prohibit the Commissioner from initiating or continuing an investigation of, or action or disciplinary proceeding against, the escrow agent or agency as authorized pursuant to the provisions of this chapter or the regulations adopted pursuant thereto; or

2. Prevent the imposition or collection of any fine or penalty authorized pursuant to the provisions of this chapter or the regulations adopted pursuant thereto against the escrow agent or agency.

Sec. 6. NRS 645A.060 is hereby amended to read as follows:

645A.060 1. In the conduct of any examination, investigation or hearing, the Commissioner may:

(a) Compel the attendance of any person by subpoena.

(b) ***Compel the production of any document by subpoena.***

(c) Administer oaths.

~~[(c)]~~ ***(d)*** Examine any person under oath concerning the business and conduct of affairs of any person subject to the provisions of this chapter, and in connection therewith require the production of any books, records or papers relevant to the inquiry.

2. Every person subpoenaed pursuant to the provisions of this section who willfully refuses or willfully neglects to appear at the time and place named in the subpoena or to produce books, records or papers required by the

Commissioner, or who refuses to be sworn or answer as a witness, is guilty of a misdemeanor.

Sec. 7. Chapter 645B of NRS is hereby amended by adding thereto the provisions set forth as sections 8 and 9 of this act.

Sec. 8. ***1. Except as otherwise provided by law*** ~~[,]~~ ***or by agreement between the parties and regardless of the date the interests were created, if the beneficial interest in a loan belongs to more than one natural person, the holders of 51 percent or more of the*** ~~[beneficial interests of record]~~ ***outstanding principal balance may act on behalf of all the holders of the beneficial interests of record on matters which require the action of the holders of the beneficial interests in the loan, including, without limitation:***

(a) The designation of a mortgage broker or mortgage agent, servicing agent or any other person to act on behalf of all the holders of the beneficial interests of record;

(b) The foreclosure of the property for which the loan was made;

(c) The sale, encumbrance or lease of real property owned by the holders resulting from a foreclosure or the receipt of a deed in lieu of a foreclosure in full satisfaction of a loan;

(d) The release of any obligation under a loan in return for an interest in equity in the real property or, if the loan was made to a person other than a natural person, an interest in equity of that entity; and

(e) The modification or restructuring of any term of the loan, deed of trust or other document relating to the loan, including, without limitation, changes to the maturity date, interest rate and the acceptance of payment of less than the full amount of the loan and any accrued interest in full satisfaction of the loan.

2. Any action which is taken pursuant to subsection 1 must be in writing.

3. The provisions of this section do not apply to a transaction involving two investors with equal interests.

Sec. 9. ***The expiration or revocation of a license of a mortgage broker or mortgage agent by operation of law or by order or decision of the Commissioner or a court of competent jurisdiction, or the voluntary surrender of a license, does not:***

1. Prohibit the Commissioner from initiating or continuing an investigation of, or action or disciplinary proceeding against, the mortgage broker or mortgage agent as authorized pursuant to the provisions of this chapter or the regulations adopted pursuant thereto; or

2. Prevent the imposition or collection of any fine or penalty authorized pursuant to the provisions of this chapter or the regulations adopted pursuant thereto against the mortgage broker or mortgage agent.

Sec. 10. NRS 645B.015 is hereby amended to read as follows:

645B.015 Except as otherwise provided in NRS 645B.016, the provisions of this chapter do not apply to:

1. Any person doing business under the laws of this State, any other state or the United States relating to banks, savings banks, trust companies, savings and loan associations, ~~[consumer finance companies,]~~ industrial loan companies, credit unions, thrift companies or insurance companies, including, without limitation, a subsidiary or a holding company of such a bank, company, association or union.

2. A real estate investment trust, as defined in 26 U.S.C. § 856, unless the business conducted in this State is not subject to supervision by the regulatory authority of the other jurisdiction, in which case licensing pursuant to this chapter is required.

3. An employee benefit plan, as defined in 29 U.S.C. § 1002(3), if the loan is made directly from money in the plan by the plan's trustee.

4. An attorney at law rendering services in the performance of his duties as an attorney at law.

5. A real estate broker rendering services in the performance of his duties as a real estate broker.

6. Any person doing any act under an order of any court.

7. Any one natural person, or husband and wife, who provides money for investment in loans secured by a lien on real property, on his own account, unless such a person makes a loan secured by a lien on real property using his own money and assigns all or a part of his interest in the loan to another person, other than his spouse or child, within 5 years after the date on which the loan is made or the deed of trust is recorded, whichever occurs later.

8. Agencies of the United States and of this State and its political subdivisions, including the Public Employees' Retirement System.

9. A seller of real property who offers credit secured by a mortgage of the property sold.

Sec. 11. NRS 645B.016 is hereby amended to read as follows:

645B.016 Except as otherwise provided in subsection 2 and NRS 645B.690:

1. A person who claims an exemption from the provisions of this chapter pursuant to subsection 1 of NRS 645B.015 must:

(a) File a written application for a certificate of exemption with the Office of the Commissioner;

(b) Pay the fee required pursuant to NRS 645B.050;

(c) Include with the written application satisfactory proof that the person meets the requirements of subsection 1 of NRS 645B.015; and

(d) Provide evidence to the Commissioner that the person is duly licensed to conduct his business ***, including, if applicable, the right to transact mortgage loans,*** and such license is in good standing pursuant to the laws of this State, any other state or the United States.

2. The provisions of subsection 1 do not apply to the extent preempted by federal law.

3. The Commissioner may require a person who claims an exemption from the provisions of this chapter pursuant to subsections 2 to 9, inclusive, of NRS 645B.015 to:

(a) File a written application for a certificate of exemption with the Office of the Commissioner;

(b) Pay the fee required pursuant to NRS 645B.050; and

(c) Include with the written application satisfactory proof that the person meets the requirements of at least one of those exemptions.

4. A certificate of exemption expires automatically if, at any time, the person who claims the exemption no longer meets the requirements of at least one exemption set forth in the provisions of NRS 645B.015.

5. If a certificate of exemption expires automatically pursuant to this section, the person shall not provide any of the services of a mortgage broker or mortgage agent or otherwise engage in, carry on or hold himself out as engaging in or carrying on the business of a mortgage broker or mortgage agent unless the person applies for and is issued:

(a) A license as a mortgage broker or mortgage agent, as applicable, pursuant to this chapter; or

(b) Another certificate of exemption.

6. The Commissioner may impose upon a person who is required to apply for a certificate of exemption or who holds a certificate of exemption an administrative fine of not more than $10,000 for each violation that he commits, if the person:

(a) Has knowingly made or caused to be made to the Commissioner any false representation of material fact;

(b) Has suppressed or withheld from the Commissioner any information which the person possesses and which, if submitted by him, would have rendered the person ineligible to hold a certificate of exemption; or

(c) Has violated any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the Commissioner that applies to a person who is required to apply for a certificate of exemption or who holds a certificate of exemption.

Sec. 12. NRS 645B.070 is hereby amended to read as follows:

645B.070 1. In the conduct of any examination, periodic or special audit, investigation or hearing, the Commissioner may:

(a) Compel the attendance of any person by subpoena.

(b) ***Compel the production of any document by subpoena.***

(c) Administer oaths.

~~[(c)]~~ ***(d)*** Examine any person under oath concerning the business and conduct of affairs of any person subject to the provisions of this chapter and in connection therewith require the production of any books, records or papers relevant to the inquiry.

2. Any person subpoenaed under the provisions of this section who willfully refuses or willfully neglects to appear at the time and place named in the subpoena or to produce books, records or papers required by the

Commissioner, or who refuses to be sworn or answer as a witness, is guilty of a misdemeanor and shall be punished as provided in NRS 645B.950.

3. In addition to the authority to recover attorney's fees and costs pursuant to any other statute, the Commissioner may assess against and collect from a person all costs, including, without limitation, reasonable attorney's fees, that are attributable to any examination, periodic or special audit, investigation or hearing that is conducted to examine or investigate the conduct, activities or business of the person pursuant to this chapter.

Sec. 13. NRS 645B.305 is hereby amended to read as follows:

645B.305 A mortgage broker shall ensure that each loan secured by a lien on real property for which he engages in activity as a mortgage broker ***:***

1. Includes a disclosure:

(a) Describing, in a specific dollar amount, all fees earned by the mortgage broker;

(b) Explaining which party is responsible for the payment of the fees described in paragraph (a); and

(c) Explaining the probable impact the fees described in paragraph (a) may have on the terms of the loan, including, without limitation, the interest rates.

2. If a private investor has acquired a beneficial interest in the loan, includes a fee for servicing the loan which must be specified in the loan. The fee must be in an amount reasonably necessary to pay the cost of servicing the loan.

Sec. 14. NRS 645B.690 is hereby amended to read as follows:

645B.690 1. If a person offers or provides any of the services of a mortgage broker or mortgage agent or otherwise engages in, carries on or holds himself out as engaging in or carrying on the business of a mortgage broker or mortgage agent and, at the time:

(a) The person was required to have a license pursuant to this chapter and the person did not have such a license; or

(b) The person's license was suspended or revoked pursuant to this chapter,

➥ the Commissioner shall impose upon the person an administrative fine of not more than $10,000 for each violation and, if the person has a license, the Commissioner ~~[shall]~~ ***may*** revoke it.

2. If a mortgage broker violates any provision of subsection 1 of NRS 645B.080 and the mortgage broker fails, without reasonable cause, to remedy the violation within 20 business days after being ordered by the Commissioner to do so or within such later time as prescribed by the Commissioner, or if the Commissioner orders a mortgage broker to provide information, make a report or permit an examination of his books or affairs pursuant to this chapter and the mortgage broker fails, without reasonable cause, to comply with the order within 20 business days or within such later time as prescribed by the Commissioner, the Commissioner shall:

(a) Impose upon the mortgage broker an administrative fine of not more than $10,000 for each violation;

(b) Suspend or revoke the license of the mortgage broker; and

(c) Conduct a hearing to determine whether the mortgage broker is conducting business in an unsafe and injurious manner that may result in danger to the public and whether it is necessary for the Commissioner to take possession of the property of the mortgage broker pursuant to NRS 645B.630.

Sec. 15. Chapter 645E of NRS is hereby amended by adding thereto a new section to read as follows:

The expiration or revocation of a license of a mortgage banker by operation of law or by order or decision of the Commissioner or a court of competent jurisdiction, or the voluntary surrender of a license, does not:

1. Prohibit the Commissioner from initiating or continuing an investigation of, or action or disciplinary proceeding against, the mortgage banker as authorized pursuant to the provisions of this chapter or the regulations adopted pursuant thereto; or

2. Prevent the imposition or collection of any fine or penalty authorized pursuant to the provisions of this chapter or the regulations adopted pursuant thereto against the mortgage banker.

Sec. 16. NRS 645E.150 is hereby amended to read as follows:

645E.150 Except as otherwise provided in NRS 645E.160, the provisions of this chapter do not apply to:

1. Any person doing business under the laws of this State, any other state or the United States relating to banks, savings banks, trust companies, savings and loan associations, ~~[consumer finance companies,]~~ industrial loan companies, credit unions, thrift companies or insurance companies, including, without limitation, a subsidiary or a holding company of such a bank, company, association or union.

2. A real estate investment trust, as defined in 26 U.S.C. § 856, unless the business conducted in this State is not subject to supervision by the regulatory authority of the other jurisdiction, in which case licensing pursuant to this chapter is required.

3. An employee benefit plan, as defined in 29 U.S.C. § 1002(3), if the loan is made directly from money in the plan by the plan's trustee.

4. An attorney at law rendering services in the performance of his duties as an attorney at law.

5. A real estate broker rendering services in the performance of his duties as a real estate broker.

6. Any person doing any act under an order of any court.

7. Any one natural person, or husband and wife, who provides money for investment in loans secured by a lien on real property, on his own account, unless such a person makes a loan secured by a lien on real property using his own money and assigns all or a part of his interest in the loan to another

person, other than his spouse or child, within 5 years after the date on which the loan is made or the deed of trust is recorded, whichever occurs later.

8. Agencies of the United States and of this State and its political subdivisions, including the Public Employees' Retirement System.

9. A seller of real property who offers credit secured by a mortgage of the property sold.

Sec. 17. NRS 645E.160 is hereby amended to read as follows:

645E.160 1. Except as otherwise provided in subsection 2, a person who claims an exemption from the provisions of this chapter pursuant to subsection 1 of NRS 645E.150 must:

(a) File a written application for a certificate of exemption with the Office of the Commissioner;

(b) Pay the fee required pursuant to NRS 645E.280;

(c) Include with the written application satisfactory proof that the person meets the requirements of subsection 1 of NRS 645E.150; and

(d) Provide evidence to the Commissioner that the person is duly licensed to conduct his business ***, including, if applicable, the right to transact mortgage loans,*** and such license is in good standing pursuant to the laws of this State, any other state or the United States.

2. The provisions of subsection 1 do not apply to the extent preempted by federal law.

3. The Commissioner may require a person who claims an exemption from the provisions of this chapter pursuant to subsections 2 to 9, inclusive, of NRS 645E.150 to:

(a) File a written application for a certificate of exemption with the Office of the Commissioner;

(b) Pay the fee required pursuant to NRS 645E.280; and

(c) Include with the written application satisfactory proof that the person meets the requirements of at least one of those exemptions.

4. A certificate of exemption expires automatically if, at any time, the person who claims the exemption no longer meets the requirements of at least one exemption set forth in the provisions of NRS 645E.150.

5. If a certificate of exemption expires automatically pursuant to this section, the person shall not provide any of the services of a mortgage banker or otherwise engage in, carry on or hold himself out as engaging in or carrying on the business of a mortgage banker unless the person applies for and is issued:

(a) A license as a mortgage banker pursuant to this chapter; or

(b) Another certificate of exemption.

6. The Commissioner may impose upon a person who is required to apply for a certificate of exemption or who holds a certificate of exemption an administrative fine of not more than $10,000 for each violation that he commits, if the person:

(a) Has knowingly made or caused to be made to the Commissioner any false representation of material fact;

(b) Has suppressed or withheld from the Commissioner any information which the person possesses and which, if submitted by him, would have rendered the person ineligible to hold a certificate of exemption; or

(c) Has violated any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the Commissioner that applies to a person who is required to apply for a certificate of exemption or who holds a certificate of exemption.

Sec. 18. NRS 645E.310 is hereby amended to read as follows:

645E.310 1. In the conduct of any examination, periodic or special audit, investigation or hearing, the Commissioner may:

(a) Compel the attendance of any person by subpoena.

(b) ***Compel the production of any document by subpoena.***

(c) Administer oaths.

~~[(c)]~~ ***(d)*** Examine any person under oath concerning the business and conduct of affairs of any person subject to the provisions of this chapter and, in connection therewith, require the production of any books, records or papers relevant to the inquiry.

2. Any person subpoenaed under the provisions of this section who willfully refuses or willfully neglects to appear at the time and place named in the subpoena or to produce books, records or papers required by the Commissioner, or who refuses to be sworn or answer as a witness, is guilty of a misdemeanor.

3. In addition to the authority to recover attorney's fees and costs pursuant to any other statute, the Commissioner may assess against and collect from a person all costs, including, without limitation, reasonable attorney's fees, that are attributable to any examination, periodic or special audit, investigation or hearing that is conducted to examine or investigate the conduct, activities or business of the person pursuant to this chapter.

Sec. 19. ~~[Chapter 645F of NRS is hereby amended by adding thereto a new section to read as follows:~~

~~***1. A hard money lender shall not:***~~

~~***(a) Service or arrange any hard money loan in which the hard money lender owns a beneficial interest; or***~~

~~***(b) Invest or otherwise acquire a beneficial interest in any hard money loan if the hard money lender owns or controls an interest in:***~~

~~***(1) The real property securing the hard money loan; or***~~

~~***(2) Any other loan also secured by the real property which secures the hard money loan.***~~

~~***2. As used in this section:***~~

~~***(a) "Hard money lender" means any person who makes or offers to make a hard money loan.***~~

~~***(b) "Hard money loan" means a loan which is secured by the value of the borrower's real property and which is issued with minimal or no consideration of the borrower's creditworthiness, including, without limitation, short-term bridge loans.***~~

~~*3. The Commissioner may adopt any regulations necessary to carry out the provisions of this section.]*~~ **(Deleted by amendment.)**

Sec. 20. **Chapter 645F of NRS is hereby amended by adding thereto a new section to read as follows:**

The Commissioner shall adopt regulations establishing guidelines and limitations for the servicing or arranging of loans of which an investor has ownership or in which an investor has a beneficial interest.

Sec. 21. **1. This section and sections 1, 2 and 4 to 20, inclusive, of this act become effective upon passage and approval.**

2. Section 3 of this act becomes effective:

(a) On January 1, 2011, for the purposes of educational qualifications of escrow agents or agencies; and

(b) Upon passage and approval for all other purposes.

Assemblyman Conklin moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 515.

Bill read second time.

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

Amendment No. 444.

SUMMARY— ~~[Requires policies of health insurance and contracts for health care services providing coverage for treatment by certain professionals to also cover treatment by interns.]~~ **Makes various changes relating to the provision of and reimbursement for certain services to assist families.** (BDR 57-1175)

AN ACT relating to ~~[mental health;]~~ **domestic relations;** requiring policies of health insurance and contracts for health care services providing coverage for treatment by licensed marriage and family therapists or clinical social workers to also cover treatment by interns; requiring interest and income earned on money in the Account for Aid for Victims of Domestic Violence to be credited to the Account; **requiring social worker interns to make certain disclosures before providing services to a client;** and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Sections 1-8 of this bill provide that if certain policies of health insurance or contracts for health care services provide coverage for treatment by licensed marriage and family therapists or clinical social workers, that coverage will also include treatment by interns.

Existing law requires a marriage and family therapist intern to inform a client that he is an intern before providing any services to the client. (NRS 641A.2876) Section 10 of this bill similarly requires a social worker intern to inform a client that he is an intern before providing any social work services to the client.

Section 9 of this bill provides that interest and income earned on money in the Account for Aid for Victims of Domestic Violence to be credited to the Account.

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

Section 1. NRS 689A.0483 is hereby amended to read as follows:

689A.0483 If any policy of health insurance provides coverage for treatment of an illness which is within the authorized scope of practice of a licensed marriage and family therapist or licensed clinical professional counselor, the insured is entitled to reimbursement for treatment by ~~[a]~~ ***:***

1. ***A*** marriage and family therapist ~~[or]~~ ***;***

2. ***A*** clinical professional counselor ***; or***

3. A marriage and family therapist intern who is working under the direct supervision of an approved supervisor as defined in NRS 641A.025 and,

➥ who is licensed pursuant to chapter 641A of NRS.

Sec. 2. NRS 689A.0485 is hereby amended to read as follows:

689A.0485 ***1.*** If any policy of health insurance provides coverage for treatment of an illness which is within the authorized scope of the practice of a licensed associate in social work, social worker, independent social worker or clinical social worker, the insured is entitled to reimbursement for treatment by an associate in social work, social worker, independent social worker or clinical social worker who is licensed pursuant to chapter 641B of NRS ~~[.]~~ ***or a social worker intern.***

2. For the purposes of this section, "social worker intern" means an applicant for licensure:

(a) As an independent social worker pursuant to chapter 641B of NRS who has not yet completed the requirements of paragraph (b) of subsection 1 of NRS 641B.230; or

(b) As a clinical social worker pursuant to chapter 641B of NRS who has not yet completed the requirements of paragraph (b) of subsection 1 of NRS 641B.240,

➥ ***and who is working under the direct supervision of a qualified social worker in postgraduate social work approved by the Board of Examiners for Social Workers.***

Sec. 3. NRS 689B.0383 is hereby amended to read as follows:

689B.0383 If any policy of group health insurance provides coverage for treatment of an illness which is within the authorized scope of practice of a licensed marriage and family therapist or licensed clinical professional counselor, the insured is entitled to reimbursement for treatment by ~~[a]~~ ***:***

1. ***A*** marriage and family therapist ~~[or]~~ ***;***

2. ***A*** clinical professional counselor ***; or***

3. A marriage and family therapist intern who is working under the direct supervision of an approved supervisor as defined in NRS 641A.025 and,

➥ who is licensed pursuant to chapter 641A of NRS.

Sec. 4. NRS 689B.0385 is hereby amended to read as follows:

689B.0385 ***1.*** If any policy of group health insurance provides coverage for treatment of an illness which is within the authorized scope of the practice of a licensed associate in social work, social worker, independent social worker or clinical social worker, the insured is entitled to reimbursement for treatment by an associate in social work, social worker, independent social worker or clinical social worker who is licensed pursuant to chapter 641B of NRS ~~[.]~~ ***or a social worker intern.***

2. For the purposes of this section, "social worker intern" means an applicant for licensure:

(a) As an independent social worker pursuant to chapter 641B of NRS who has not yet completed the requirements of paragraph (b) of subsection 1 of NRS 641B.230; or

(b) As a clinical social worker pursuant to chapter 641B of NRS who has not yet completed the requirements of paragraph (b) of subsection 1 of NRS 641B.240,

➥ ***and who is working under the direct supervision of a qualified social worker in postgraduate social work approved by the Board of Examiners for Social Workers.***

Sec. 5. NRS 695B.1973 is hereby amended to read as follows:

695B.1973 If any contract for hospital or medical service provides coverage for treatment of an illness which is within the authorized scope of practice of a licensed marriage and family therapist or licensed clinical professional counselor, the insured is entitled to reimbursement for treatment by ~~[a]~~ ***:***

1. A marriage and family therapist ~~[or]~~ ***;***

2. A clinical professional counselor ***; or***

3. A marriage and family therapist intern who is working under the direct supervision of an approved supervisor as defined in NRS 641A.025 and,

➥ who is licensed pursuant to chapter 641A of NRS.

Sec. 6. NRS 695B.1975 is hereby amended to read as follows:

695B.1975 ***1.*** If any contract for hospital or medical service provides coverage for treatment of an illness which is within the authorized scope of the practice of a licensed associate in social work, social worker, independent social worker or clinical social worker, the insured is entitled to reimbursement for treatment by an associate in social work, social worker, independent social worker or clinical social worker who is licensed pursuant to chapter 641B of NRS ~~[.]~~ ***or a social worker intern.***

2. For the purposes of this section, "social worker intern" means an applicant for licensure:

(a) As an independent social worker pursuant to chapter 641B of NRS who has not yet completed the requirements of paragraph (b) of subsection 1 of NRS 641B.230; or

(b) As a clinical social worker pursuant to chapter 641B of NRS who has not yet completed the requirements of paragraph (b) of subsection 1 of NRS 641B.240,

➥ and who is working under the direct supervision of a qualified social worker in postgraduate social work approved by the Board of Examiners for Social Workers.

Sec. 7. NRS 695C.1773 is hereby amended to read as follows:

695C.1773 If any evidence of coverage provides coverage for treatment of an illness which is within the authorized scope of practice of a licensed marriage and family therapist or licensed clinical professional counselor, the insured is entitled to reimbursement for treatment by ~~[a]~~ ***:***

1. ***A*** marriage and family therapist ~~[or]~~ ***;***

2. ***A*** clinical professional counselor ***; or***

3. A marriage and family therapist intern who is working under the direct supervision of an approved supervisor as defined in NRS 641A.025 and,

➥ who is licensed pursuant to chapter 641A of NRS.

Sec. 8. NRS 695C.1775 is hereby amended to read as follows:

695C.1775 ***1.*** If any evidence of coverage provides coverage for treatment of an illness which is within the authorized scope of the practice of a licensed associate in social work, social worker, independent social worker or clinical social worker, the insured is entitled to reimbursement for treatment by an associate in social work, social worker, independent social worker or clinical social worker who is licensed pursuant to chapter 641B of NRS ~~[.]~~ ***or a social worker intern.***

2. For the purposes of this section, "social worker intern" means an applicant for licensure:

(a) As an independent social worker pursuant to chapter 641B of NRS who has not yet completed the requirements of paragraph (b) of subsection 1 of NRS 641B.230; or

(b) As a clinical social worker pursuant to chapter 641B of NRS who has not yet completed the requirements of paragraph (b) of subsection 1 of NRS 641B.240,

➥ and who is working under the direct supervision of a qualified social worker in postgraduate social work approved by the Board of Examiners for Social Workers.

Sec. 9. NRS 217.440 is hereby amended to read as follows:

217.440 1. An Account for Aid for Victims of Domestic Violence is hereby created in the State General Fund. The Account must be administered by the Administrator of the Division.

2. ***The interest and income earned on the money in the Account for Aid for Victims of Domestic Violence, after deducting any applicable charges, must be credited to the Account.***

3. Any nonprofit organization in the State which is able to meet the requirements specified in subsection 7 of NRS 217.420 may apply for a grant from the Account for Aid for Victims of Domestic Violence.

~~[3.]~~ ***4.*** An application for a grant must be received by the Division before April 1 preceding the fiscal year for which the grant is sought.

Sec. 10. **Chapter 641B of NRS is hereby amended by adding thereto a new section to read as follows:**

1. A social worker intern shall, before providing any social work services to a client:

(a) Inform the client that he is a social worker intern and is practicing under the supervision of a qualified social worker in postgraduate social work who has been approved by the Board; and

(b) Provide to the client the name of his approved supervisor.

2. A violation of the provisions of subsection 1 is grounds for initiating disciplinary action or for denying licensure.

3. For the purposes of this section, "social worker intern" means an applicant for licensure:

(a) As an independent social worker who has not yet completed the requirements of paragraph (b) of subsection 1 of NRS 641B.230; or

(b) As a clinical social worker who has not yet completed the requirements of paragraph (b) of subsection 1 of NRS 641B.240,

↵ and who is working under the direct supervision of a qualified social worker in postgraduate social work approved by the Board.

~~[Sec. 10.]~~ ***Sec. 11.*** This act becomes effective on July 1, 2009.

Assemblyman Conklin moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 65.

Bill read second time and ordered to third reading.

GENERAL FILE AND THIRD READING

Assembly Bill No. 73.

Bill read third time.

The following amendment was proposed by the Assemblymen Carpenter, Claborn, and Mastroluca:

Amendment No. 138.

AN ACT relating to watercraft; revising the requirements for the operation of a vessel towing a person; deleting provisions governing certain equipment required on certain motorboats; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires a person who operates a boat that is towing a person on water skis or another device to be at least 14 years of age, or at least 12 years of age as long as there is a passenger on the boat who is at least 21 years of age and who is in a position to supervise. The skier must also be observed by another person on the boat. The observer must be at least 12 years of age, or at least 10 years of age as long as there is a passenger on the boat who is at least 21 years of age. (NRS 488.570) **Section 3** of this bill ~~[removes the authority for a person who is 12 or 13 years of age to operate]~~ **provides that a person who operates** such a boat ~~[, and]~~ **must be at least 16 years of age, or at least 14 years of age as long as there is a passenger on the boat who is at least 18 years of age and who is in a position to supervise the operator. Section 3** also ~~[removes the authority for]~~ **provides that** a person who is ~~[10 or 11]~~ **at least 14** years of age ~~[to]~~ **, or at least 12 years of age as long as there is a passenger on the boat who is at least 18 years of age, may** act as the observer of the ~~[operator of such a boat.]~~ **person being towed.**

Section 4 of this bill repeals a provision which requires certain motorboats to be equipped with an efficient bell or whistle. (NRS 488.198)

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

Section 1. NRS 488.295 is hereby amended to read as follows:

488.295 1. The owner of a boat livery shall keep a record of the name and address of the person or persons hiring any vessel which is designed or permitted by him to be operated as a motorboat, the identification number thereof, ~~[and]~~ the departure date and time, and the expected time of return. The record ~~[shall]~~ ***must*** be preserved for at least 6 months.

2. The owner of a boat livery or his agent or employee shall not permit any motorboat, or any vessel designed or permitted by him to be operated as a motorboat, to depart from his premises unless it has been provided, either by owner or renter, with the equipment required by NRS 488.187, 488.193 ~~[, 488.198]~~ and 488.540 and any regulations ~~[made]~~ ***adopted*** pursuant thereto.

Sec. 2. NRS 488.540 is hereby amended to read as follows:

488.540 1. The Commission may establish and maintain for the operation of vessels on the waters of this State pilot rules in conformity with the pilot rules contained in ~~[the]~~ federal navigation laws or the Navigation Rules promulgated by the United States Coast Guard.

2. A person shall operate a vessel in this State in conformance with the pilot rules adopted by the Commission.

3. The operator of any vessel in this State shall maintain a proper lookout for other vessels, obstructions or hazards. An operator of a vessel who fails to maintain a proper lookout and causes injury to another person or property damage to another vessel is guilty of a misdemeanor.

4. A person shall not operate or give permission for the operation of a vessel which is not equipped as required by this section and NRS 488.185, 488.187 ~~[,]~~ ***and*** 488.193 **.** ~~[and 488.198.]~~

Sec. 3. NRS 488.570 is hereby amended to read as follows:

488.570 1. A person shall not operate a vessel on any waters of this State towing a person on water skis, a surfboard, an inflatable device or any similar device unless the operator :

(a) Is ~~*[is]*~~ at least ~~[14]~~ ***16*** years of age ~~*[.]*~~ ; or

(b) Is at least ~~[12]~~ ***14*** years of age, if a passenger in the vessel is a person who is ~~[21]~~ ***18*** years of age or older and is in a position to supervise the operator.

2. A person shall not operate a vessel on any waters of this State towing a person on water skis, a surfboard, an inflatable device or any similar device unless there is in the vessel a person, in addition to the operator, who is in a position to observe the person being towed and is :

(a) At ~~*[at]*~~ least ~~[12]~~ ***14*** years of age ~~*[.]*~~ ; or

(b) At least ~~[10]~~ ***12*** years of age, if another passenger in the vessel is a person who is ~~[21]~~ ***18*** years of age or older.

➥ The observer shall continuously observe the person being towed and shall immediately display so as to be visible from every direction, an international orange flag of at least 12 inches in height by 12 inches in width when the person being towed is getting ready to be towed and has a rope or line extended to him, or ceases to be towed and is in the water awaiting pickup by the vessel.

3. When within 100 feet of the person in the water, every vessel, other than the vessel towing him, must be operated at a speed that leaves a flat wake, but in no case may it be operated at a speed greater than 5 nautical miles per hour.

4. A person shall not operate a vessel on any waters of this State towing a person on water skis, a surfboard or similar device, or engage in waterskiing, surfboarding or similar activity from sunset to sunrise, as established by the Nautical Almanac Office, United States Naval Observatory, Washington, D.C.

5. The provisions of this section do not apply to a performer engaged in a professional exhibition or a person engaged in an activity authorized under NRS 488.305.

Sec. 4. NRS 488.198 is hereby repealed.

Sec. 5. This act becomes effective on January 1, 2010.

TEXT OF REPEALED SECTION

488.198 Whistles; bells.

1. Every motorboat of class 1, 2 or 3 must be equipped with an efficient whistle or other mechanical appliance that produces sound.

2. Every motorboat of class 2 or 3 must be equipped with an efficient bell.

3. The provisions of this section do not apply to motorboats while competing in any race conducted pursuant to NRS 488.305 or, if the boats are designed and intended solely for racing, while engaged in navigation incidental to the tuning up of the boats and engines for a race.

Assemblyman Carpenter moved the adoption of the amendment.

Remarks by Assemblyman Carpenter.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 311.

Bill read third time.

The following amendment was proposed by Assemblyman Settelmeyer:

Amendment No. 492.

AN ACT relating to common-interest communities; revising provisions governing the audit and review of financial statements of common-interest communities; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires a unit owners' association with an annual budget of less than $75,000 to have its financial statement audited once every 4 fiscal years unless an audit for a fiscal year in which an audit will not be conducted is requested by 15 percent of the total number of voting members of the association. **(NRS 116.31144)** This bill **[**~~eliminates the requirement of an audit and instead~~**]** requires the financial statement of such an association to be reviewed in the year immediately preceding the year in which a study of the association's reserves is conducted unless **[**~~a review~~**]** **an audit** is otherwise requested by **15 percent of** the voting members of the association.

Existing law also requires an association with an annual budget of $75,000 or more but less than $150,000 to have its financial statement audited once every 4 fiscal years and reviewed every fiscal year for which an audit is not conducted. **(NRS 116.31144)** This bill **[**~~eliminates the requirement of an audit and instead~~**]** requires the financial statement of such an association to be reviewed every fiscal year **[**~~. (NRS 116.31144)~~**]** **unless an audit is otherwise requested by 15 percent of the voting members of the association.**

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

Section 1. NRS 116.31144 is hereby amended to read as follows:

116.31144 1. Except as otherwise provided in subsection 2, the executive board shall:

(a) If the annual budget of the association is less than $75,000, cause the financial statement of the association to be **[**~~audited~~**]** ***reviewed*** by an independent certified public accountant **[**~~at least once every 4 fiscal years.~~**]** ***during the year immediately preceding the year in which a study of the reserves of the association is to be conducted pursuant to NRS 116.31152.***

(b) If the annual budget of the association is $75,000 or more but less than $150,000, cause the financial statement of the association to be ~~[~~:

~~(1) Audited by an independent certified public accountant at least once every 4 fiscal years; and~~

~~(2) Reviewed~~] ***reviewed*** by an independent certified public accountant every fiscal year **.** ~~[for which an audit is not conducted.]~~

(c) If the annual budget of the association is $150,000 or more, cause the financial statement of the association to be audited by an independent certified public accountant every fiscal year.

2. For any fiscal year **,** ~~[for which]~~ ~~[~~an audit~~]~~ ~~*[a review of the financial statement of the association will not be conducted pursuant to paragraph (a) of subsection 1,]*~~ the executive board ***of an association to which paragraph (a) or (b) of subsection 1 applies*** shall cause the financial statement for that fiscal year to be audited ~~*[reviewed]*~~ by an independent certified public accountant if, within 180 days before the end of the fiscal year, 15 percent of the total number of voting members of the association submit a written request for such an audit. ~~*[a review.]*~~

3. The Commission shall adopt regulations prescribing the requirements for the auditing or reviewing of financial statements of an association pursuant to this section. Such regulations must include, without limitation:

(a) The qualifications necessary for a person to audit or review financial statements of an association; and

(b) The standards and format to be followed in auditing or reviewing financial statements of an association.

Assemblyman Settelmeyer moved the adoption of the amendment.

Remarks by Assemblyman Settelmeyer.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

Assembly Bill No. 88.

Bill read third time.

The following amendment was proposed by Assemblymen Anderson and Gansert:

Amendment No. 469.

AN ACT relating to sexual offenses; establishing a civil remedy for a person who was a victim of a sexual offense which was used to promote child pornography; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill establishes a civil cause of action for a person who, as a minor, was a victim of a sexual offense where any **depiction of** sexual ~~[~~portrayal~~]~~ **conduct** of the offense was used to promote child pornography. A victim who prevails in such an action may recover his actual damages, which are deemed to be at least $150,000, plus attorney's fees and costs. **Section 3** of this bill establishes the statute of limitations for such an action.

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

Section 1. Chapter 200 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Any person who, while a minor, was a victim of a sexual offense of which any depiction of sexual ~~[portrayal]~~ conduct of such offense was used to promote child pornography and who suffered personal or psychological injury as a result may bring an action against any person who promoted or possessed the child pornography, regardless of whether the victim is now an adult.

2. A victim who prevails in an action brought pursuant to this section may recover his actual damages, which shall be deemed to be at least $150,000, plus attorney's fees and costs.

3. A victim may request to use a pseudonym instead of his name in all court proceedings and records related to an action brought pursuant to this section. Upon notification that a victim has requested to use a pseudonym, the court shall ensure that the pseudonym is used in all court proceedings and records.

4. It is not a defense to a cause of action under this section that a defendant did not know the victim or did not personally engage in the sexual conduct which involved the victim and which is depicted in the child pornography.

5. An action may be brought pursuant to this section regardless of whether any person has been prosecuted or convicted of a sexual offense involving the victim.

6. As used in this section:

(a) "Child pornography" means a violation of NRS 200.710 to 200.730, inclusive.

(b) "Sexual offense" means a violation of NRS 200.366 ~~[, 200.710 to 200.730, inclusive,]~~ or 201.230.

Sec. 2. NRS 200.700 is hereby amended to read as follows:

200.700 As used in NRS 200.700 to 200.760, inclusive, ***and section 1 of this act,*** unless the context otherwise ~~[~~provides:~~]~~ ***requires:***

1. "Performance" means any play, film, photograph, computer-generated image, electronic representation, dance or other visual presentation.

2. "Promote" means to produce, direct, procure, manufacture, sell, give, lend, publish, distribute, exhibit, advertise or possess for the purpose of distribution.

3. "Sexual conduct" means sexual intercourse, lewd exhibition of the genitals, fellatio, cunnilingus, bestiality, anal intercourse, excretion, sado-masochistic abuse, masturbation, or the penetration of any part of a person's body or of any object manipulated or inserted by a person into the genital or anal opening of the body of another.

4. ”Sexual portrayal” means the depiction of a person in a manner which appeals to the prurient interest in sex and which does not have serious literary, artistic, political or scientific value.

Sec. 3. NRS 11.215 is hereby amended to read as follows:

11.215 1. Except as otherwise provided in ***subsection 2 and*** NRS 217.007, an action to recover damages for an injury to a person arising from the sexual abuse of the plaintiff which occurred when the plaintiff was less than 18 years of age must be commenced within 10 years after the plaintiff:

(a) Reaches 18 years of age; or

(b) Discovers or reasonably should have discovered that his injury was caused by the sexual abuse,

➥ whichever occurs later.

2. ***An action to recover damages pursuant to section 1 of this act must be commenced within 3 years after the occurrence of the following, whichever is later:***

(a) The court enters a verdict in a related criminal case; or

(b) The victim reaches the age of 18 years.

3. As used in this section, “sexual abuse” has the meaning ascribed to it in NRS 432B.100.

Assemblyman Anderson moved the adoption of the amendment.

Remarks by Assemblyman Anderson.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Oceguera moved that the actions whereby Assembly Bills Nos. 239, 283, 385, and 505 were rereferred to the Committee on Ways and Means be rescinded.

Motion carried.

Assemblyman Oceguera moved that Assembly Bills Nos. 239, 283, 385, and 505 be taken from General File and placed on the Chief Clerk’s desk.

Motion carried.

Assemblyman Oceguera moved that the Assembly recess until 1:45 p.m.

Motion carried.

Assembly in recess at 1:13 p.m.

ASSEMBLY IN SESSION

At 2:17

Madam Speaker presiding.

Quorum present.

Assembly Bill No. 47.
Bill read third time.
Roll call on Assembly Bill No. 47:
YEAS—41.
NAYS—None.
EXCUSED—Hardy.
Assembly Bill No. 47 having received a constitutional majority, Madam Speaker declared it passed, as amended.
Bill ordered transmitted to the Senate.

Assembly Bill No. 117.
Bill read third time.
Remarks by Assemblyman Cobb.
Roll call on Assembly Bill No. 117:
YEAS—41.
NAYS—None.
EXCUSED—Hardy.
Assembly Bill No. 117 having received a constitutional majority, Madam Speaker declared it passed, as amended.
Bill ordered transmitted to the Senate.

Assembly Bill No. 209.
Bill read third time.
Remarks by Assemblyman Manendo.
Roll call on Assembly Bill No. 209:
YEAS—37.
NAYS—Anderson, Conklin, Horne, Leslie—4.
EXCUSED—Hardy.
Assembly Bill No. 209 having received a constitutional majority, Madam Speaker declared it passed, as amended.
Bill ordered transmitted to the Senate.

Assembly Bill No. 259.
Bill read third time.
Remarks by Assemblyman Kihuen.
Roll call on Assembly Bill No. 259:
YEAS—41.
NAYS—None.
EXCUSED—Hardy.
Assembly Bill No. 259 having received a constitutional majority, Madam Speaker declared it passed, as amended.
Bill ordered transmitted to the Senate.

Assembly Bill No. 265.
Bill read third time.

Remarks by Assemblyman Denis.

Roll call on Assembly Bill No. 265:

YEAS—41.

NAYS—None.

EXCUSED—Hardy.

Assembly Bill No. 265 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Bill No. 305.

Bill read third time.

Remarks by Assemblyman Mortenson.

Roll call on Assembly Bill No. 305:

YEAS—41.

NAYS—None.

EXCUSED—Hardy.

Assembly Bill No. 305 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Bill No. 314.

Bill read third time.

Roll call on Assembly Bill No. 314:

YEAS—41.

NAYS—None.

EXCUSED—Hardy.

Assembly Bill No. 314 having received a two-thirds majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Bill No. 319.

Bill read third time.

Remarks by Assemblymen Segerblom and Stewart.

Roll call on Assembly Bill No. 319:

YEAS—28.

NAYS—Carpenter, Christensen, Cobb, Gansert, Goedhart, Goicoechea, Grady, Gustavson, Hambrick, McArthur, Settelmeyer, Stewart, Woodbury—13.

EXCUSED—Hardy.

Assembly Bill No. 319 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Bill No. 338.

Bill read third time.

Remarks by Assemblywoman McClain.

Roll call on Assembly Bill No. 338:

YEAS—41.

NAYS—None.

EXCUSED—Hardy.

Assembly Bill No. 338 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Bill No. 353.

Bill read third time.

Remarks by Assemblymen Bobzien, Cobb, Smith, Goedhart, Oceguera, and Madam Speaker.

Assemblyman Oceguera requested that the following remarks be entered in the Journal.

ASSEMBLYMAN BOBZIEN:

Thank you, Madam Speaker. AB 353 revises the abatement procedures and penalties for violations of certain state public nuisances laws. A court or magistrate must order a person convicted of a public nuisance to abate the nuisance within a specified time, and the court must impose a civil penalty. Civil penalties collected must be deposited and used only for abatement. The measure allows the enforcement agency to assume responsibility to abate the nuisance at the defendant's expense if the defendant fails to do so. The bill also allows the board of county commissioners to adopt ordinances to allow for a summary abatement of a dangerous structure or condition to the extent necessary to remove the imminent danger that presents an immediate hazard, in addition to enforcing the abatement of a public nuisance defined by state law. The county may also enforce abatement of any other public nuisances defined by the ordinance. The bill removes the population threshold for a county's solid waste management authority to establish and administer a program for the control of unlawful dumping. In an action brought by the district health department or any other person authorized by state law against a person for the unlawful disposal of waste, the court clerk must remit several penalties collected from the defendant to the district health department.

This is legislation brought to this body by the Washoe County illegal dumping task force, including Washoe County, the Washoe County Sheriff's Department, and Keep Truckee Meadows Beautiful, in an attempt to combat illegal dumping and other problems that we have that are particularly acute in northern Nevada. One of the major components of the bill is the levying of the civil penalty, which is designed to provide a funding mechanism for actually being able to clean up some of these dumps that infect our land.

ASSEMBLYMAN COBB:

Thank you, Madam Speaker. I rise in opposition to AB 353. I appreciate the intent of the bill, and there are some good policies. My main concern with the bill is the mandatory fine involved. In a time when Nevada is leading the nation—if not always at least for most of the time over the last year—in foreclosures, a lot of people are having a tough time paying their mortgage and staying in their home. If we have a mandatory fine of $500 to $5,000 where there is no discretion left within the court to lessen the fine or not even have a fine in a good faith effort to clear it up or for undue hardship, I think that is overly burdensome to our constituents. That is the only part of the bill I disagree with. I encourage a no vote on this bill simply because of that one provision that I feel would be too burdensome. Thank you.

ASSEMBLYWOMAN SMITH:

Thank you, Madam Speaker. I rise in support of AB 353. I don't think there is an issue over which I have had as much contact from constituents as code enforcement. We have been working on this issue for a long time with the citizens group. It is amazing the items that you see—business and individuals dumping alongside the road or up in the foothills where our constituents walk. They don't have to pay the fine if they don't commit the violation. It's not as if something is being imposed for an action that doesn't take place. It is a lot of work and a lot of effort. We have done cleanup days with the community in my district and literally needed backhoes and dump trucks to haul out the trash that local businesses and individuals haul and

leave. If you can post a sign saying there is a fine, perhaps it will deter people from dumping. The main thing is—there's no fine if you don't do the crime. Thank you.

ASSEMBLYMAN GOEDHART:

Thank you, Madam Speaker. In this bill, I need clarification. The fine that is being purposed, is that against the person who is committing the crime of dumping the trash or is it perhaps the innocent property holder or property owner who did not even know someone was discarding some rubbish? The reason why I bring that question is that in Armargosa Valley, we have Nye County code enforcements, and they can usually go after the folks that have what is considered to be a public nuisance and trash on their property. In a lot of cases, we have seen trash on federal property and we've repeatedly asked different federal agencies to go ahead and clean up the trash that is still on their property. We have gotten very limited success with cooperation from those folks. Those are some questions before I cast my vote.

ASSEMBLYMAN BOBZIEN:

To my colleague from Amargosa, the civil penalty is upon conviction.

Madam Speaker requested the privilege of the Chair for the purpose of making the following remarks:

To whom would the fine be directed? Also, what about the federal government? Can we fine them?

ASSEMBLYMAN BOBZIEN:

The person who has committed the dumping—whether it's on public land or it's on private land, the person convicted of the nuisance is fined.

Madam Speaker requested the privilege of the Chair for the purpose of making the following remarks:

This is when there is a criminal case pending, not a civil nuisance case, is that correct?

ASSEMBLYMAN BOBZIEN:

That is correct. This is the creation of a civil penalty on top of any other penalties.

Madam Speaker requested the privilege of the Chair for the purpose of making the following remarks:

Did that answer your question Mr. Goedhart?

ASSEMBLYMAN GOEDHART:

Thank you, Madam Speaker. I don't know if it did, because the way I read the language, if you're an innocent property owner and someone dumps trash on your property, then you could be the one convicted of the crime. It's not necessarily the person who is doing the dumping. It is, in some cases, an innocent landowner who has been a recipient of trash dumped on his or her property.

Also, I don't think we heard from the bill sponsor about the applicability or enforceability to a federal agency as well. Thank you.

Madam Speaker requested the privilege of the Chair for the purpose of making the following remarks:

Assemblywoman Smith?

ASSEMBLYWOMAN SMITH:

Thank you, Madam Speaker, for a second time. I think another thing to remember here is that this is not a simple process. It's a lengthy process, and one of the things that we hear about when we go to a citizen advisory board or a neighborhood advisory board meeting is how long this process takes. It's not something that happens overnight. A lot of proof needs to take place, and I've seen them dig through a dump load of trash that was found somewhere to try and track

down the person who has left the trash. It is a very difficult and long process, and I don't think that it is one that is taken lightly.

Madam Speaker requested the privilege of the Chair for the purpose of making the following remarks:

Assemblyman Oceguera?

ASSEMBLYMAN OCEGUERA:

Thank you, Madam Speaker, I rise in support of AB 353. My role, outside of the Legislature, was at one time with the code enforcement division which was under my command. It is a long process, at least in North Las Vegas, to get to the point where we will even think about doing what this bill does. What I see this bill doing is giving that hammer at the end that process. If you are the innocent homeowner, as my colleague from Amargosa said, you're going to be notified several times over and over again for a lengthy process. At the end of that process, then you could be fined.

Madam Speaker requested the privilege of the Chair for the purpose of making the following remarks:

This doesn't change the standard for what is considered a nuisance, whether you're an innocent property owner or a dumper, that is already in existing law.

Assemblymen Conklin, Anderson, and Leslie moved the previous question.

The question being the passage of Assembly Bill No. 353.

Roll call on Assembly Bill No. 353:

YEAS—36.

NAYS—Cobb, Goedhart, Gustavson, Hambrick, Ohrenschall—5.

EXCUSED—Hardy.

Assembly Bill No. 353 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Bill No. 369.

Bill read third time.

Remarks by Assemblyman Mortenson.

Roll call on Assembly Bill No. 369:

YEAS—41.

NAYS—None.

EXCUSED—Hardy.

Assembly Bill No. 369 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Bill No. 377.

Bill read third time.

Remarks by Assemblyman Bobzien.

Roll call on Assembly Bill No. 377:

YEAS—41.

NAYS—None.

EXCUSED—Hardy.

Assembly Bill No. 377 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Bill No. 384.

Bill read third time.

Remarks by Assemblyman Kihuen.

Potential conflict of interest declared by Assemblyman Gustavson.

Roll call on Assembly Bill No. 384:

YEAS—41.

NAYS—None.

EXCUSED—Hardy.

Assembly Bill No. 384 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Conklin moved that Assembly Bill No. 399 be taken from the General File and placed on the Chief Clerk's desk.

Motion carried.

GENERAL FILE AND THIRD READING

Assembly Bill No. 428.

Bill read third time.

Remarks by Assemblywoman Dondero Loop.

Roll call on Assembly Bill No. 428:

YEAS—41.

NAYS—None.

EXCUSED—Hardy.

Assembly Bill No. 428 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Bill No. 433.

Bill read third time.

Remarks by Assemblymen Pierce, Stewart, Smith, Carpenter, and Goicoechea.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblywoman Smith moved that Assembly Bill No. 433 be taken from the General File and placed on the Chief Clerk's desk.

Motion carried.

GENERAL FILE AND THIRD READING

Assembly Bill No. 475.

Bill read third time.

Roll call on Assembly Bill No. 475:
YEAS—41.
NAYS—None.
EXCUSED—Hardy.
Assembly Bill No. 475 having received a constitutional majority, Madam Speaker declared it passed, as amended.
Bill ordered transmitted to the Senate.

Assembly Bill No. 481.
Bill read third time.
Remarks by Assemblyman Cobb.
Roll call on Assembly Bill No. 481:
YEAS—41.
NAYS—None.
EXCUSED—Hardy.
Assembly Bill No. 481 having received a constitutional majority, Madam Speaker declared it passed, as amended.
Bill ordered transmitted to the Senate.

Assembly Bill No. 499.
Bill read third time.
Remarks by Assemblyman Segerblom.
Roll call on Assembly Bill No. 499:
YEAS—41.
NAYS—None.
EXCUSED—Hardy.
Assembly Bill No. 499 having received a constitutional majority, Madam Speaker declared it passed, as amended.
Bill ordered transmitted to the Senate.

Assembly Bill No. 503.
Bill read third time.
Remarks by Assemblyman Atkinson.
Roll call on Assembly Bill No. 503:
YEAS—37.
NAYS—Kirkpatrick, Mastroluca, Pierce, Smith—4.
EXCUSED—Hardy.
Assembly Bill No. 503 having received a constitutional majority, Madam Speaker declared it passed, as amended.
Bill ordered transmitted to the Senate.

Assembly Bill No. 512.
Bill read third time.
Roll call on Assembly Bill No. 512:
YEAS—39.
NAYS—Claborn, Goedhart—2.
EXCUSED—Hardy.

Assembly Bill No. 512 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Oceguera moved that Assembly Bills Nos. 218, 372; Senate Bill Nos. 38, 109; Senate Joint Resolution No. 9 of the 74th Session be taken from the General File and placed on the General File for the next legislative day.

Motion carried.

Assemblyman Oceguera moved that the action whereby Assembly Bill No. 537 was referred to the Committee on Commerce and Labor be rescinded.

Motion carried.

Assemblyman Oceguera moved that Assembly Bill No. 537 be referred to the Committee on Ways and Means.

Motion carried.

Assemblyman Oceguera moved that the action whereby Assembly Bill No. 538 was referred to the Committee on Health and Human Services be rescinded.

Motion carried.

Assemblyman Oceguera moved that Assembly Bill No. 538 be referred to the Committee on Ways and Means.

Motion carried.

Assemblyman Oceguera moved that the action whereby Assembly Bill No. 539 was referred to the Committee on Commerce and Labor be rescinded.

Motion carried.

Assemblyman Oceguera moved that Assembly Bill No. 539 be referred to the Committee on Ways and Means.

Motion carried.

Assemblyman Oceguera moved that the action whereby Assembly Bill No. 540 was referred to the Committee on Government Affairs be rescinded.

Motion carried.

Assemblyman Oceguera moved that Assembly Bill No. 540 be referred to the Committee on Ways and Means.

Motion carried.

NOTICE OF EXEMPTION

April 16, 2009

The Fiscal Analysis Division, pursuant to Joint Standing Rule 14.6, has determined the exemption of: Assembly Bills Nos. 537, 538, 539 and 540.

MARK STEVENS
Fiscal Analysis Division

UNFINISHED BUSINESS

SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the Speaker and Chief Clerk signed Assembly Bill No. 39; Assembly Joint Resolution No. 3 of the 74th Session.

GUESTS EXTENDED PRIVILEGE OF ASSEMBLY FLOOR

On request of Assemblyman Anderson, the privilege of the floor of the Assembly Chamber for this day was extended to the following students from Bailey Charter Elementary School: Pablo Barrera, Caleb Barrett, Tre Bussey, Natasha Despres, Kalin Drake, Marissa Dupree-Maxwell, Sonia Elias-Hagler, Brandon Ellison, Sienha Fernandez, Kayli Funk, Edward Lopez, Hannah Marsh, Jacy Marymee, Tyra Mcgee-Garrett, Shannen Moline, Joshua Ravo, Emily Reid, Salvador Ruiz Martinez, Sonia Salazar-Banquicio, Johnny Vergara, Tommy Vitone, Jordan Williamson, Dan Scurlock, Erin Tibbs, Savannah Barber, Madelyn Bowers, Herb Cevallos, Alexia Cooper, Katie Corrales, Kaycee Craig, Tyler Dailey, Dakota Lund, Victoria Manus, Ricky Morales, Derrick Mwenewa, Frank River, Cynthia Rodriguez, Omar Rodriguez, Zoe Ruiz, Julia Saldana Torobio, Jaelynn Thomas, Robert Vitone, Dayne Wells, Makayla Wardrobe, Brendan Deshane, Daniel Ojeda, and Justin Anderson.

On request of Assemblyman Atkinson, the privilege of the floor of the Assembly Chamber for this day was extended to the following members of Trenz: Janea Edgel, Ajay Dews, Ismael Navarrette, Andrea Menchaca, Jessica Menchaca, Devon Cashman, Rebecca Rodriguez, Kala Oakes, Julian Cisneros, Mandella Edwards, Laura Brown, Markia Jefferson, Ashley Dansby, DArelle Davis, Tyrone Cooper, Darryn Mcmillin, Ashley Clay, Avery Campbell, Tabitha Agnir, William Nichols Jr., Datne Garcia, Victoria Harris, Daniel Enriquez, Alexander Camacho, Dominque Tyler, Denise Williams, Joselyn Miller, Kiara Miller, Nicole Parks, F. A. Pridgon, Joyce Gorsuch, Nicolette Herrera, T.J. Ropelato, Breanna Lebsack, Curtis Davis and Jordan Pierce.

On request of Assemblyman Carpenter, the privilege of the floor of the Assembly Chamber for this day was extended to Vicki Bates and Kim Foster.

On request of Assemblyman Christensen, the privilege of the floor of the Assembly Chamber for this day was extended to Sue Lowden and Mark J. Sprinkle.

On request of Assemblyman Cobb, the privilege of the floor of the Assembly Chamber for this day was extended to Bruce Specter and Jennifer Baker.

On request of Assemblyman Conklin, the privilege of the floor of the Assembly Chamber for this day was extended to Andrew Diss.

On request of Assemblyman Goedhart, the privilege of the floor of the Assembly Chamber for this day was extended to Pejman Bady.

On request of Assemblyman Goicoechea, the privilege of the floor of the Assembly Chamber for this day was extended to Alandra Parrazo.

On request of Assemblywoman McClain, the privilege of the floor of the Assembly Chamber for this day was extended to Pamela Gustafson.

On request of Assemblyman Munford, the privilege of the floor of the Assembly Chamber for this day was extended to Guy Rocha and Daphne Beleon.

On request of Assemblyman Oceguera, the privilege of the floor of the Assembly Chamber for this day was extended to Phillip Hoffman.

On request of Assemblyman Settelmeyer, the privilege of the floor of the Assembly Chamber for this day was extended to Sherese Settlmeyer and Beverly Willard.

On request of Assemblyman Stewart, the privilege of the floor of the Assembly Chamber for this day was extended Tibi Ellis.

Assemblyman Oceguera moved that the Assembly adjourn until Friday, April 17, 2009, at 10:30 a.m.

Motion carried.

Assembly adjourned at 3:09 p.m.

Approved: BARBARA E. BUCKLEY
Speaker of the Assembly

Attest: SUSAN FURLONG REIL
Chief Clerk of the Assembly