

**THE ONE HUNDRED AND TWENTIETH DAY**

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CARSON CITY (Monday), June 1, 2009

Assembly called to order at 9:20 a.m.

Madam Speaker presiding.

Roll called.

All present.

Prayer by the Chaplain, Terry Sullivan.

Let us pray. This, folks, is as good as it gets. I know we're all tired and overworked and certainly in the case of you elected folks, underpaid. And still it's as good as it gets. So Lord, we're all about thanking You today because we're all Americans and, more importantly, we're Nevadans. So when I say this is as good as it gets, I think that's pretty darn good. Lord, we sure do thank You for that. It's the last day here, Lord, and we're all headed somewhere, so we ask that You get us there as safely as possible. Finally, Lord, I think I speak for all of us when I say we're all grateful for having had this opportunity to serve the good folks of our great state and being part of this incredible process. We sure thank You for that, too.

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 Health and Human Services, to which was referred Senate Bill No. 316, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

DEBBIE SMITH, *Chair*

**MOTIONS, RESOLUTIONS AND NOTICES**

Assemblyman Ocegüera moved that all rules be suspended, reading so far had considered second reading, rules further suspended, Senate Bill No. 316 considered engrossed, declared an emergency measure under the *Constitution*, and placed on third reading and final passage.

Motion carried.

**UNFINISHED BUSINESS****REPORTS OF CONFERENCE COMMITTEES**

*Madam Speaker:*

The Conference Committee concerning Assembly Bill No. 140, consisting of the undersigned members, has met and reports that:

It has agreed to recommend that Amendment No. 771 of the Senate be concurred in.

It has agreed to recommend that the bill be further amended as set forth in Conference Amendment No. 8, which is attached to and hereby made a part of this report.

WILLIAM HORNE  
KATHY MCCLAIN  
HEIDI GANSERT

*Assembly Conference Committee*

MAGGIE CARLTON  
ALLISON COPENING

*Senate Conference Committee*

Conference Amendment No. CA8.

AN ACT relating to real property; revising provisions relating to a notice of sale of real property under execution; establishing the crime of defacing a notice of sale of real property under execution or a notice of sale of real property pursuant to a trustee's power of sale; establishing rights and duties of a purchaser of real property pursuant to a foreclosure sale and establishing rights and duties of a tenant in possession of such property; revising provisions relating to a sale of real property pursuant to a trustee's power of sale; requiring a landlord to make certain disclosures to a prospective tenant; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

**Sections 2 and 7** of this bill revise existing law by requiring that a notice of sale of real property under execution or a notice of sale of real property pursuant to a trustee's power of sale be served upon the State Board of Health if the real property is operated as a licensed health facility. **Sections 2 and 6.7** of this bill require, if the sale of property is a residential foreclosure, a separate notice to be served upon any tenant or subtenant, other than the judgment debtor, in actual occupation of the real property subject to a notice of sale under execution or a notice of sale pursuant to a trustee's power of sale to inform the tenant or subtenant that the property is subject to a notice of sale. (NRS 21.130) **Sections 3 and 8** of this bill make it unlawful for a person to willfully remove or deface a notice of sale under execution or a notice of sale pursuant to a trustee's power of sale which is posted on real property. (NRS 21.140, 107.084) **Sections 4 and 6** of this bill require the purchaser of a vacant residential property at a foreclosure sale or a trustee's sale to maintain the exterior of the property. **Sections 4 and 6** also authorize the appropriate governmental entity to assess a civil penalty of up to \$1,000 per day, under certain circumstances, for failure to maintain the property.

Existing law provides that a person who holds over and continues in possession of real property that has been foreclosed after a 3-day notice to quit has been served upon him may be removed. (NRS 40.255) **Section 5** of this bill provides that a tenant or subtenant, other than the person whose name appears on the mortgage or deed of trust, may be removed only after the expiration of a specified period not to exceed 60 days if the property has been sold as a residential foreclosure. **Section 5** also requires the tenant or subtenant who remains in occupation of the real property to remit rent to the new owner of the property pending expiration of the specified period. **Section 5** further prohibits any person from entering a record of eviction for a tenant or subtenant who vacates the property within the specified period if

the property has been sold as a residential foreclosure. Finally, **section 5** allows the new owner of the real property, if the property has been sold as a residential foreclosure, to negotiate a new purchase, lease or rental agreement with the tenant or subtenant in occupation of the property or to offer a payment in exchange for the tenant or subtenant vacating the property on a date earlier than the end of the specified period.

**Section 5.5** of this bill requires a landlord to file proof of service with the court of any notice required to be served before the removal of a person who holds over and continues in possession of real property after receiving a 3-day notice to quit. (NRS 40.280)

**Section 9** of this bill requires a landlord to disclose in writing to a prospective tenant if the property to be leased or rented is the subject of foreclosure proceedings. **Section 9** also makes it a deceptive trade practice for any landlord to willfully fail to make such a disclosure.

**Section 10 of this bill amends section 3 of Assembly Bill No. 149 of this session to ensure that social security numbers are redacted from the copy of a promissory note before it is attached to a notice given before a trustee's power of sale is carried out. (NRS 107.085)**

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

Section 1. (Deleted by amendment.)

Sec. 2. NRS 21.130 is hereby amended to read as follows:

21.130 1. Before the sale of property on execution, notice of the sale, in addition to the notice required pursuant to NRS 21.075 and 21.076, must be given as follows:

(a) In cases of perishable property, by posting written notice of the time and place of sale in three public places at the township or city where the sale is to take place, for such a time as may be reasonable, considering the character and condition of the property.

(b) In case of other personal property, by posting a similar notice in three public places of the township or city where the sale is to take place, not less than 5 ~~nor~~ **or** more than 10 days before the sale, and, in case of sale on execution issuing out of a district court, by the publication of a copy of the notice in a newspaper, if there is one in the county, at least twice, the first publication being not less than 10 days before the date of the sale.

(c) In case of real property, by:

(1) Personal service upon each judgment debtor or by registered mail to the last known address of each judgment debtor ~~and~~ ***and, if the property of the judgment debtor is operated as a facility licensed under chapter 449 of NRS, upon the State Board of Health;***

(2) Posting a similar notice particularly describing the property, for 20 days successively, in three public places of the township or city where the property is situated and where the property is to be sold; ~~and~~

(3) Publishing a copy of the notice three times, once each week, for 3 successive weeks, in a newspaper, if there is one in the county. The cost of publication must not exceed the rate for legal advertising as provided in NRS 238.070. If the newspaper authorized by this section to publish the notice of sale neglects or refuses from any cause to make the publication, then the posting of notices as provided in this section shall be deemed sufficient notice. Notice of the sale of property on execution upon a judgment for any sum less than \$500, exclusive of costs, must be given only by posting in three public places in the county, one of which must be the courthouse ~~[-]~~ ;

(4) *Recording a copy of the notice in the office of the county recorder; and*

(5) *If the sale of property is a residential foreclosure, posting a copy of the notice in a conspicuous place on the property. In addition to the requirements of NRS 21.140, the notice must not be defaced or removed until the transfer of title is recorded or the property becomes occupied after completion of the sale, whichever is earlier.*

2. *If the sale of property is a residential foreclosure, the notice must include, without limitation:*

(a) *The physical address of the property; and*

(b) *The contact information of the party who is authorized to provide information relating to the foreclosure status of the property.*

3. *If the sale of property is a residential foreclosure, a separate notice must be posted in a conspicuous place on the property and mailed, with a certificate of mailing issued by the United States Postal Service or another mail delivery service, to any tenant or subtenant, if any, other than the judgment debtor, in actual occupation of the premises not later than 3 business days after the notice of the sale is given pursuant to subsection 1. The separate notice must be in substantially the following form:*

#### **NOTICE TO TENANTS OF THE PROPERTY**

*Foreclosure proceedings against this property have started, and a notice of sale of the property to the highest bidder has been issued.*

*You may either: (1) terminate your lease or rental agreement and move out; or (2) remain and possibly be subject to eviction proceedings under chapter 40 of the Nevada Revised Statutes. Any subtenants may also be subject to eviction proceedings.*

*Between now and the date of the sale, you may be evicted if you fail to pay rent or live up to your other obligations to the landlord.*

*After the date of the sale, you may be evicted if you fail to pay rent or live up to your other obligations to the successful bidder, in accordance with chapter 118A of the Nevada Revised Statutes.*

*Under the Nevada Revised Statutes ~~[-40.255-]~~, eviction proceedings may begin against you after you have been given a ~~[-3-day-]~~ notice to quit.*

*If the property is sold and you pay rent by the week or another period of time that is shorter than 1 month, you should generally receive notice after not less than the number of days in that period of time.*

*If the property is sold and you pay rent by the month or any other period of time that is 1 month or longer, you should generally receive notice at least 60 days in advance.*

*Under Nevada Revised Statutes 40.280, notice must generally be served on you pursuant to chapter 40 of the Nevada Revised Statutes and may be served by:*

- (1) Delivering a copy to you personally in the presence of a witness;*
- (2) If you are absent from your place of residence or usual place of business, leaving a copy with a person of suitable age and discretion at either place and mailing a copy to you at your place of residence or business; or*
- (3) If your place of residence or business cannot be ascertained, or a person of suitable age or discretion cannot be found there, posting a copy in a conspicuous place on the leased property, delivering a copy to a person residing there, if a person can be found, and mailing a copy to you at the place where the leased property is.*

*If the property is sold and a landlord, successful bidder or subsequent purchaser files an eviction action against you in court, you will be served with a summons and complaint and have the opportunity to respond. Eviction actions may result in temporary evictions, permanent evictions, the awarding of damages pursuant to Nevada Revised Statutes 40.360 or some combination of those results.*

*Under the Justice Court Rules of Civil Procedure:*

- (1) You will be given at least 10 days to answer a summons and complaint;*
- (2) If you do not file an answer, an order evicting you by default may be obtained against you;*
- (3) A hearing regarding a temporary eviction may be called as soon as 11 days after you are served with the summons and complaint; and*
- (4) A hearing regarding a permanent eviction may be called as soon as 20 days after you are served with the summons and complaint.*

**4.** The sheriff shall not conduct a sale of the property on execution or deliver the judgment debtor's property to the judgment creditor if the judgment debtor *or any other person entitled to notice* has not been properly notified as required in this section and NRS 21.075 and 21.076.

**5.** *As used in this section, "residential foreclosure" means the sale of a single family residence pursuant to NRS 40.430. As used in this subsection, "single family residence" means a structure that is comprised of not more than four units.*

Sec. 3. NRS 21.140 is hereby amended to read as follows:

21.140 1. An officer selling without the notice prescribed by NRS 21.075, 21.076 and 21.130 forfeits \$500 to the aggrieved party, in addition to his actual damages.

2. ~~[A] It is unlawful for a~~ person to willfully ~~[taking]~~ take down or ~~[defacing]~~ deface the notice posted pursuant to NRS 21.130, if done before the sale or, if the judgment is satisfied before sale, before the satisfaction of the judgment. ~~[, forfeits]~~ ***In addition to any other penalty, any person who violates this subsection shall forfeit \$500 to the aggrieved party.***

Sec. 4. Chapter 40 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Any vacant residential property purchased or acquired by a person at a foreclosure sale pursuant to NRS 40.430 must be maintained by that person in accordance with subsection 2.

2. ***In addition to complying with any other ordinance or rule as required by the applicable governmental entity, the purchaser shall care for the exterior of the property, including, without limitation:***

(a) ***Limiting the excessive growth of foliage which would otherwise diminish the value of that property or of the surrounding properties;***

(b) ***Preventing trespassers from remaining on the property;***

(c) ***Preventing mosquito larvae from growing in standing water; and***

(d) ***Preventing any other condition that creates a public nuisance.***

3. ***If a person violates subsection 2, the applicable governmental entity shall mail to the last known address of the person, by certified mail, a notice:***

(a) ***Describing the violation;***

(b) ***Informing the person that a civil penalty may be imposed pursuant to this section unless the person acts to correct the violation within 14 days after the date of receipt of the notice and completes the correction within 30 days after the date of receipt of the notice; and***

(c) ***Informing the person that he may contest the allegation pursuant to subsection 4.***

4. ***If a person, within 5 days after a notice is mailed to him pursuant to subsection 3, requests a hearing to contest the allegation of a violation of subsection 2, the applicable governmental entity shall apply for a hearing before a court of competent jurisdiction.***

5. ***Except as otherwise provided in subsection 8, in addition to any other penalty, the applicable governmental entity may impose a civil penalty of not more than \$1,000 per day for a violation of subsection 2:***

(a) ***Commencing on the day following the expiration of the period of time described in subsection 3; or***

(b) ***If the person requested a hearing pursuant to subsection 4, commencing on the day following a determination by the court in favor of the applicable governmental entity.***

6. ***The applicable governmental entity may waive or extend the period of time described in subsection 3 if:***

*(a) The person to whom a notice is sent pursuant to subsection 3 makes a good faith effort to correct the violation; and*

*(b) The violation cannot be corrected in the period of time described in subsection 3.*

*7. Any penalty collected by the applicable governmental entity pursuant to this section must be directed to local nuisance abatement programs.*

*8. The applicable governmental entity may not assess any penalty pursuant to this section in addition to any penalty prescribed by a local ordinance. This section shall not be deemed to preempt any local ordinance.*

*9. If the applicable governmental entity assesses any penalty pursuant to this section, any lien related thereto must be recorded in the office of the county recorder.*

*10. As used in this section, "applicable governmental entity" means:*

*(a) If the property is within the boundaries of a city, the governing body of the city; and*

*(b) If the property is not within the boundaries of a city, the board of county commissioners of the county in which the property is located.*

Sec. 5. NRS 40.255 is hereby amended to read as follows:

40.255 1. Except as *otherwise* provided in ~~[subsection]~~ *subsections 2* ~~[and 7]~~ *and 7*, in any of the following cases, a person who holds over and continues in possession of real property or a mobile home after a 3-day written notice to quit has been served upon him ~~[-, and also upon any subtenant in actual occupation of the premises, pursuant to NRS 40.280,]~~ may be removed as prescribed in NRS 40.290 to 40.420, inclusive:

*(a) Where the property or mobile home has been sold under an execution against him or a person under whom he claims, and the title under the sale has been perfected;*

*(b) Where the property or mobile home has been sold upon the foreclosure of a mortgage, or under an express power of sale contained therein, executed by him or a person under whom he claims, and the title under the sale has been perfected;*

*(c) Where the property or mobile home has been sold under a power of sale granted by NRS 107.080 to the trustee of a deed of trust executed by such person or a person under whom he claims, and the title under such sale has been perfected; or*

*(d) Where the property or mobile home has been sold by him or a person under whom he claims, and the title under the sale has been perfected.*

*2. If the property has been sold as a residential foreclosure, a tenant or subtenant in actual occupation of the premises, other than a person whose name appears on the mortgage or deed, who holds over and continues in possession of real property or a mobile home in any of the cases described in paragraph (b) or (c) of subsection 1 may be removed as prescribed in NRS 40.290 to 40.420, inclusive, after receiving a notice of the change of ownership of the real property or mobile home and after the expiration of a*

*notice period beginning on the date the notice was received by the tenant or subtenant and expiring:*

*(a) For all periodic tenancies with a period of less than 1 month, after not less than the number of days in the period; and*

*(b) For all other periodic tenancies or tenancies at will, after not less than 60 days.*

*3. During the notice period described in subsection 2:*

*(a) The new owner has the rights, obligations and liabilities of the previous owner or landlord pursuant to chapter 118A of NRS under the lease or rental agreement which the previous owner or landlord entered into with the tenant or subtenant regarding the property; and*

*(b) The tenant or subtenant continues to have the rights, obligations and liabilities he had pursuant to chapter 118A of NRS under the lease or rental agreement which he entered into with the previous owner or landlord regarding the property.*

*4. The notice described in subsection 2 must contain a statement:*

*(a) Providing the contact information of the new owner to whom rent should be remitted;*

*(b) Notifying the tenant or subtenant that the lease or rental agreement he entered into with the previous owner or landlord of the property continues in effect through the notice period described in subsection 2; and*

*(c) Notifying the tenant or subtenant that failure to pay rent to the new owner or comply with any other term of the agreement or applicable law constitutes a breach of the lease or rental agreement and may result in eviction proceedings.*

*5. If the property has been sold as a residential foreclosure in any of the cases described in paragraph (b) or (c) of subsection 1, no person may enter a record of eviction for a tenant or subtenant who vacates a property during the notice period described in subsection 2.*

*6. If the property has been sold as a residential foreclosure in any of the cases described in paragraphs (b) or (c) of subsection 1, nothing in this section shall be deemed to prohibit:*

*(a) The tenant from vacating the property at any time before the expiration of the notice period described in subsection 2 without any obligation to the new owner of a property purchased pursuant to a foreclosure sale or trustee's sale; or*

*(b) The new owner of a property purchased pursuant to a foreclosure sale or trustee's sale from:*

*(1) Negotiating a new purchase, lease or rental agreement with the tenant or subtenant; or*

*(2) Offering a payment to the tenant or subtenant in exchange for vacating the premises on a date earlier than the expiration of the notice period described in subsection 2.*

*7. This section does not apply to the tenant of a mobile home lot in a mobile home park.*



8. *As used in this section, “residential foreclosure” means the sale of a single family residence pursuant to NRS 40.430 or under a power of sale granted by NRS 107.080. As used in this subsection, “single family residence” means a structure that is comprised of not more than four units.*

Sec. 5.5. NRS 40.280 is hereby amended to read as follows:

40.280 1. Except as otherwise provided in NRS 40.253, the notices required by NRS 40.251 to 40.260, inclusive, may be served:

(a) By delivering a copy to the tenant personally, in the presence of a witness;

(b) If he is absent from his place of residence or from his usual place of business, by leaving a copy with a person of suitable age and discretion at either place and mailing a copy to the tenant at his place of residence or place of business; or

(c) If the place of residence or business cannot be ascertained, or a person of suitable age or discretion cannot be found there, by posting a copy in a conspicuous place on the leased property, delivering a copy to a person there residing, if the person can be found, and mailing a copy to the tenant at the place where the leased property is situated.

2. Service upon a subtenant may be made in the same manner as provided in subsection 1.

3. Before an order to remove a tenant is issued pursuant to subsection 5 of NRS 40.253, a landlord shall file with the court a proof of service of any notice required by that section. ***Before a person may be removed as prescribed in NRS 40.290 to 40.420, inclusive, a landlord shall file with the court proof of service of any notice required pursuant to NRS 40.255.*** Except as otherwise provided in subsection 4, this proof must consist of:

(a) A statement, signed by the tenant and a witness, acknowledging that the tenant received the notice on a specified date;

(b) A certificate of mailing issued by the United States Postal Service; or

(c) The endorsement of a sheriff, constable or other process server stating the time and manner of service.

4. If service of the notice was not delivered in person to a tenant whose rent is reserved by a period of 1 week or less and the tenancy has not continued for more than 45 days, proof of service must include:

(a) A certificate of mailing issued by the United States Postal Service or by a private postal service to the landlord or his agent; or

(b) The endorsement of a sheriff or constable stating the:

(1) Time and date the request for service was made by the landlord or his agent;

(2) Time, date and manner of the service; and

(3) Fees paid for the service.

Sec. 6. Chapter 107 of NRS is hereby amended by adding thereto the provisions set forth as sections 6.3 and 6.7 of this act.

Sec. 6.3. 1. Any vacant residential property purchased or acquired by a person at a trustee's sale pursuant to NRS 107.080 must be maintained by that person in accordance with subsection 2.

2. *In addition to complying with any other ordinance or rule as required by the applicable governmental entity, the purchaser shall care for the exterior of the property, including, without limitation:*

- (a) Limiting the excessive growth of foliage which would otherwise diminish the value of that property or of the surrounding properties;*
- (b) Preventing trespassers from remaining on the property;*
- (c) Preventing mosquito larvae from growing in standing water; and*
- (d) Preventing any other condition that creates a public nuisance.*

3. *If a person violates subsection 2, the applicable governmental entity shall mail to the last known address of the person, by certified mail, a notice:*

- (a) Describing the violation;*
- (b) Informing the person that a civil penalty may be imposed pursuant to this section unless the person acts to correct the violation within 14 days after the date of receipt of the notice and completes the correction within 30 days after the date of receipt of the notice; and*
- (c) Informing the person that he may contest the allegation pursuant to subsection 4.*

4. *If a person, within 5 days after a notice is mailed to him pursuant to subsection 3, requests a hearing to contest the allegation of a violation of subsection 2, the applicable governmental entity shall apply for a hearing before a court of competent jurisdiction.*

5. *Except as otherwise provided in subsection 8, in addition to any other penalty, the applicable governmental entity may impose a civil penalty of not more than \$1,000 per day for a violation of subsection 2:*

- (a) Commencing on the day following the expiration of the period of time described in subsection 3; or*
- (b) If the person requested a hearing pursuant to subsection 4, commencing on the day following a determination by the court in favor of the applicable governmental entity.*

6. *The applicable governmental entity may waive or extend the period of time described in subsection 3 if:*

- (a) The person to whom a notice is sent pursuant to subsection 3 makes a good faith effort to correct the violation; and*
- (b) The violation cannot be corrected in the period of time described in subsection 3.*

7. *Any penalty collected by the applicable governmental entity pursuant to this section must be directed to local nuisance abatement programs.*

8. *The applicable governmental entity may not assess any penalty pursuant to this section in addition to any penalty prescribed by a local ordinance. This section shall not be deemed to preempt any local ordinance.*

9. *If the applicable governmental entity assesses any penalty pursuant to this section, any lien related thereto must be recorded in the office of the county recorder.*

10. *As used in this section, "applicable governmental entity" means:*

(a) *If the property is within the boundaries of a city, the governing body of the city; and*

(b) *If the property is not within the boundaries of a city, the board of county commissioners of the county in which the property is located.*

Sec. 6.7. 1. In addition to the requirements of NRS 107.080, if the sale of property is a residential foreclosure, a copy of the notice of default and election to sell and the notice of sale must:

(a) *Be posted in a conspicuous place on the property not later than 3 business days after the notice of default and election to sell or the notice of sale is recorded pursuant to NRS 107.080; and*

(b) *Include, without limitation:*

(1) *The physical address of the property; and*

(2) *The contact information of the trustee or the person conducting the foreclosure who is authorized to provide information relating to the foreclosure status of the property.*

2. *In addition to the requirements of NRS 107.084, the notices must not be defaced or removed until the transfer of title is recorded or the property becomes occupied after completion of the sale, whichever is earlier.*

3. *A separate notice must be posted in a conspicuous place on the property and mailed, with a certificate of mailing issued by the United States Postal Service or another mail delivery service, to any tenant or subtenant, if any, other than the grantor or his successor in interest, in actual occupation of the premises not later than 3 business days after the notice of the sale is given pursuant to subsection 4 of NRS 107.080. The separate notice must be in substantially the following form:*

#### **NOTICE TO TENANTS OF THE PROPERTY**

*Foreclosure proceedings against this property have started, and a notice of sale of the property to the highest bidder has been issued.*

*You may either: (1) terminate your lease or rental agreement and move out; or (2) remain and possibly be subject to eviction proceedings under chapter 40 of the Nevada Revised Statutes. Any subtenants may also be subject to eviction proceedings.*

*Between now and the date of the sale, you may be evicted if you fail to pay rent or live up to your other obligations to the landlord.*

*After the date of the sale, you may be evicted if you fail to pay rent or live up to your other obligations to the successful bidder, in accordance with chapter 118A of the Nevada Revised Statutes.*

*Under the Nevada Revised Statutes ~~40.255~~, eviction proceedings may begin against you after you have been given a ~~(3-day)~~ notice to quit.*

*If the property is sold and you pay rent by the week or another period of time that is shorter than 1 month, you should generally receive notice after not less than the number of days in that period of time.*

*If the property is sold and you pay rent by the month or any other period of time that is 1 month or longer, you should generally receive notice at least 60 days in advance.*

*Under Nevada Revised Statutes 40.280, notice must generally be served on you pursuant to chapter 40 of the Nevada Revised Statutes and may be served by:*

- (1) Delivering a copy to you personally in the presence of a witness;*
- (2) If you are absent from your place of residence or usual place of business, leaving a copy with a person of suitable age and discretion at either place and mailing a copy to you at your place of residence or business; or*
- (3) If your place of residence or business cannot be ascertained, or a person of suitable age or discretion cannot be found there, posting a copy in a conspicuous place on the leased property, delivering a copy to a person residing there, if a person can be found, and mailing a copy to you at the place where the leased property is.*

*If the property is sold and a landlord, successful bidder or subsequent purchaser files an eviction action against you in court, you will be served with a summons and complaint and have the opportunity to respond. Eviction actions may result in temporary evictions, permanent evictions, the awarding of damages pursuant to Nevada Revised Statutes 40.360 or some combination of those results.*

*Under the Justice Court Rules of Civil Procedure:*

- (1) You will be given at least 10 days to answer a summons and complaint;*
- (2) If you do not file an answer, an order evicting you by default may be obtained against you;*
- (3) A hearing regarding a temporary eviction may be called as soon as 11 days after you are served with the summons and complaint; and*
- (4) A hearing regarding a permanent eviction may be called as soon as 20 days after you are served with the summons and complaint.*

*4. As used in this section, "residential foreclosure" has the meaning ascribed to it in NRS 107.080.*

Sec. 7. NRS 107.080 is hereby amended to read as follows:

107.080 1. Except as otherwise provided in NRS 107.085, if any transfer in trust of any estate in real property is made after March 29, 1927, to secure the performance of an obligation or the payment of any debt, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which the transfer is security.

2. The power of sale must not be exercised, however, until:

- (a) In the case of any trust agreement coming into force:

(1) On or after July 1, 1949, and before July 1, 1957, the grantor, or his successor in interest, a beneficiary under a subordinate deed of trust or any other person who has a subordinate lien or encumbrance of record on the property, has for a period of 15 days, computed as prescribed in subsection 3, failed to make good the deficiency in performance or payment; or

(2) On or after July 1, 1957, the grantor, or his successor in interest, a beneficiary under a subordinate deed of trust or any other person who has a subordinate lien or encumbrance of record on the property, has for a period of 35 days, computed as prescribed in subsection 3, failed to make good the deficiency in performance or payment;

(b) The beneficiary, the successor in interest of the beneficiary or the trustee first executes and causes to be recorded in the office of the recorder of the county wherein the trust property, or some part thereof, is situated a notice of the breach and of his election to sell or cause to be sold the property to satisfy the obligation; and

(c) Not less than 3 months have elapsed after the recording of the notice.

3. The 15- or 35-day period provided in paragraph (a) of subsection 2 commences on the first day following the day upon which the notice of default and election to sell is recorded in the office of the county recorder of the county in which the property is located and a copy of the notice of default and election to sell is mailed by registered or certified mail, return receipt requested and with postage prepaid to the grantor, ~~and~~ to the person who holds the title of record on the date the notice of default and election to sell is recorded ~~and~~ ***and, if the property is operated as a facility licensed under chapter 449 of NRS, to the State Board of Health,*** at their respective addresses, if known, otherwise to the address of the trust property. The notice of default and election to sell must ~~describe~~ :

(a) ***Describe*** the deficiency in performance or payment and may contain a notice of intent to declare the entire unpaid balance due if acceleration is permitted by the obligation secured by the deed of trust, but acceleration must not occur if the deficiency in performance or payment is made good and any costs, fees and expenses incident to the preparation or recordation of the notice and incident to the making good of the deficiency in performance or payment are paid within the time specified in subsection 2 ~~and~~ ; ***and***

(b) ***If the property is a residential foreclosure, comply with the provisions of section 6.7 of this act.***

4. The trustee, or other person authorized to make the sale under the terms of the trust deed or transfer in trust, shall, after expiration of the 3-month period following the recording of the notice of breach and election to sell, and before the making of the sale, give notice of the time and place thereof by recording the notice of sale and by:

(a) Providing the notice to each trustor, ~~and~~ any other person entitled to notice pursuant to this section ***and, if the property is operated as a facility licensed under chapter 449 of NRS, the State Board of Health,*** by personal service or by mailing the notice by registered or certified mail to the last

known address of the trustor and any other person entitled to such notice pursuant to this section;

(b) Posting a similar notice particularly describing the property, for 20 days successively, in three public places of the township or city where the property is situated and where the property is to be sold; ~~and~~

(c) Publishing a copy of the notice three times, once each week for 3 consecutive weeks, in a newspaper of general circulation in the county where the property is situated ~~;~~ **and**

***(d) If the property is a residential foreclosure, complying with the provisions of section 6.7 of this act.***

5. Every sale made under the provisions of this section and other sections of this chapter vests in the purchaser the title of the grantor and his successors in interest without equity or right of redemption. A sale made pursuant to this section may be declared void by any court of competent jurisdiction in the county where the sale took place if:

(a) The trustee or other person authorized to make the sale does not substantially comply with the provisions of this section ~~;~~ **or any applicable provision of section 6.7 of this act;**

(b) Except as otherwise provided in subsection 6, an action is commenced in the county where the sale took place within 90 days after the date of the sale; and

(c) A notice of lis pendens providing notice of the pendency of the action is recorded in the office of the county recorder of the county where the sale took place within 30 days after commencement of the action.

6. If proper notice is not provided pursuant to subsection 3 or paragraph (a) of subsection 4 to the grantor, to the person who holds the title of record on the date the notice of default and election to sell is recorded, to each trustor or to any other person entitled to such notice, the person who did not receive such proper notice may commence an action pursuant to subsection 5 within 120 days after the date on which the person received actual notice of the sale.

7. The sale of a lease of a dwelling unit of a cooperative housing corporation vests in the purchaser title to the shares in the corporation which accompany the lease.

**8. As used in this section, “residential foreclosure” means the sale of a single family residence under a power of sale granted by this section. As used in this subsection, “single family residence”:**

***(a) Means a structure that is comprised of not more than four units.***

***(b) Does not include any time share or other property regulated under chapter 119A of NRS.***

Sec. 8. NRS 107.084 is hereby amended to read as follows:

107.084 ~~It is unlawful for a person who to willfully remove~~ **remove** or ~~deface~~ **deface** a notice posted pursuant to subsection 4 of NRS 107.080, if done before the sale or, if the default is satisfied before the sale, before the satisfaction of the default . ~~;~~ **In addition to any other penalty,**

*any person who violates this section* is liable in the amount of \$500 to any person aggrieved by the removal or defacing of the notice.

Sec. 9. Chapter 118A of NRS is hereby amended by adding thereto a new section to read as follows:

1. A landlord shall disclose in writing to a prospective tenant if the property to be leased or rented is the subject of any foreclosure proceedings.

2. *A willful violation of subsection 1 constitutes a deceptive trade practice for the purposes of NRS 598.0903 to 598.0999, inclusive.*

Sec. 10. Section 3 of Assembly Bill No. 149 of this session is hereby amended to read as follows:

Sec. 3. NRS 107.085 is hereby amended to read as follows:

107.085 1. With regard to a transfer in trust of an estate in real property to secure the performance of an obligation or the payment of a debt, the provisions of this section apply to the exercise of a power of sale pursuant to NRS 107.080 only if:

(a) The trust agreement becomes effective on or after October 1, 2003 ~~and~~

~~(b) On~~, *and, on* the date the trust agreement is made, the trust agreement is subject to the provisions of § 152 of the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1602(aa), and the regulations adopted by the Board of Governors of the Federal Reserve System pursuant thereto, including, without limitation, 12 C.F.R. § 226.32 ~~[-]; or~~

*(b) The trust agreement concerns owner-occupied housing as defined in section 1 of this act.*

2. The trustee shall not exercise a power of sale pursuant to NRS 107.080 unless:

(a) In the manner required by subsection 3, not later than 60 days before the date of the sale, the trustee causes to be served upon the grantor *or the person who holds the title of record* a notice in the form described in subsection 3; and

(b) If an action is filed in a court of competent jurisdiction claiming an unfair lending practice in connection with the trust agreement, the date of the sale is not less than 30 days after the date the most recent such action is filed.

3. The notice described in subsection 2 must be:

(a) Served upon the grantor *or the person who holds the title of record*:

*(1) Except as otherwise provided in subparagraph (2), by personal service or, if personal service cannot be timely effected, in such other manner as a court determines is reasonably calculated to afford notice to the grantor* ~~[-]~~ *or the person who holds the title of record; or*

*(2) If the trust agreement concerns owner-occupied housing as defined in section 1 of this act:*

*(I) By personal service;*

*(II) If the grantor or the person who holds the title of record is absent from his place of residence or from his usual place of business, by leaving a copy with a person of suitable age and discretion at either place*

*and mailing a copy to the grantor or the person who holds the title of record at his place of residence or place of business; or*

*(III) If the place of residence or business cannot be ascertained, or a person of suitable age or discretion cannot be found there, by posting a copy in a conspicuous place on the trust property, delivering a copy to a person there residing if the person can be found and mailing a copy to the grantor or the person who holds the title of record at the place where the trust property is situated; and*

(b) In substantially the following form, with the applicable telephone numbers and mailing addresses provided on the notice and , except as otherwise provided in subsection 4, a copy of the promissory note attached to the notice:

NOTICE

YOU ARE IN DANGER OF LOSING YOUR HOME!

Your home loan is being foreclosed. In *not less than* 60 days your home will be sold and you will be forced to move. For help, call:

Consumer Credit Counseling \_\_\_\_\_

The Attorney General \_\_\_\_\_

The Division of Financial Institutions \_\_\_\_\_

Legal Services \_\_\_\_\_

Your Lender \_\_\_\_\_

Nevada Fair Housing Center \_\_\_\_\_

4. *The trustee shall cause all social security numbers to be redacted from the copy of the promissory note before it is attached to the notice pursuant to paragraph (b) of subsection 3.*

5. This section does not prohibit a judicial foreclosure.

~~5.~~ 6. As used in this section, “unfair lending practice” means an unfair lending practice described in NRS 598D.010 to 598D.150, inclusive.

*Sec. 11. 1. This section and section 10 of this act become effective on July 1, 2009.*

*2. Sections 1 to 9, inclusive, of this act become effective on October 1, 2009.*

Assemblyman Conklin moved that the Assembly adopt the report of the Conference Committee concerning Assembly Bill No. 140.

Motion carried by a constitutional majority.

Madam Speaker announced if there were no objections, the Assembly would recess subject to the call of the Chair.

Assembly in recess at 9:27 a.m.



## ASSEMBLY IN SESSION

At 9:39 a.m.

Madam Speaker presiding.

Quorum present.

## REMARKS FROM THE FLOOR

Assemblyman Ocegüera requested that the following remarks be entered in the Journal.

Madam Speaker requested the privilege of the Chair for the purpose of making the following remarks:

Let's turn our attention to some of our legislators who won't be returning to the Assembly. May we consider Mark Manendo?

Assemblyman Manendo has been a member of this body since 1994. We were in the same freshman class together, along with, on the Democratic side, David Goldwater and Genie Ohrenschall. The rest of the freshman class were Republicans. It was the year of our 21-21 tie.

Mark has served in a variety of positions—as Assistant Majority Whip, chairman of Government Affairs, vice chairman of both Transportation and Health and Human Services, and chair of the Legislative Commission's Subcommittee to Study Categories of Misdemeanors. But he is really known to all of us for his ready smile, his idealism, and his energy. There is probably no person that I have met that cares more about the people of his district or works harder to serve them than Mark Manendo.

Mark is a native of Pennsylvania. He first became interested in politics as a child when his mother, whom we all know and love, ran for the local school board. Although she lost, Mark was bitten by the political bug and has been involved in politics ever since. His family moved to Las Vegas when he was a teenager, and he graduated from Chaparral High School in 1985. In 1990, he became involved in the legislative campaign of his predecessor, Assemblyman William Petrak. In 1994 when Mr. Petrak expressed an interest in retiring, Mr. Manendo ran for the Assembly himself.

During his service, Mark has concentrated on legislation that helps to directly improve the lives of citizens. He sponsored a bill that authorized police departments to train citizens to write tickets to drivers who park illegally in handicapped spaces. That had been an area where the police didn't really have time to enforce it, and folks that were truly disabled had trouble. As a result of his efforts, compliance has greatly improved.

Mark's father was a veteran, and he has always been a champion of the interests of veterans. In 2003, he sponsored legislation to allow the acceptance of gifts to support the veterans' cemeteries. He has been just as active with mobile home parks, and he's been instrumental in the passing of several pieces of legislation ensuring the safety of mobile parks and protecting the rights of those who rent space in parks. He has been the chairman of our mobile home caucus for the last several sessions. He has also championed laws regarding drinking and driving. To many of the freshmen—sometimes it takes a while for ideas to gain acceptance. Mark was at the forefront before anyone else with regard to DUI. He fought for sessions to get the law passed to lower the threshold from .10 to .08. It wasn't too long ago that we just really didn't take seriously the issue of DUI and the people killed on our roads by others. He was also instrumental in passing laws prohibiting the use of minors in distributing materials promoting alcohol and requiring DUI offenders with blood alcohol content exceeding .18 to get treatment. As a result of these efforts, he was three times given the Legislative Leadership Award by the National Commission Against Drunk Driving.

Mark Manendo's passion is encouraging citizens to get involved in the political process. He works to reach out to the people in his district and find out what issues most concern them. He walks his district and knocks on every door. He is one of the rare legislators that actually walks and knocks on doors during the session on the weekends. He constantly attends and participates in community events. He is a tireless volunteer for all kinds of causes that benefit the

community. He frequently returns to his alma mater, Chaparral High School, to speak to students in social science and government classes. He is especially passionate about reaching new voters and often carries with him a stack of voter registration forms. He is involved in anything that happens to his community. We have a saying that no one can outwork Mark Manendo. The people return him here because they know him, they like him, and they trust him.

You've been a good friend to me, Mark, since our freshman days. We've gone through a lot together and seen a lot of changes together. This body will miss you. Thank you for your years of service.

ASSEMBLYWOMAN SPIEGEL:

I stand to thank Mark Manendo for reaching out to the whole community. It is said very often that all politics is local. Mark is the epitome of somebody who gets out there and reaches out to meet people, encourage them, and help them.

I first met Mark a number of years ago before I ever thought of running for office. Mark was always there with a smile and encouragement and looking to see what the problems were and if there was something he could do to help. His tireless energy—we see every day. Anybody who has ever been in a committee meeting with Mark will hear him say very often, “I just got an email from a constituent.” “I was just in the supermarket, and I saw a constituent who said that we need to be doing this.” “I just got a phone call from a constituent.” I don't know if there is anybody in this building who is in better contact with their constituents than Mark Manendo. I know the people of Nevada have been really fortunate to have you, and I hope I have learned a lot from you on how to work with and to reach out to constituents. I hope that the lessons of Mark Manendo continue, because Nevada will be a better place for them. Thank you.

ASSEMBLYMAN MORTENSON:

I would like everyone to look at the pinwheel on Mark's desk. There is something significant about that—spiritual, I think. There is no other pinwheel in this whole Assembly that is turning except for Mark's. The funny thing is that it turns even when he is not there.

I have to bring up an incident that happened a few years ago. Somehow or other, all the legislators' laptops got a virus, and then it was blamed on Dennis Nolan. Dennis used to sit right over here somewhere. So the next day he came in with a paper bag over his head and two slits cut in for his eyes, and he held up a sign, “I didn't do it.” Everybody laughed very hard, and then he held up a second sign that said “Mark Manendo did it.”

I think Mark has one of the greatest senses of humor in this Assembly, and his culprit who is sitting next to him used to be second-in-command in that area. or maybe first. They are two peas in a pod. We are going to miss him terribly. Of course, again, I'm not going to be here to miss him, but I will miss him wherever I am. Thank you very much, Mark. We love you and we'll miss you.

ASSEMBLYWOMAN PIERCE:

I can't add to what the Speaker said. You work tirelessly for your constituents, and you always have the little guy in your thoughts as you move through this process. I just wanted to thank you for your service.

ASSEMBLYMAN CLABORN:

I have to say some good things about my good friend Mark. He is a great guy, and everybody is right: He is the hardest worker that you can imagine. I can remember when I first came here, he was so concerned about the noise barriers. People were saying, “Those would cost millions of dollars.” He said he didn't care—you put them on the other side of town, you can put them on our side of town. He fought fearlessly, like a gladiator fighting a big lion. And guess what? Today you have wall barriers all over 215, all over the freeways where he was wanting them in his district.

Mark, you are a great guy. I love you. You've got a great family. Take care of Robin. I'm not going to miss you because I'm going to be with you and see you all the time. We will always be pals until they close that lid down on this fat boy. Thank you, Mark.

ASSEMBLYMAN CARPENTER:

Thank you, Mark. We've always been friends; we've always had a great time. I'm going to miss you, too. If you ever need a real home in a mobile home park, come to Elko.

ASSEMBLYMAN DENIS:

I rise in support of my neighbor, Mark Manendo. I have known him much longer than I've been in the Legislature. I remember coming up to the Legislature with the PTA and advocating. One of the things I do remember was the DUI stuff that he was doing. Year after year, we tried to get it, but we just couldn't get it quite there. Mark was always there fighting for that. My other colleague just mentioned the sound barriers. Every time I travel anywhere now and I see a sound barrier on a freeway, I always think of Mark and the testament that if you work something long enough, eventually you'll get it. I appreciate all that you do. I appreciate your commitment and your passion. Nevada is a better place because of your service. Thank you.

ASSEMBLYMAN HARDY:

I think Assemblyman Manendo gave new definition to the word "fight" for sound barriers, and I'll just leave it at that.

One of the things I appreciate about you, Mark, is your ability to understand people and know who needs to be recognized in committee, to involve everybody's opinion and be able to focus without them even saying anything, and to know how to involve everybody on the committee. It was very admirable. As I, as a freshman, came to Government Affairs and watched your ability to include people and their comments and work that committee, I appreciated that. Thank you, Mark.

ASSEMBLYMAN GRADY:

Yesterday Mark mentioned a little bit about a trip that we made around the state. As Paul Harvey would say, "I'd like to tell you the rest of the story." What really happened is we started out in Las Vegas with a number of legislators in a van; it was sponsored by NACO and the Nevada League of Cities when I was with them. We made the tour up through the rural area. Many of the legislators had never been on that route. We stopped at a ranch, and there happened to be a number of cattle that were watering there. As we were talking to the people that owned the ranch, Mark kind of wandered off. We thought, "Well, I wonder where he's gone?" So we snuck around to see what Mark would do. He was over there—and I'll exaggerate it a little bit—but he was saying, "Moo, moo." So we had to tell Mark to be careful—that those cows were trying to mother up with their calves, and they may mistake Mark for one of the calves. That night when we went to Elko—we couldn't resist it—we did buy him that bell, but not only the bell but a big collar to go with it. The next morning when we left Elko, Mark had the bell on, and it rang, and it rang, and it rang until—I think it was Ms. Koivisto—told him "Mark, take off that damn bell or we're throwing both of you out the window." Mark, it was a good trip, and we appreciate it.

ASSEMBLYMAN ANDERSON:

I have had the pleasure of having Mr. Manendo on the Judiciary Committee. His predecessor, who was also on the Judiciary Committee, first brought Mark up, and he would sit in the back of the committee room in the old Judiciary, which is now a hallway. I got to know him early on as somebody who cared deeply about the political process first, and then as a member. When I look at my almanac for the day, June 1, there is a statement from Captain Lawrence about his pending loss of his ship: "Don't give up the ship." While Perry gets the credit for the use of that term on the name of his ship in Lake Erie, it was Lawrence who is often forgotten about. "Don't give up the ship" is Mark Manendo. When my colleague wondered about the pinwheel on Mark's desk that was constantly turning, I thought it was appropriate because he is a Don Quixote, that is, someone who tilts at windmills that seem impossible to others, but he will make sure that he lifts them as soon as he gets the opportunity. Mr. Manendo, for your tenacity, for your "don't give up the ship" attitude, for all those drunk drivers who are going to stay off the road because you gave them a second chance to show them the error of their ways and they changed their behavior as a result, the people of this state are thankful for your presence here.

ASSEMBLYMAN STEWART:

I'll remember my friend Mark Manendo for his strong advocacy of the cultural arts, and I appreciate that. Also, he is always cheerful and caring. The only time I've seen him when he wasn't cheerful was when he was concerned about a certain bill about a week and a half ago—he got a little angry then. We'll miss you, Mark, and thank you for your service.

ASSEMBLYMAN OHRENSCHALL:

I first met Mark at Paradise Democratic Club meetings and Young Democrats meetings, before he was elected to the Assembly. I am proud of everything that you have done for your constituents and how you delivered for the Whitney area of Las Vegas, everything you've done for the veterans' home in southern Nevada, everything you've done for victims' rights groups and for mobile home parks. You're really someone who has brought home the bacon to the people you represent. We'll miss you, Mark.

ASSEMBLYMAN ATKINSON:

I got to know Mark before I came to this body. I work for the county, but I used to be a neighborhood liaison, and I staffed the Whitney town hall. I believe Mark was there more than I was. I later learned that he was the Assemblyman for the area, and I admired his work ethic and what he meant to his constituents. I believe staff and I were supposed to lead those meetings, but I remember somehow he led most of them. You can tell that his constituents really admire his work and how hard he works for them. It was no wonder to me when I read and understood later how much he walked his district and how much he walked during the interim. Over the years, Mark and I have become pretty good friends, I believe. We talk from time to time when we're not in session about a lot of issues.

I have been privileged to have him as vice chair of the Transportation Committee the last two sessions. We don't always agree, but I understand where he stands. He is very, very strong when it comes to safety in our state. He really, really wants to do what is right when it comes to safety, whether it is texting, seat belts, or cell phone usage. You guys don't sit by him and have to disagree with him in committee. He doesn't give up, and he's almost had me a couple times the last few sessions. He was close; if we had gone 123 days, he would have had me. He is just a fighter.

I've always admired that about you, Mark. I know you are a good man, and I know you're not done. I know you have a lot more to contribute to our state. I will end by wishing you all the best of luck, and I am sure that the following of your district doesn't end today. Good luck, and we appreciate you.

ASSEMBLYWOMAN MCCLAIN:

Mark, we have been friends for a long time. We have had a lot of fun together. You are a great advocate for your constituents, and I know you work really hard. It has been great working with you.

ASSEMBLYMAN HOGAN:

I rise to defend our friend, M&M, against any slings or arrows that might be cast his way. He has become one of my closest friends here, and I have enjoyed his humor and his friendship and his clever ideas on where to go at night. I keep getting surprised in and around my own district when people that I'm trying to convince that I'm a heck of a legislator say, "Yeah, but do you know a fellow up there named Manendo?" He is one of the most widely known folks in my district, which is not particularly close to his, but everybody seems to know Mark. He makes a lasting impression in one way or another.

Everyone has mentioned the sound walls. The thing I think about every time I look at Mark is how someone who looks so young could be termed out. We must have a very short term limit period that it could happen so quickly to someone who looks like he is still reaching for age 27 or 28. It leaves us all to wonder who could possibly take up the cause as effectively as Mark has carried the cause of bringing blessed silence to our very, very noisy city by extending sound walls up and down every street and avenue until finally we are totally enclosed, totally soundproof, and able to enjoy the peace and quiet of our own families. Thank you so much, Mark, for all of the fun, for all of the excellent legislative contributions, and for giving us a good

example of how to fully cultivate the crop of constituents who live on our respective farms. Thanks again, and we will be seeing you regularly.

SENATOR DENNIS NOLAN:

Thank you, Madam Speaker, for extending me the privilege of the floor. It really wasn't planned. It was fortuitous that I was here during this celebration of my good friend Mark Manendo's time here in this house. I would be remiss if I didn't stand up and say a couple of things, having spent eight years here and coming here in 1995 with Mark. We hadn't met each other before coming here in 1995. I guess we're the original members of the vertically-challenged caucus, and we've had this ongoing debate about who is taller. But I guess when you're under 5 foot 6 inches, it really doesn't matter who is taller.

We have had a great time together, and that's what happens in these chambers. You get to enjoy each other's company and develop friendships that you never thought you would have. I do have to share a couple of stories about Mark that maybe aren't too well known. The first rural tour we took, we went down to Minden to see a dairy farm. We were in the middle of this large round building where the cows step onto a conveyor belt, and they throw the mechanism on the udder to get the milk. We were kind of amazed by that, not having seen it before, and I saw a photo opportunity for Mark. I wanted to get a picture of Mark with one of the cows with this whole contraption on her in the background. I got the camera ready, and I asked Mark to back up so we could just see the tail end of the cow, because the cows were face in and they were going around this big conveyor belt. I noticed the next cow coming across had its tail up. I wasn't too sure about a lot of things with cows, but I kind of figured what that was. So I asked Mark to take another step back. Just about that time, he took a guacamole shower. It was a terrible thing to do, but he and I were always goofing and getting into trouble.

One of our favorite times was putting a whoopee cushion behind Sandi Krenzer as she sat between the two of us. We just looked at it, and she would lean back and lean forth and lean back and lean forth, and then she started to lean back and David Goldwater stepped behind her. It went off, and they both stared at each for two seconds thinking, "Oh, my gosh."

Some of the best times we had were challenging the chairman of Judiciary's patience and mettle, and he finally had to separate us in that committee.

Mark is a wonderful friend. Mark says he is coming over to the Senate. All I can say is get ready to leave your youthful appearance behind, because when you step through that magic looking glass, you start looking like them—you get old.

Madam Speaker, thank you very much for the opportunity. Mark, happy trails, and maybe we'll see you on the other side.

Madam Speaker requested the privilege of the Chair for the purpose of making the following remarks:

Mark, thank you for your service. Thank you for everything you've done for our state. Thanks for the cow stories, too.

Now, may we consider Assemblywoman Kathy McClain?

Kathy was also first elected in 1998. For the past two sessions, she has served as chair for the Committee on Taxation, a position which was especially critical this session. During the most recent interim, she chaired the study on the issues relating to senior citizens and veterans. She has also chaired the Task Force for a Healthy Nevada, the Nevada Commission on Aging, and the Nevada Commission on Veterans' Services.

I got to know Kathy during her first term in 1999 when we served together on Judiciary and Health and Human Services. I soon realized that she was smart, hardworking, and plain-spoken. She always said exactly what she meant and let the chips fall where they might. She has been a great sounding board to me. I think probably this session, I have gotten to know Kathy better than in all the other sessions because we worked so closely together on the budget.

Kathy was born in Greeley, Colorado, during World War II. What—it must have been the very end. Her father was in England in the Army Air Corps, and her mother was living with her grandparents and working in a munitions factory in Denver. After the war, her family moved back to the farm in Iowa, where she grew up with four siblings and acquired her strong work ethic. Later she returned to Colorado, where she lived until she moved to Nevada. Kathy earned

a bachelor's degree in public administration from Regis University in Denver and a master's in public administration from UNLV. She also earned an academic certificate in gerontology, reflecting her strong interest in the study of the elderly. She has a strong passion in policies affecting senior citizens.

During the most recent interim, she chaired the study relating to senior citizens. If you were asked any questions recently by Kathy about interim committees and study committees this interim, it was because I promised her she could have her committee on seniors and veterans, but only if she removed some of the 35 committees that we had unwittingly authorized this session. She took on the task—not a pleasant assignment—because of her passion for senior citizens' and veterans' issues. Another of her passions has been health care. She strengthened many of our public health programs when she chaired the Task Force for a Healthy Nevada. It also ended up improving her health habits. As you know, one of the jobs of the Task Force is to determine how to improve public health and how to fund antismoking activities. Kathy, herself, at the time was a heavy smoker and in fact used to sneak cigarettes in her office, thinking I would not find out about it. But I find out about everything in this building and had to do some enforcement of our no smoking rules. One of the witnesses before the Task Force was Dr. Elizabeth Fildes, the director of the Nevada Tobacco Users' Helpline, and she prevailed upon Kathy to set an example by breaking her own smoking habit, which she did.

Throughout her legislative career, Kathy has represented an older area of Las Vegas. She fought to ensure her district and areas like it get the schools, public facilities, and services they need. In recent years, much of our attention has focused on the growing suburbs, and Kathy has always been an important voice for our older neighborhoods.

Kathy has also been a mentor and an inspiration for the young women who are just entering politics. She is an active participant and member of the faculty for the new leadership program at UNLV, a program to educate and empower the next generation of women leaders. At the conclusion of this week-long seminar at UNLV for college-age women, she always invites the participants to her home to meet the other women in the Legislature. She has fought for funding for that program and has made it possible. They were just recognized nationally, won an award, and I think it is in large measure due to Kathy's support of the program and her fight for the funding. I also have to thank her because I got one of our interns from the new leadership program when I went to speak most recently. Edith Gonzalez Duarte, who is a Regents Scholar and whom I think you have all met, approached me and said "You inspired me. Can I volunteer for you at the special session?" She volunteered for two of them, and then came back. When I see young, bright women like that who ultimately will take one of these seats, she was inspired through Kathy's vision and that program.

So whether it is her work with veterans, the commission, or every piece of legislation—they are tremendous tributes. I have never seen a better tribute given by this body than the ones arranged by Kathy McClain for our veterans. Whether it is veterans, seniors, public health, or inspiring the next generation of women, you have left your mark on this body, and for that we applaud you. Thank you for your service.

ASSEMBLYMAN MANENDO:

Ms. McClain and I have been friends for a long time. We have worked on a lot of projects together. We have had opportunities to have a little fun, and we certainly know that she and her husband Dave throw some nice get-togethers at their house, and we are grateful for that because it brings all of us together. Some of our caucus meetings we've had at your house, and we've had an opportunity to break bread together as an extended family.

We are absolutely grateful for her work in the community for seniors and veterans. The state is going to miss her.

Kathy, you are a good spirit, a hard worker, and we're going to miss you. We appreciate your dedication and your hard work for the State of Nevada, and we love you. Thank you.

ASSEMBLYMAN CLABORN:

Kathy is a real good friend of mine along with my family. She is a real great legislator, but better than that, she is a great cook. I have been to her home many times, and she is a fabulous cook. Kathy, I wish you luck in all your endeavors, and I know you will go places. I am not

going to miss you, either, because I going to be around here helping you do whatever you want to do. It is good to see you today, and I will see you tomorrow, too. Goodbye, now. Thank you.

ASSEMBLYMAN MORTENSON:

Everybody has talked about Kathy as a legislator; I want to talk about her as a lobbyist. My first session here, she represented local government as a lobbyist, and she was a fearsome lobbyist.

It was my first session, and I was trying to right all the wrongs of local government. I had a bill that said something to the effect that when there was testimony before the commissions or the councils, the negative side would have equal time with the positive side in these discussions and in the debates and so on. Local government did not like that at all, and Kathy, I think, was the fearsome one who led the charge, and it was dreadful. I finally backed off and pulled the bill. She was the one who made me do it. She is really good at that, but she is also a great legislator. She puts the same fearsomeness in the tax committee that she did earlier. Thank you.

ASSEMBLYMAN CARPENTER:

Kathy, you and I have been on a number of committees together, and you've always worked hard. Last session, we were on the corrections committee, and we did a lot of good things there to hopefully stabilize the prison population. Because if this time we'd have had to put as much money in the budget as we did last session, we'd have had to get maybe \$2 billion in tax increases. Thank you for all your hard work and for being my friend.

ASSEMBLYMAN ANDERSON:

First of all, Kathy clearly knows the way to a man's heart is through his stomach. Her food is no doubt a telling point. My lips, this time, have missed the opportunity to burn with the hot peppers. Kathy's tales of the sea adventures of her and her husband have always fascinated me.

I can't think of Kathy without thinking of her sidekick, because I see the two of them together and think of them as a single force in the Judiciary Committee. After some time in committee, the two of them would take time to get a smoke, and you could see that all they wanted to do was get out of there to go have a smoke.

Kathy's passion for veterans is what endears her to us all. She cares for veterans as few people could understand. It is just not another thing to do because of the flag. It is not just the right thing to do because they are veterans. It is a group of people that she will advocate for under any circumstance. Her passion of advocacy is for the right way all the time, not just some of the time. Even if she is standing by herself, Kathy is always the kind of person we all hope to be, and it has been a pleasure to serve with her.

ASSEMBLYMAN GOICOECHEA:

My colleague from Reno was talking about something that would make his lips burn. I want to thank Kathy for giving me a new vice, and to my colleague from Reno, I guarantee you it will help.

In the 2003 Session, my freshman session, I sat next to Kathy, and we had a very contentious session. I will say that Kathy never abandoned me all through that session, even though we were on different sides of the fence. I really have to thank her for that. She showed me that as well as being a good legislator, she can be your friend. I want to thank you, Kathy.

ASSEMBLYWOMAN KOIVISTO:

Kathy and I have been friends since she was up here as a lobbyist my first session, and then when she came back as a legislator, it was even more fun. Kathy is a gourmet cook, as you have heard, and my husband and I spend time with her and her husband eating a lot. We have enjoyed conventions together, and we are not going to miss each other because we are going to see each other. As you have heard, if there is a veterans' event, if there is a seniors' event, you know Kathy's fingerprints are on it. She is passionate about what she does. Kathy, keep directing that passion. Thank you.

ASSEMBLYMAN ATKINSON:

I keep saying I am not going to speak about the next person and then someone I am very well connected to comes up. Kathy is a strong, strong fighter. I have known Kathy for a lot of years

now. We actually have two different sets of employers. We have gone through some times together. We have laughed together, we've cried, we've even cursed together. I have gotten some of my cursing skills from Kathy and Ellen. Once Kathy considers you a friend, you are a friend, and she will do anything for you. I have gotten a lot of my will to fight from her. I remember calling her during our most difficult time and wanting to give up. After listening to her, I got off the phone, cursing and swearing, and thought "I've got to fight. I've got to fight." Because she wasn't going to let me give up either, and I want to thank her for that. She has been a true friend, and I want to thank her for that.

Again, as I said earlier about other people, I know this isn't the last stand for her. She has a lot more to contribute. I remember her fight for seniors before I even knew anything about her legislative aspirations. She has been doing that for a long time in the county. I had a community center and I remember having to set up plenty of times for her for her senior events, so I know she has always been a fighter for seniors even before people thought she was a senior. She is still not a senior, but she has been doing that for a long time, so that just tells you she really cares about them, and it has been in her heart. I know she is not done, and I just want to let her know that if there is anything you ever need from me, I am your friend and I am there for you. Thank you, Kathy.

Madam Speaker requested the privilege of the Chair for the purpose of making the following remarks:

Thank you for your service. You have made a difference.

Madam Speaker announced if there were no objections, the Assembly would recess subject to the call of the Chair.

Assembly in recess at 10:27 a.m.

#### ASSEMBLY IN SESSION

At 10:34 a.m.

Madam Speaker presiding.

Quorum present.

Assemblyman Ocegüera requested that the following remarks be entered in the Journal.

Madam Speaker requested the privilege of the Chair for the purpose of making the following remarks:

If the body will permit, we will consider Assemblyman Harry Mortenson.

Harry Mortenson was first elected to the Nevada State Assembly in November 1996, and at the end of his current term of office, he will have completed 14 years of service to this honorable body. He is now completing his seventh regular session in the Assembly and previously served in nine special sessions.

Harry was born in our nation's capital and was educated at a number of excellent colleges and universities. For his undergraduate degree, Harry attended classes at the University of Maryland and received his bachelor of science degree in physics and math at Roanoke College in Virginia. His initial graduate studies were at American University and Catholic University, which were followed by studies at Duke University, where he was awarded his master's in math and physics. Harry also attended the University of Virginia in Charlottesville for post-graduate studies. All of this education enabled Harry to work in his chosen career as a nuclear physicist.

Harry embarked on his second career as a Nevada Assemblyman at the age of 66, an age when many have lost the energy and intellectual curiosity to pursue something totally new and challenging. Harry's first session in 1997 must have convinced him that he indeed had found a perfect way to learn and to serve his fellow Nevadans at the same time. Harry has a large, supportive, and loving family. He and his wife Helen have been married for 52 years. We all



love Helen as much as we love Harry. Their children Eric, Lisa, and Kirk have blessed Harry and Helen with many grandchildren to love. Their fourteenth grandchild just arrived on the thirteenth of this month, so congratulations are, yet again, in order.

As you might expect, Harry has a wide range of hobbies and interests. His legislative biography lists a number that are technical in nature including astronomy, photography, optics, archaeology, paleontology, nuclear energy, and natural sciences. His interests and skills in computer technology qualify him as a computer guru. Among some of his other interests include sailing, scuba diving, high-fidelity sound, and the Nevada Ballet Theater.

As a member of the Assembly, Harry has served on a number of different standing committees. During the current session, he served on Judiciary, a committee that he served on in three previous sessions. He also served on the Assembly Committee on Corrections, Parole, and Probation this year. Harry has always enjoyed the rather technical procedures involved in amending the *Nevada Constitution* through two sessions of the Legislature and one vote of the people. He served on the Assembly Committee on Constitutional Amendments during the 1999 and 2001 Sessions and was chair in 2003. Since 2005, this committee has been combined with our elections committee, and Harry takes the gavel for all proposed constitutional amendments. Harry has long been an advocate for amending the constitution to allow the Legislature to convene a limited special legislative session on extraordinary occasions. His A.J.R. 13 from the 2003 and 2005 Sessions found legislative approval and narrowly lost in 2006. An improved version of this proposal was introduced and approved again this session, with Harry and Assemblyman Ohrenschall being the primary cosponsors. Assembly Joint Resolution No. 5 must be returned to the 2011 Session for a second legislative approval before going to the voters in 2012.

Just like fine wine, Harry's legislative achievements have improved over the years. During his first three regular sessions, Harry gained passage and approval of two bills for which he was the primary sponsor on election matters, ballot question language, and petitions. He was probably ahead of his time on a number of his early proposals, such as A.B. 434 that he sponsored in 2001. It did not pass, but it would have provided exemptions from taxes for researching and developing renewable energy, an idea that finally found its time. From the 2003 Session to the present, he has successfully guided a number of important bills through the legislative process. Of particular note are those concerning Nevada's precious natural resources. Earlier this session, three of Harry's bills on paleontology became law. One protects paleontology sites, another provides for an ex-officio state paleontologist, while the third designates April as Paleontology Awareness Month in Nevada. His bill to protect the Spring Mountains National Recreation Area in southern Nevada also became law. Perhaps most significant is A.B. 369, which provides tax exemptions for property held by the Archaeological Conservancy, the Nature Conservancy, the American Land Conservancy, and the Nevada Land Conservancy. Such land must be held for eventual transfer to local government or state government and held indefinitely for education, environmental protection, or conservation purposes.

Over the years, Harry has served on a number of interim committees of the Legislature including allocation of the limousines, long-range mass transit, care of the mentally ill, and protection of natural treasures. He certainly found a perfect match as a member of the Legislature's Committee on High-Level Radioactive Waste. Harry has served on that committee continually from 1997 to the present. He was selected to chair that committee in 2001-2002 and again in 2007-2008. Whether it is elections, constitutional amendments, high-level radioactive waste, or protecting our state and our treasures, I've learned so much from Harry Mortenson and his enthusiasm and love of this state and all the diversity it offers. You have left a mark on this institution, and we are so incredibly thankful for your years of service. Thank you, Harry.

ASSEMBLYMAN SEGERBLOM:

I call Harry our conscience. I think he, more than any other person, really tries to do the right thing. He is so conflicted when pressures come to bend or change. He knows that he may have to do it, but inside he cannot accept that and so he will just keep pushing for the good and for the best. He is so honest and admirable, and I cannot say enough about him.

I do want to mention one funny story. For those who are not on Elections, Procedures, Ethics, and Constitutional Amendments, we are kind of a bunch of renegades, but Marcus and Heidi watch over us so that we don't get crazy. One day Marcus happened to walk out of the room, and Harry got a glint in his eye and smiled and said, "We're going to vote on A.J.R. 1." We didn't know any better, and so we called the question, and lo and behold, we voted on A.J.R. 1 and it passed. Marcus came back and said, "Oh, my gosh. What's happened here? How did this happen?" So anyway, we are kind of a renegade bunch, and Harry and Ellen both lead the troops, but we are kept in check by Marcus and Heidi. Thank you, Marcus and Heidi, and thank you, Mr. Mortenson, for being so great.

ASSEMBLYMAN CONKLIN:

Thank you for letting me go after my colleague, Mr. Segerblom. At the end of the 2005 Session when Mr. Mortenson was passing out committee gifts, he called me up and referred to me as his nemesis. That is exactly how he called me up: "my nemesis." We haven't always agreed, Harry. We know that, but we've always talked and we've always shared our ideas. We've always listened to each other, tried to understand, and agreed where we could. But we've both stood by our guns when we couldn't agree, too. For that, I will never forget you, and I will always be reminded that I need to be patient and listen and be open. I certainly appreciate all of the conversations that we've had, particularly on the constitutional amendments, ballot initiatives, and the election portions, because there are always more sides. I don't know that anybody is right or anybody is wrong; I think we're just trying to get it right. God bless you for that. I appreciate you.

ASSEMBLYMAN OHRENSCHALL:

Last session—my freshman session when I thought I knew it all—I wanted very desperately to be liked and to be part of the team. Every now and then, that didn't always work with how I felt on a bill. Last session I learned a lot from Harry. He really helped me find the courage to stand by my convictions, and I really appreciate that, Harry. I'll miss you very much.

ASSEMBLYMAN STEWART:

As one who is old, Harry, I appreciate your ability to protect things that are old. I'll always appreciate that very much. I also appreciate your skills with photography. Each session that I have been here, you've presented me with a picture of myself which made me look halfway good, and I really appreciate that. We'll miss you, Harry. Thank you very much.

ASSEMBLYMAN CARPENTER:

To me, Harry has always been the most interesting legislator. He is certainly, I think, the smartest. On many committees, when there are bills up, sometimes Harry and I are the only ones who vote for them or against them. That's kind of refreshing. Harry, I've always enjoyed you, and you're a great friend. One of these days, I hope you get to be the administrator or director of the next fusion atomic power plant.

ASSEMBLYMAN ANDERSON:

Harry is not big on mornings, and Judiciary meets in the morning. Harry occasionally would have preferred to stay in bed, because things that happen later in the day are much more to his time clock. But having Harry in Judiciary has always been one of the more important parts of my day, knowing that Harry was there with his great stories about his youth and the misgivings about the things that he may have done, and all of us cringing, knowing that it was going to be on the public record.

When Harry first came, he served, I think, on Government Affairs in the morning. After a few sessions, he asked if I thought it would be okay if he came to Judiciary, to which I explained I have no control over that issue—who is on what committee—but I thought that he would do very, very well there. I know that Harry is going to tell me the truth whether I want to hear it or not. He told me just recently very, very clearly—not the first time that I've heard it, of course—but very, very clearly that I was probably the only person who could pull off pompous and get away with it. I love Harry for his honesty and his straightforward attitude about who you are and what we all are. With Harry's youthful exuberance and his constant ability to learn a new task and to keep an open mind, he follows that Aristotle concept that it is possible to entertain a

thought without embracing it. You can discuss it without making it your own. I've always admired that quality in him and his ability to help us all. Thank you, Harry, for your service.

ASSEMBLYMAN MANENDO:

When Mr. Mortenson came in as a freshman, I had been here just one term prior to that. When I read his bio—he's a nuclear physicist—I felt really intimidated, and I kind of stayed away from him and didn't realize what a gentle and caring man he is. In one of the pictures up on the board, he looks like Santa Claus. Back in the old days, I would take the legislative guides around door-to-door, and sometimes in the classrooms, I would give them to teachers and kids. The kids would look through and say, "That's Santa Claus." I would say, "I think it is," because he is such a caring, gentle man that has a passion and love for people.

One thing that has not been mentioned is his passion for photography. Mr. Mortenson over the years has blessed us with having a wonderful photo album—photos of anything and everything. It's really a great opportunity to reminisce about the old days and all the way up until this session. He appreciates the art of photography, and if you go into his office—sometimes I don't know if it's going to blow up or not, he's got so many electronic devices—but he has a lot of pictures, including one of his wife Helen. She is just a gem.

We appreciate your service and your passion to the State of Nevada. It is a better place because of you. I've learned so much from you, and I am so honored that we've become such close friends. I wouldn't trade that for the world. Harry, thank you very, very much for everything that you have done in bringing me into your life. I'm grateful, thank you.

ASSEMBLYWOMAN DONDERO LOOP:

My recollections of Harry and Helen are on a personal note. I would be remiss if I didn't thank you both for being friends to me and mostly—at the risk of talking about my momma—to my mother. Thank you for taking care of her while I've been up here.

Thank you mostly for just being a voice of reason and for coming to Judiciary in the morning and having the expertise that you have. Thank you.

ASSEMBLYWOMAN GANSERT:

I want to thank you for your work here in the Legislature. You're a gentleman and a scholar. I've so enjoyed being on your committee in constitutional amendments. We do have great debates in there, and we do have some renegades. It's always a lot of fun, and I appreciate that you're open to the debate. You want everyone to discuss things, to ask the questions, and to get the testimony. Thank you for your dedication and your service.

ASSEMBLYMAN CLABORN:

I've got a lot of stories to tell about Harry. Harry and I have been friends for many years. I used to move his trailers around when he was campaigning, a couple of sessions before I ever ran. Anyway, I'm not going to tell any stories about that. I'm going to tell a few stories about Harry.

Since I've become a chairman, I would look at the agenda and say, "Oh, my gosh. Here comes Harry again with paleontology." Every time I see that I want to hide underneath the desk for the simple fact that back in the old days, I used to run all kinds of heavy equipment. The first thing Harry did, along with Helen on videoconference from Las Vegas, was talk about all of these skeletons and all of the artifacts that these big caterpillars and tractors tore up from all the ground around the Twin Lakes area, how they took all of our treasures and hid them, and then Germany came over and grabbed some of them. That's about the time that I wanted to hide. After about three sessions, I finally had to admit it. I had to tell him. After I got Helen and everybody calmed down about stealing all of the artifacts, I had to admit it. I said, "I've got to apologize, Harry. I was one of the guys that dug all of those up and hauled them off and hid them back in the old days so we could build Twin Lakes Reservoir and put a settlement out there." He understood, but I still feel bad about that. To me, dirt was dirt and bones were bones. Whatever it was, rock was rock and we had to move it. I feel bad about it, but one thing that he taught me is how to say "paleontology."

Thank you, Harry. It's been a wonderful ride, and it's not over yet. It's not over until they close that big lid down on you and me. We've still got a few good years left. It's been a

pleasure working with you, Harry, and you've done a lot for the state. I hope those Germans and whoever stole our artifacts will give them back one of these days. Thank you very much.

Madam Speaker requested the privilege of the Chair for the purpose of making the following remarks:

Harry, for your years of service and the mark that you left, I thank you.

#### REPORTS OF COMMITTEES

*Madam Speaker:*

Your Committee on Elections, Procedures, Ethics, and Constitutional Amendments, to which was referred Senate Bill No. 264, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Elections, Procedures, Ethics, and Constitutional Amendments, to which were referred Senate Concurrent Resolutions Nos. 19, 26, has had the same under consideration, and begs leave to report the same back with the recommendation: Be adopted.

ELLEN M. KOIVISTO, *Chair*

#### MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, May 31, 2009

*To the Honorable the Assembly:*

I have the honor to inform your honorable body that the Senate amended, and on this day passed, as amended, Assembly Bill No. 395, Amendment No. 794, and respectfully requests your honorable body to concur in said amendment.

SHERRY L. RODRIGUEZ  
*Assistant Secretary of the Senate*

#### MOTIONS, RESOLUTIONS AND NOTICES

Senate Concurrent Resolution No. 19.

Assemblywoman Koivisto moved the adoption of the resolution.

Remarks by Assemblywoman Koivisto.

Resolution adopted and ordered transmitted to the Senate.

Senate Concurrent Resolution No. 26.

Assemblywoman Koivisto moved the adoption of the resolution.

Remarks by Assemblywoman Koivisto.

Resolution adopted.

By the Committee on Ways and Means:

Assembly Concurrent Resolution No. 34—Providing for the Interim Finance Committee to create the Subcommittee for Federal Stimulus Oversight.

Assemblyman Oceguela moved that the resolution be adopted.

Remarks by Assemblyman Oceguela.

Resolution adopted and ordered transmitted to the Senate.

Assemblyman Oceguela moved that the Assembly recess until 2 p.m.

Motion carried.

Assembly in recess at 11:06 a.m.

## ASSEMBLY IN SESSION

At 2:51 p.m.

Madam Speaker presiding.

Quorum present.

Assemblyman Ocegüera moved that for the balance of session, all rules be suspended, and all bills and joint resolutions reported out of committee be declared emergency measures under the *Constitution* and placed on third reading and final passage.

Assemblyman Ocegüera moved that all rules be suspended and the reprinting of all bills and resolutions be dispensed with for the balance of session.

Motion carried.

Senate Concurrent Resolution No. 37

Resolution read.

Assemblyman Ocegüera moved that Senate Concurrent Resolution No. 37 be taken from the Resolution File and referred to the Committee on Ways and Means.

Motion carried.

Madam Speaker announced if there were no objections, the Assembly would recess subject to the call of the Chair.

Assembly in recess at 2:52 p.m.

## ASSEMBLY IN SESSION

At 3:02 p.m.

Madam Speaker presiding.

Quorum present.

## REPORTS OF COMMITTEES

*Madam Speaker:*

Your Committee on Elections, Procedures, Ethics, and Constitutional Amendments, to which was referred Senate Bill No. 212, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Elections, Procedures, Ethics, and Constitutional Amendments, to which was referred Senate Bill No. 3, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

ELLEN M. KOIVISTO, *Chair*

## MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, June 1, 2009

*To the Honorable the Assembly:*

I have the honor to inform your honorable body that the Senate on this day adopted the report of the Conference Committee concerning Assembly Bill No. 84; Assembly Bill No. 140; Assembly Bill No. 320; Senate Bill No. 182.

SHERRY L. RODRIGUEZ

*Assistant Secretary of the Senate*

## GENERAL FILE AND THIRD READING

Senate Bill No. 3.

Bill read third time.

The following amendment was proposed by the Committee on Elections, Procedures, Ethics, and Constitutional Amendments:

Amendment No. 1001.

AN ACT relating to legislative affairs; creating the Legislative Committee on Child Welfare and Juvenile Justice; prescribing the powers and duties of the Committee; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

**Section 3** of this bill creates the Legislative Committee on Child Welfare and Juvenile Justice and provides for the appointment of its membership by the Legislative Commission. **Section 4** of this bill prescribes the manner in which meetings must be conducted by the Committee and provides for the compensation of its members. **Section 5** of this bill prescribes the duties of the Committee, including the evaluation and review of issues relating to child welfare services and juvenile justice in this State. **Sections 6 and 7** of this bill authorize the Committee to conduct investigations and hold hearings and provide for the administration of oaths, the deposition of witnesses and the issuance of subpoenas in connection with those investigations and hearings. ~~[Section 9 of this bill provides that the members of the Committee will be appointed following the 2011 Legislative Session, unless before then a sufficient amount of money is collected through gifts, grants and donations to establish and provide administrative support for the Committee.]~~

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

Section 1. Chapter 218 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this act.

Sec. 2. *As used in sections 2 to 8, inclusive, of this act, unless the context otherwise requires, "Committee" means the Legislative Committee on Child Welfare and Juvenile Justice.*

Sec. 3. *1. The Legislative Committee on Child Welfare and Juvenile Justice is hereby created. The membership of the Committee consists of three members of the Senate and three members of the Assembly, appointed by the Legislative Commission.*

*2. The Legislative Commission shall select the Chairman and Vice Chairman of the Committee from among the members of the Committee. After the initial selection of those officers, each of those officers holds the position for a term of 2 years commencing on July 1 of each odd-numbered year. The Chairmanship of the Committee must alternate each biennium between the houses of the Legislature. If a vacancy occurs in the Chairmanship or Vice Chairmanship, the vacancy must be filled in the*

*same manner as the original selection for the remainder of the unexpired term.*

*3. A member of the Committee who is not a candidate for reelection or who is defeated for reelection continues to serve until the convening of the next regular session of the Legislature.*

*4. A vacancy on the Committee must be filled in the same manner as the original appointment.*

*Sec. 4. 1. The members of 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. The Director of the Legislative Counsel Bureau or his designee shall act as the nonvoting recording Secretary of the Committee.*

*3. Four members of the Committee constitute a quorum, and a quorum may exercise all the power and authority conferred on the Committee.*

*4. Except during a regular or special session of the Legislature, for each day or portion of a day during which a member of the Committee attends a meeting of the Committee or is otherwise engaged in the work of the Committee, the member is entitled to receive the:*

*(a) Compensation provided for a majority of the members of the Legislature during the first 60 days of the preceding regular session;*

*(b) Per diem allowance provided for state officers and employees generally; and*

*(c) Travel expenses provided pursuant to NRS 218.2207.*

*↪ The compensation, per diem allowances and travel expenses of the members of the Committee must be paid from the Legislative Fund.*

*Sec. 5. The Committee shall evaluate and review issues relating to:*

*1. The provision of child welfare services in this State, including, without limitation:*

*(a) Programs for the provision of child welfare services;*

*(b) Licensing and reimbursement of providers of foster care;*

*(c) Mental health services; and*

*(d) Compliance with federal requirements regarding child welfare; and*

*2. Juvenile justice in this State, including, without limitation:*

*(a) The coordinated continuum of care in which community-based programs and services are combined to ensure that health services, substance abuse treatment, education, training and care are compatible with the needs of each juvenile in the juvenile justice system;*

*(b) Individualized supervision, care and treatment to accommodate the individual needs and potential of the juvenile and his family, and treatment programs which integrate the juvenile into situations of living and interacting that are compatible with a healthy, stable and familial environment;*

*(c) Programs for aftercare and reintegration in which juveniles will continue to receive treatment after their active rehabilitation in a facility to*

*prevent the relapse or regression of progress achieved during the recovery process;*

*(d) Overrepresentation and disparate treatment of minorities in the juvenile justice system, including, without limitation, a review of the various places where bias may influence decisions concerning minorities;*

*(e) Gender-specific services, including, without limitation, programs for female juvenile offenders which consider female development in their design and implementation and which address the needs of females, including issues relating to:*

*(1) Victimization and abuse;*

*(2) Substance abuse;*

*(3) Mental health;*

*(4) Education; and*

*(5) Vocational and skills training;*

*(f) The quality of care provided for juvenile offenders in state institutions and facilities, including, without limitation:*

*(1) The qualifications and training of staff;*

*(2) The documentation of the performance of state institutions and facilities;*

*(3) The coordination and collaboration of agencies; and*

*(4) The availability of services relating to mental health, substance abuse, education, vocational training and treatment of sex offenders and violent offenders;*

*(g) The feasibility and necessity for the independent monitoring of state institutions and facilities for the quality of care provided to juvenile offenders; and*

*(h) Programs developed in other states which provide a system of community-based programs that place juvenile offenders in more specialized programs according to the needs of the juveniles.*

Sec. 6. 1. *The Committee may:*

*(a) Conduct investigations and hold hearings in connection with its duties pursuant to section 5 of this act;*

*(b) Request that the Legislative Counsel Bureau assist in the research, investigations, hearings and reviews of the Committee; and*

*(c) Propose recommended legislation concerning child welfare and juvenile justice to the Legislature.*

2. *The Committee shall, on or before January 15 of each odd-numbered year, submit to the Director of the Legislative Counsel Bureau for transmittal to the Legislature a report concerning the evaluation and review conducted pursuant to section 5 of this act.*

Sec. 7. 1. *If the Committee conducts investigations or holds hearings pursuant to section 6 of this act:*

*(a) The Chairman of the Committee or, in his absence, a member designated by the Committee may administer oaths;*



*(b) The Chairman of the Committee may cause the deposition of witnesses, residing 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; and*

*(c) The Chairman of the Committee 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 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 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 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.*

*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 then and there show cause why he has not attended or testified or produced the books or papers before the Committee. 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, the court shall enter an order that the witness appear before the Committee at the time and place fixed in the order and testify or produce the required books or papers, and upon failure to obey the order, the witness shall be dealt with as for contempt of court.*

*Sec. 8. Each witness who appears before the Committee by its order, except a state officer or employee, is entitled to receive for his attendance the fees and mileage provided for witnesses in civil cases in the courts of record of this State. The fees and mileage must be audited and paid upon the presentation of proper claims sworn to by the witness and approved by the Secretary and Chairman of the Committee.*

*Sec. 9. ~~1. Except as otherwise provided in this section, the Legislative Commission shall appoint the members of the Legislative Committee on Child Welfare and Juvenile Justice created pursuant to section 3 of this act following the 2011 Legislative Session.~~*

*~~2. The Director of the Legislative Counsel Bureau shall accept gifts, grants and donations to establish and provide administrative support for the Legislative Committee on Child Welfare and Juvenile Justice. The money must be accounted for separately in the Legislative Fund.~~*

*~~3. If the Director of the Legislative Counsel Bureau determines that sufficient money has been collected to establish and provide administrative~~*

~~support for the Legislative Committee on Child Welfare and Juvenile Justice before the adjournment sine die of the 2011 Legislative Session, the Director must notify the Legislative Commission.~~

~~4. If the Legislative Commission agrees with the Director that a sufficient amount of money has been collected, the Legislative Commission shall appoint the members of the Legislative Committee on Child Welfare and Juvenile Justice to serve until appointments are made following the 2011 Legislative Session. (Deleted by amendment.)~~

Sec. 10. This act becomes effective ~~upon passage and approval.~~ on July 1, 2009.

Assemblywoman Koivisto moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

Senate Bill No. 212.

Bill read third time.

The following amendment was proposed by the Committee on Elections, Procedures, Ethics, and Constitutional Amendments:

Amendment No. 1002.

AN ACT relating to initiative petitions; providing a procedure for a petition proposing a statute, an amendment to a statute or an amendment to the Constitution to be placed on a ballot; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires that an initiative petition proposing a statute, an amendment to a statute or an amendment to the Constitution be signed by a number of registered voters that is equal to at least 10 percent of the voters who voted at the last preceding general election. (Nev. Const. Art. 19, § 2) Existing law also requires an initiative petition be signed by a number of registered voters from each county in the State that is at least equal to 10 percent of the voters who voted in the entire State at the last preceding general election multiplied by the population percentage for that county. (NRS 295.012) The United States District Court for the District of Nevada declared that the current existing law violates the Equal Protection Clause of the United States Constitution because it results in the signatures of voters from counties with lower population carrying more weight than the signatures of voters from counties with higher population. (*Marijuana Policy Project v. Miller*, 578 F.Supp. 2d 1290 (D. Nev. 2008)) This bill repeals and replaces the current existing law.

**Section 3.2** of this bill requires the Legislature to create petition districts from which signatures for a petition for initiative must be gathered. **Section 14** of this bill defines "petition district" to mean congressional district until July 1, 2011, at which time the Legislature must have established petition districts for the period after that date. **Section 3.4** of this bill requires the Director of the Legislative Counsel Bureau to retain a copy of maps of the

petitions district and make them available to any interested person for a reasonable fee not to exceed the actual cost of producing the copy. **Section 12** of this bill requires a petition for initiative to be signed by a number of registered voters in each petition district in the State that equals at least 10 percent of the voters who voted in that petition district in the last preceding general election.

**Section 5** of this bill requires the Secretary of State to determine, as soon as practicable after each general election, the number of signatures required to be gathered from each petition district. **Sections 6-9** of this bill provide procedures for the verification of signatures on a petition proposing a statute, an amendment to a statute or an amendment to the Constitution. **Sections 7 and 9** require the Secretary of State to adopt regulations concerning these procedures. **Section 10** of this bill requires the Secretary of State to provide on his website a current list of the registered voters in this State that indicates the petition district in which each registered voter resides. **Section 13** of this bill authorizes the person signing a petition to indicate his petition district on the petition and, if not so indicated, ~~follows~~ **requires** the circulator of the petition to indicate the petition district of the person if known. **Section 13** further allows a voter to consult the website of the Secretary of State to determine within which petition district he resides and to rely on that information.

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

Section 1. Chapter 293 of NRS is hereby amended by adding thereto the provisions set forth as ~~sections 2 and 3~~ **section 2** of this act.

Sec. 2. *"Petition district" means a district established by the Legislature pursuant to section 3.2 of this act.*

Sec. 3. (Deleted by amendment.)

Sec. 3.2. *1. The Legislature shall establish petition districts from which signatures for a petition for initiative that proposes a statute, an amendment to a statute or an amendment to the Constitution of this State must be gathered. The petition districts must be established in a manner that is fair to all residents of the State, represent approximately equal populations and ensure that each signature is afforded the same weight.*

*2. Petition districts must be:*

*(a) Based on the population databases compiled by the Bureau of the Census of the United States Department of Commerce as validated and incorporated into the geographic information system by the Legislative Counsel Bureau for use by the Nevada Legislature.*

*(b) Designated in the maps filed with the Office of the Secretary of State pursuant to section 3.4 of this act.*

Sec. 3.4. *The Director of the Legislative Counsel Bureau shall:*

*1. Retain in an office of the Legislative Counsel Bureau, copies of maps of the petition districts established pursuant to section 3.2 of this act.*

**2. Make available copies of the maps to any interested person for a reasonable fee, not to exceed the actual costs of producing copies of the maps.**

**3. File a copy of the maps with the Secretary of State.**

Sec. 4. NRS 293.010 is hereby amended to read as follows:

293.010 As used in this title, unless the context otherwise requires, the words and terms defined in NRS 293.013 to 293.121, inclusive, **and section 2 of this act**, have the meanings ascribed to them in those sections.

Sec. 5. NRS 293.127563 is hereby amended to read as follows:

293.127563 1. As soon as practicable after each general election, the Secretary of State shall determine the number of signatures required to be gathered from each ~~{county}~~ **petition district** within the State for a petition for initiative that proposes a statute, an amendment to **a** statute or an amendment to the Constitution of this State.

2. To determine the number of signatures required to be gathered from ~~{a county,}~~ **a petition district**, the Secretary of State shall ~~{multiply}~~ **calculate** the amount that equals 10 percent of the voters who voted in ~~{the entire State}~~ **that petition district** at the last preceding general election. ~~{By the population percentage for that county.}~~

~~3.—As used in this section:~~

~~(a) "Total population of the State" means the determination of the total population of the State by the national decennial census conducted by the Bureau of the Census of the United States Department of Commerce pursuant to Section 2 of Article I of the Constitution of the United States and reported by the Secretary of Commerce to the Governor pursuant to 13 U.S.C. § 141(c).~~

~~(b) "Population percentage for that county" means the figure obtained by dividing the population of the county, as determined by the national decennial census conducted by the Bureau of the Census of the United States Department of Commerce pursuant to Section 2 of Article I of the Constitution of the United States and reported by the Secretary of Commerce to the Governor pursuant to 13 U.S.C. § 141(c), by the total population of the State.]~~

Sec. 6. NRS 293.1276 is hereby amended to read as follows:

293.1276 1. Within 4 days, excluding Saturdays, Sundays and holidays, after the submission of a petition containing signatures which are required to be verified pursuant to NRS 293.128, 293.165, 293.172, 293.200, 295.056, 298.109, 306.035 or 306.110, the county clerk shall determine the total number of signatures affixed to the documents **and, in the case of a petition proposing a statute, an amendment to a statute or an amendment to the Constitution, shall tally the number of signatures for each petition district contained fully or partially within his county** and forward that information to the Secretary of State.

2. If the Secretary of State finds that the total number of signatures filed with all the county clerks is less than 100 percent of the required number of

registered voters, he shall so notify the person who submitted the petition and the county clerks and no further action may be taken in regard to the petition. If the petition is a petition to recall a county, district or municipal officer, the Secretary of State shall also notify the officer with whom the petition is to be filed.

3. After the petition is submitted to the county clerk, it must not be handled by any other person except by an employee of the county clerk's office until it is filed with the Secretary of State.

Sec. 7. NRS 293.1277 is hereby amended to read as follows:

293.1277 1. If the Secretary of State finds that the total number of signatures submitted to all the county clerks is 100 percent or more of the number of registered voters needed to declare the petition sufficient, he shall immediately so notify the county clerks. Within 9 days, excluding Saturdays, Sundays and holidays, after notification, each of the county clerks shall determine the number of registered voters who have signed the documents submitted in his county ~~{ }~~ ***and, in the case of a petition proposing a statute, an amendment to a statute or an amendment to the Constitution, shall tally the number of signatures for each petition district contained or fully contained within his county.***

2. If more than 500 names have been signed on the documents submitted to him, a county clerk shall examine the signatures by sampling them at random for verification. The random sample of signatures to be verified must be drawn in such a manner that every signature which has been submitted to the county clerk is given an equal opportunity to be included in the sample. The sample must include an examination of at least 500 or 5 percent of the signatures, whichever is greater.

3. In determining from the records of registration the number of registered voters who signed the documents, the county clerk may use the signatures contained in the file of applications to register to vote. If the county clerk uses that file, he shall ensure that every application in the file is examined, including any application in his possession which may not yet be entered into his records. The county clerk shall rely only on the appearance of the signature and the address and date included with each signature in making his determination.

4. ***In the case of a petition proposing a statute, an amendment to a statute or an amendment to the Constitution, when the county clerk is determining the number of registered voters who signed the documents from each petition district contained fully or partially within his county, he must use the statewide voter registration list available pursuant to NRS 293.675.***

5. Except as otherwise provided in subsection ~~{6,}~~ 7, upon completing the examination, the county clerk shall immediately attach to the documents a certificate properly dated, showing the result of his examination, ***including the tally of signatures by petition district, if required,*** and transmit the documents with the certificate to the Secretary of State. ***If a petition district***

*comprises more than one county and the petition proposes a statute, an amendment to a statute or an amendment to the Constitution, the appropriate county clerks shall comply with the regulations adopted by the Secretary of State pursuant to this section to complete the certificate.* A copy of this certificate must be filed in the clerk's office. When the county clerk transmits the certificate to the Secretary of State, the county clerk shall notify the Secretary of State of the number of requests to remove a name received by the county clerk pursuant to NRS 295.055 or 306.015.

~~{5-}~~ 6. A person who submits a petition to the county clerk which is required to be verified pursuant to NRS 293.128, 293.165, 293.172, 293.200, 295.056, 298.109, 306.035 or 306.110 must be allowed to witness the verification of the signatures. A public officer who is the subject of a recall petition must also be allowed to witness the verification of the signatures on the petition.

~~{6-}~~ 7. For any petition containing signatures which are required to be verified pursuant to the provisions of NRS 293.165, 293.200, 306.035 or 306.110 for any county, district or municipal office within one county, the county clerk shall not transmit to the Secretary of State the documents containing the signatures of the registered voters.

~~{7-}~~ 8. The Secretary of State ~~may~~ **shall** by regulation establish further procedures for carrying out the provisions of this section.

Sec. 8. NRS 293.1278 is hereby amended to read as follows:

293.1278 1. If the certificates received by the Secretary of State from all the county clerks establish that the number of valid signatures is less than 90 percent of the required number of registered voters, the petition shall be deemed to have failed to qualify, and the Secretary of State shall immediately so notify the petitioners and the county clerks.

2. If those certificates establish that the number of valid signatures is equal to or more than the sum of 100 percent of the number of registered voters needed to make the petition sufficient plus the total number of requests to remove a name received by the county clerks pursuant to NRS 295.055 or 306.015 ~~{-}~~ **and, in the case of a petition proposing a statute, an amendment to a statute or an amendment to the Constitution, that the petition has the minimum number of signatures required for each petition district,** the petition shall be deemed to qualify as of the date of receipt by the Secretary of State of those certificates, and the Secretary of State shall immediately so notify the petitioners and the county clerks.

3. If the certificates establish that the petitioners have 100 percent or more of the number of registered voters needed to make the petition sufficient but the petition fails to qualify pursuant to subsection 2, each county clerk who received a request to remove a name pursuant to NRS 295.055 or 306.015 shall remove each name as requested, amend the certificate and transmit the amended certificate to the Secretary of State. If the amended certificates establish that the petitioners have 100 percent or more of the number of registered voters needed to make the petition

sufficient ~~to~~ **and, in the case of a petition proposing a statute, an amendment to a statute or an amendment to the Constitution, that the petition has the minimum number of signatures required for each petition district**, the petition shall be deemed to qualify as of the date of receipt by the Secretary of State of the amended certificates, and the Secretary of State shall immediately so notify the petitioners and the county clerks.

Sec. 9. NRS 293.1279 is hereby amended to read as follows:

293.1279 1. If the statistical sampling shows that the number of valid signatures filed is 90 percent or more, but less than the sum of 100 percent of the number of signatures of registered voters needed to declare the petition sufficient plus the total number of requests to remove a name received by the county clerks pursuant to NRS 295.055 or 306.015, the Secretary of State shall order the county clerks to examine the signatures for verification. The county clerks shall examine the signatures for verification until they determine that 100 percent of the number of signatures of registered voters needed to declare the petition sufficient are valid. If the county clerks received a request to remove a name pursuant to NRS 295.055 or 306.015, the county clerks may not determine that 100 percent of the number of signatures of registered voters needed to declare the petition sufficient are valid until they have removed each name as requested pursuant to NRS 295.055 or 306.015.

2. Except as otherwise provided in this subsection, if the statistical sampling shows that the number of valid signatures filed in any county is 90 percent or more but less than the sum of 100 percent of the number of signatures of registered voters needed to constitute 10 percent of the number of voters who voted at the last preceding general election in that county plus the total number of requests to remove a name received by the county clerk in that county pursuant to NRS 295.055 or 306.015, the Secretary of State may order the county clerk in that county to examine every signature for verification. If the county clerk received a request to remove a name pursuant to NRS 295.055 or 306.015, the county clerk may not determine that 100 percent or more of the number of signatures of registered voters needed to constitute 10 percent of the number of voters who voted at the last preceding general election in that county are valid until he has removed each name as requested pursuant to NRS 295.055 or 306.015. In the case of a petition for initiative that proposes a statute, an amendment to ~~a~~ statute or an amendment to the Constitution of this State, if the statistical sampling shows that the number of valid signatures in any ~~county~~ **petition district** is 90 percent or more but less than the sum of 100 percent of the number of signatures of registered voters required for that ~~county~~ **petition district** pursuant to NRS 295.012 plus the total number of requests to remove a name received by the county clerk ~~in that~~ **or county clerks, if the petition district comprises more than one county**, pursuant to NRS 295.055, the Secretary of State may order the county clerk to examine every signature for verification.

3. Within 12 days, excluding Saturdays, Sundays and holidays, after receipt of such an order, the county clerk *or county clerks* shall determine from the records of registration what number of registered voters have signed the petition ~~[-]~~ ***and, if appropriate, tally those signatures by petition district.*** If necessary, the board of county commissioners shall allow the county clerk additional assistants for examining the signatures and provide for their compensation. In determining from the records of registration what number of registered voters have signed the petition ~~[-]~~ ***and in determining in which petition district the voters reside,*** the county clerk must use the statewide voter registration list. The county clerk may rely on the appearance of the signature and the address and date included with each signature in determining the number of registered voters that signed the petition.

4. Except as otherwise provided in subsection 5, upon completing the examination, the county clerk *or county clerks* shall immediately attach to the documents of the petition an amended certificate, properly dated, showing the result of the examination and shall immediately forward the documents with the amended certificate to the Secretary of State. A copy of the amended certificate must be filed in the county clerk's office. ***In the case of a petition to propose a statute, an amendment to a statute or an amendment to the Constitution, if a petition district comprises more than one county, the county clerks shall comply with the regulations adopted by the Secretary of State pursuant to this section to complete the amended certificate.***

5. For any petition containing signatures which are required to be verified pursuant to the provisions of NRS 293.165, 293.200, 306.035 or 306.110 for any county, district or municipal office within one county, the county clerk shall not forward to the Secretary of State the documents containing the signatures of the registered voters.

6. Except for a petition to recall a county, district or municipal officer, the petition shall be deemed filed with the Secretary of State as of the date on which he receives certificates from the county clerks showing the petition to be signed by the requisite number of voters of the State.

7. If the amended certificates received from all county clerks by the Secretary of State establish that the petition is still insufficient, he shall immediately so notify the petitioners and the county clerks. If the petition is a petition to recall a county, district or municipal officer, the Secretary of State shall also notify the officer with whom the petition is to be filed.

***8. The Secretary of State shall adopt regulations to carry out the provisions of this section.***

Sec. 10. NRS 293.4687 is hereby amended to read as follows:

293.4687 1. The Secretary of State shall maintain a website on the Internet for public information maintained, collected or compiled by the Secretary of State that relates to elections, which must include, without limitation:



(a) The Voters' Bill of Rights required to be posted on his Internet website pursuant to the provisions of NRS 293.2549;

(b) The abstract of votes required to be posted on a website pursuant to the provisions of NRS 293.388; ~~and~~

(c) *A current list of the registered voters in this State that also indicates the petition district in which each registered voter resides;*

(d) *A map or maps indicating the boundaries of each petition district; and*

(e) All reports on campaign contributions and expenditures submitted to the Secretary of State pursuant to the provisions of NRS 294A.120, 294A.125, 294A.140, 294A.150, 294A.200, 294A.210, 294A.220, 294A.270, 294A.280, 294A.283, 294A.360 and 294A.362 and all reports on contributions received by and expenditures made from a legal defense fund submitted to the Secretary of State pursuant to NRS 294A.286.

2. The abstract of votes required to be maintained on the website pursuant to paragraph (b) of subsection 1 must be maintained in such a format as to permit the searching of the abstract of votes for specific information.

3. If the information required to be maintained by the Secretary of State pursuant to subsection 1 may be obtained by the public from a website on the Internet maintained by a county clerk or city clerk, the Secretary of State may provide a hyperlink to that website to comply with the provisions of subsection 1 with regard to that information.

Sec. 11. Chapter 295 of NRS is hereby amended by adding thereto a new section to read as follows:

***"Petition district" has the meaning ascribed to it in section 2 of this act.***

Sec. 12. NRS 295.012 is hereby amended to read as follows:

295.012 ~~1.~~ A petition for initiative that proposes a statute, an amendment to *a* statute or an amendment to the Constitution must be proposed by a number of registered voters from each ~~county~~ ***petition district*** in the State that is at least equal to 10 percent of the voters who voted in ~~the entire State~~ ***that petition district*** at the last preceding general election ~~. [multiplied by the population percentage for that county.]~~

2. As used in this section:

(a) ~~"Total population of the State" means the determination of the total population of the State by the national decennial census conducted by the Bureau of the Census of the United States Department of Commerce pursuant to Section 2 of Article I of the Constitution of the United States and reported by the Secretary of Commerce to the Governor pursuant to 13 U.S.C. § 141(c).~~

(b) ~~"Population percentage for that county" means the figure obtained by dividing the population of the county, as determined by the national decennial census conducted by the Bureau of the Census of the United States Department of Commerce pursuant to Section 2 of Article I of the Constitution of the United States and reported by the Secretary of Commerce~~

to the Governor pursuant to 13 U.S.C. § 141(c), by the total population of the State.]

Sec. 13. NRS 295.055 is hereby amended to read as follows:

295.055 1. The Secretary of State shall by regulation specify:

(a) The format for the signatures on a petition for an initiative or referendum and make free specimens of the format available upon request. The regulations must ensure that the format includes, without limitation, that:

(1) In addition to signing the petition, a person who signs a petition ~~[shall print]~~ :

(I) ***Shall print*** his given name followed by his surname on the petition before his signature ~~[ ]~~ ; and

(II) ***May indicate the petition district in which he resides. If the person does not indicate the petition district on the petition, the circulator ~~may~~ shall indicate the petition district of the person if known.***

(2) Each signature must be dated.

(b) The manner of fastening together several sheets circulated by one person to constitute a single document.

2. ***The registered voter may consult the list of the registered voters in this State posted on the website maintained by the Secretary of State pursuant to subsection 1 of NRS 293.4687 to determine the petition district in which he resides. The registered voter may rely on the information contained in the list when he indicates the appropriate petition district, unless he believes that the information is inaccurate.***

3. Each document of the petition must bear the name of a county, and only registered voters of that county may sign the document.

~~[3-]~~ 4. A person who signs a petition may request that the county clerk remove his name from it by transmitting his request in writing to the county clerk at any time before the petition is filed with the county clerk.

Sec. 14. Notwithstanding the definition of “petition district” set forth in sections 2 and 11 of this act, until July 1, 2011, “petition district” as used in chapters 293 and 295 of NRS means congressional districts established for the State of Nevada.

Sec. 15. This act becomes effective upon passage and approval.

Assemblywoman Koivisto moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

Senate Bill No. 264.

Bill read third time.

Roll call on Senate Bill No. 264:

YEAS—28.

NAYS—Carpenter, Christensen, Cobb, Gansert, Goedhart, Goicoechea, Grady, Gustavson, Hambrick, Hardy, McArthur, Settlemeyer, Stewart, Woodbury—14.

Senate Bill No. 264 having received a constitutional majority, Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 316.

Bill read third time.

Remarks by Assemblywoman Spiegel.

Roll call on Senate Bill No. 316:

YEAS—35.

NAYS—Christensen, Cobb, Goedhart, Gustavson, Hambrick, McArthur, Stewart—7.

Senate Bill No. 316 having received a constitutional majority,

Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 418.

Bill read third time.

Roll call on Senate Bill No. 418:

YEAS—39.

NAYS—Christensen, Goedhart, Settelmeyer—3.

Senate Bill No. 418 having received a constitutional majority,

Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 3.

Bill read third time.

Roll call on Senate Bill No. 3:

YEAS—38.

NAYS—Cobb, Goedhart, Gustavson, McArthur—4.

Senate Bill No. 3 having received a constitutional majority,

Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 212.

Bill read third time.

Remarks by Assemblymen Carpenter, Conklin, and Gustavson.

#### MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Conklin moved that Senate Bill No. 212 be taken from its position on the General File and placed at the bottom of the General File.

Motion carried.

Assemblyman Conklin moved that Senate Bill No. 395 be taken from the Chief Clerk's desk and placed at the top of the General File.

Motion carried.

#### GENERAL FILE AND THIRD READING

Senate Bill No. 395.

Bill read third time.

Roll call on Senate Bill No. 395:

YEAS—29.

NAYS—Carpenter, Christensen, Cobb, Gansert, Goedhart, Goicoechea, Grady, Gustavson, Hambrick, Hardy, McArthur, Settelmeyer, Woodbury—13.

Senate Bill No. 395 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

MOTIONS, RESOLUTIONS AND NOTICES

Vetoed Assembly Bill No. 267 of the 75th Session.

Bill read.

The question was put: “Shall the bill pass, notwithstanding the objections of the Governor?”

Remarks by Assemblyman Segerblom.

Assemblyman Ocegüera requested that the following remarks be entered in the Journal.

ASSEMBLYMAN SEGERBLOM:

Thank you, Madam Speaker. It is a very simple bill and it deals with a very inequitable situation. Currently, if you have a golf course—and because the Legislature has said they want to encourage the golf course use of open space—a golf course is taxed as open space which means they basically pay no tax. However, there are some golf courses that are taking advantage of this tax exemption and are marketing themselves to be sold as property for developing houses, so, they pay no property tax but they are out there and available to be used as a subdivision. If they were taxed as a subdivision they would pay a lot more tax.

This bill says that if you are going to be a golf course and take advantage of that open space tax exemption then you have to agree to be a golf course. I urge your support to override the Governor’s veto. Thank you.

The roll was called, and the Assembly overrode the veto of the Governor by the following vote:

Roll call on Assembly Bill No. 267:

YEAS—29.

NAYS—Christensen, Cobb, Gansert, Goedhart, Goicoechea, Grady, Gustavson, Hambrick, Hardy, McArthur, Settelmeyer, Stewart, Woodbury—13.

Bill ordered transmitted to the Senate.

Vetoed Assembly Bill No. 491 of the 75th Session.

Bill read.

The question was put: “Shall the bill pass, notwithstanding the objections of the Governor?”

Remarks by Assemblymen Anderson and Kirkpatrick.

Assemblyman Ocegüera requested that the following remarks be entered in the Journal.

ASSEMBLYMAN ANDERSON:

Thank you, Madam Speaker. Assembly Bill 491 will remedy common problems faced by judgment debtors: first, to assist judgment debtors to claim their exempt properties; second, to declare the number of court hearings needed to determine the exempt status of the properties; and third, to decrease the volume of exempt properties that are seized and then returned to the constable’s office. Under current law, when a bank receives a writ of execution on a debtor’s bank account, the entire balance is frozen. Debtors can file an affidavit of exemption and request that exemption amounts be returned. However, this process has been taking as long as 45 days. Section 2 of the bill leaves at least \$1,000 in the bank account available to debtors until the court can determine if other amounts are exempt. This is to allow a judgment debtor to access funds needed for the day-to-day necessary transactions, such as rent, food, and

medications. Particularly in this day of electronic transfer of funds, this is an essential factor. The interplay of federal law governing exempt benefits and state garnishment laws raise potential liabilities that banks face when choosing to follow federal regulations or state laws. This bill resolves that conflict and balances the needs of the bank to follow all applicable state and federal procedures and the need of the debtors to support themselves while trying to figure out their financial problems.

In the Governor's veto message, he states specifically, "Making the 'wildcard exemption' of \$1,000 automatic instead of requiring the debtor to file for the exemption will make it even more burdensome for businesses to collect what is rightfully theirs." This is simply not true. Currently, a debtor's assets are not distributed to creditors until all exempt properties are returned to the debtor. Assembly Bill 491 will help streamline the process and allow the debtor to continue to pay for the necessities of life. Madam Speaker, I urge this body to support the bill and pass it out of this house unanimously.

ASSEMBLYWOMAN KIRKPATRICK:

Thank you, Madam Speaker. I rise in support of the override on Assembly Bill 491.

I started with this bill in the summertime, and it has changed somewhat. But I will tell you that one of my constituents, who I think most of you met—she was here on a credit bill that we were trying to help her with. She received the notice for her garnishment the day after they took it. Consequently, she had no groceries, she could not pay her bills, she had automatic withdrawals, she was not even notified of the court document. How fair is that when you are trying to resolve it? In her instance, she had \$20,000 in medical debt that she was paying. However, a creditor did not want to wait any longer—they wanted all their money up-front—so they took her to court. She had over \$2 million in medical debt when her husband died, and she has been faithfully trying to pay these off.

I will tell you that ten other states are doing this very same thing, so I ask you to please support this override.

The roll was called, and the Assembly overrode the veto of the Governor by the following vote:

Roll call on Assembly Bill No. 491:

YEAS—28.

NAYS—Carpenter, Christensen, Cobb, Gansert, Goedhart, Goicoechea, Grady, Gustavson, Hambrick, Hardy, McArthur, Settlemeyer, Stewart, Woodbury—14.

Bill ordered transmitted to the Senate.

#### COMMUNICATIONS

#### OFFICE OF THE GOVERNOR

May 29, 2009

THE HONORABLE STEVEN HORSFORD, *Senate Majority Leader*, Legislative Building, 401

South Carson Street, Carson City, NV 89701

RE: Senate Bill 201 of the 75th Legislative Session

DEAR SENATOR HORSFORD:

I am herewith forwarding to you, for filing within the constitutional time limit and without my approval, Senate Bill 201, which is entitled:

AN ACT relating to taxation; authorizing certain counties to impose additional taxes on fuels for motor vehicles; providing for the administration, allocation, disbursement and use of the additional taxes; exempting the sale of revenue bonds secured by county fuel taxes from certain requirements; and providing other matters properly relating thereto.

This bill would increase fuel taxes in Washoe County. The bill resulted from an advisory ballot question in November of 2008 whereby the voters of Washoe County were asked whether the Washoe County Board of Commissioners should "seek state legislation for the Regional

Transportation Commission (RTC) to obtain necessary additional funding for transportation projects that will reduce traffic congestion, improve air quality, and repair and maintain roads in the Truckee Meadows?”

Notably absent from the language of that advisory question was a clear and concise statement that the state legislation being sought would come in the form of a fuel tax increase. Also notably absent from the language of that advisory question is a clear and concise statement of the amount of the fuel tax increase being sought. Although I have asked the question many times, nobody has adequately explained why the advisory question did not simply state that the voters were being asked to support a fuel tax increase along with the specific amount of that increase.

By contrast, Initiative Petition 1 from the 75th Legislative Session enacted a room tax as the result of a ballot question. With respect to that ballot question, voters were asked whether they “support the imposition of an additional hotel and motel room tax of not more than 3 percent to be used in the first 2 years after imposition to avoid large cuts in the funding of education and other state programs and to be used thereafter to increase the funding of K-12 education, specifically to improve student achievement and for salaries of non-administrative educational personnel?” The call of the ballot question on the room tax increase clearly and concisely informed voters of the impact of their vote.

If the voters of Washoe County are being asked to support a tax increase, they are entitled to a clear and concise ballot question stating the fact that a tax increase is being sought along with the amount of that tax increase. There is no reason a concept as simple as a tax increase cannot be clearly stated in the call of the question. I support the will of the people but I cannot support bills premised on advisory questions worded in a manner that deliberately obscures the impact of the question from the voters.

For these reasons, I hereby exercise my constitutional grant of authority and veto Senate Bill 201.

Sincerely,  
JIM GIBBONS  
*Governor*

#### MOTIONS, RESOLUTIONS AND NOTICES

Vetoed Senate Bill No. 201 of the 75th Session.

Bill read.

The question was put: “Shall the bill pass, notwithstanding the objections of the Governor?”

Remarks by

The roll was called, and the Assembly overrode the veto of the Governor by the following vote:

Roll call on Senate Bill No. 201:

YEAS—35.

NAYS—Christensen, Goedhart, Gustavson, Hambrick, McArthur, Settlemeyer—6.

NOT VOTING—Cobb.

Bill ordered transmitted to the Senate.

#### MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Oceguela moved that Vetoed Assembly Bill No. 119 of the 75th Session be taken from the General File and placed on the Chief Clerk’s desk.

Motion carried.

Assemblyman Ocegüera moved that Vetoed Assembly Bill No. 307 of the 75th Session be taken from the General File and placed on the Chief Clerk's desk.

Motion carried.

Assemblyman Ocegüera moved that Vetoed Assembly Bill No. 473 of the 75th Session be taken from the General File and placed on the Chief Clerk's desk.

Motion carried.

#### UNFINISHED BUSINESS

##### CONSIDERATION OF SENATE AMENDMENTS

Assembly Bill No. 395.

The following Senate amendment was read:

Amendment No. 794.

AN ACT relating to state employees; authorizing discussions of workplace relations for certain state employees; expanding the duties of the Personnel Commission to include discussions of workplace relations for certain state employees; providing for workplace relations units of state employees and for their representatives; establishing procedures for discussing workplace relations and for making and amending workplace relations agreements; prohibiting certain unfair labor practices; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Title 23 of NRS governs public employment. This bill authorizes discussions of workplace relations between the State and certain state employees. **Sections 18-20** of this bill expand the duties of the Personnel Commission to include hearing and deciding disputes between the State and certain state employees. **Section 21** of this bill authorizes certain state employees to organize and join employee organizations, or refrain from engaging in that activity, and, as applicable, to discuss workplace relations through exclusive representatives. **Section 22** of this bill establishes requirements concerning workplace relations agreements. **Sections 24 and 25** of this bill prescribe certain unfair labor practices in the context of discussions of workplace relations. **Section 27** of this bill provides for the creation and organization of workplace relations units of state employees. **Sections 28-31** of this bill provide for the election or designation of exclusive representatives of workplace relations units. **Section 32** of this bill requires the exclusive representative of a workplace relations unit to engage in discussions of workplace relations with the Executive Department of the State Government on behalf of the employees within the unit.

**Section 34** of this bill requires the Executive Department and an exclusive representative to begin negotiations regarding a workplace relations agreement within 60 days after one party notifies the other of a desire to negotiate. **Sections 35-38** of this bill provide for mediation, arbitration and

judicial review of disputes between the Executive Department and a workplace relations unit. **Section 40** of this bill authorizes certain supplemental discussions between the Executive Department and the exclusive representative of a workplace relations unit of any terms and conditions of employment that do not affect all the employees of the workplace relations unit. **Section 42.3 of this bill authorizes the State to suspend the applicability of a workplace relations agreement in situations of emergency. Section 42.5 requires that any workplace relations agreement be posted on the Internet website of the State, if any.**

**Section 44.3** of this bill revises the authority of the Governor to appoint the members of the Personnel Commission by requiring the Majority Leader of the Senate and the Speaker of the Assembly to each appoint one of the members to the Commission. (NRS 284.030)

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

Section 1. Title 23 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to ~~42.1~~ **42.6** inclusive, of this act.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 16, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *"Arbitration" means a process of dispute resolution where the parties involved in an impasse or grievance dispute submit their dispute to a third party for a final and binding decision.*

Sec. 4. (Deleted by amendment.)

Sec. 4.5. *"Commission" means the Personnel Commission created by NRS 284.030.*

Sec. 5. *"Confidential employee" means an employee who provides administrative support to an employee who assists in the formulation, determination and effectuation of personnel policies or managerial policies concerning discussions of workplace relations or supplemental discussions of workplace relations.*

Sec. 6. *"Discussions of workplace relations" means a method to determine the terms and conditions of employment for all employees within a workplace relations unit through negotiation, mediation or arbitration between the Executive Department and the exclusive representative of the workplace relations unit pursuant to this chapter.*

Sec. 7. 1. *"Employee" means a person who:*

*(a) Is employed in the classified service of the State pursuant to chapter 284 of NRS, including, without limitation, persons employed in the classified service by the Nevada System of Higher Education; or*

*(b) Is employed by the Public Employees' Retirement System and who is required to be paid in accordance with the pay plan for the classified service of the State.*



2. *The term does not include:*

(a) *A managerial employee whose primary function, as determined by the Commission, is to administer and control the business of any agency, board, bureau, commission, department, division, elected officer or any other unit of the Executive Department and who is vested with discretion and independent judgment with regard to the general conduct and control of that agency, board, bureau, commission, department, division, elected officer or unit;*

(b) *An elected official and any person appointed to fill a vacancy in an elected office;*

(c) *A confidential employee;*

(d) *A temporary employee who is employed for a fixed period of 4 months or less;*

(e) *A commissioned officer and an enlisted member of the Nevada National Guard;*

(f) *A justice of the Supreme Court and a judge of a district court;*

(g) *Inmates of state institutions even though they may be receiving compensation for services performed for the institution; or*

(h) *Any person employed by the Legislature.*

Sec. 8. *"Exclusive representative" means an employee organization that, as a result of designation by the Commission, has the exclusive right to represent all employees within a workplace relations unit and to negotiate with the Executive Department pursuant to this chapter concerning the terms and conditions of employment for those employees.*

Sec. 9. *"Executive Department" means an agency, board, bureau, commission, department, division, elected officer or any other unit of the Executive Department of State Government.*

Sec. 10. *"Fair share agreement" means an agreement between an employer and an exclusive representative under which any of the employees in a workplace relations unit are required to pay a proportionate share of the costs of discussions of workplace relations, the administration of a workplace relations agreement and the negotiation of other matters affecting the terms and conditions of employment.*

Sec. 11. *"Grievance" means an act, omission or occurrence which an employee or an exclusive representative constitutes in his belief an injustice relating to any condition arising out of the relationship between an employer and an employee, including, without limitation, working hours, working conditions, membership in an organization of employees or the interpretation of any law, regulation or agreement.*

Sec. 12. *"Mediation" means assistance by an impartial third party to reconcile differences between the Executive Department and an exclusive representative through interpretation, suggestion and advice.*

Sec. 13. *"Professional employee" means an employee engaged in work that:*

1. *Is predominately intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;*
2. *Involves the consistent exercise of discretion and judgment in its performance;*
3. *Is of such a character that the result accomplished or produced cannot be standardized in relation to a given period; and*
4. *Requires advanced knowledge in a field of science or learning customarily acquired through a prolonged course of specialized intellectual instruction and study in an institution of higher learning, as distinguished from general academic education, an apprenticeship or training in the performance of routine mental or physical processes.*

Sec. 14. "Supervisory employee" means an employee who has authority to:

1. *Hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or who has the responsibility to direct such employees; or*
2. *Adjust the grievances of other employees or effectively recommend such an action, if the exercise of that authority requires the use of independent judgment and is not of a routine or clerical nature.*

↪ *The exercise of such authority shall not be deemed to place the employee in supervisory employee status unless the exercise of such authority occupies a significant portion of the employee's workday. Nothing in this section may be construed to mean that an employee who has been given incidental administrative duties is classified as a supervisory employee.*

Sec. 15. "Terms and conditions of employment" includes, without limitation:

1. *Hours and working conditions;*
2. *Grievances;*
3. *Discipline and discharge; and*
4. *Any other term or condition of employment that does not require an appropriation from the Legislature to be given effect.*

Sec. 16. "Workplace relations unit" means a collection of employees that the Commission has established as a workplace relations unit pursuant to section 27 of this act.

Sec. 17. 1. *The Legislature hereby finds and declares that there is a great need to:*

(a) *Promote orderly and constructive relations between the State and its employees; and*

(b) *Increase the efficiency of State Government.*

2. *It is therefore within the public interest that the Legislature enact provisions:*

(a) *Granting certain state employees the right to associate with others in organizing and choosing representatives for the purpose of discussing workplace relations;*

*(b) Requiring the State to recognize, negotiate and discuss workplace relations with employee organizations that represent state employees and to enter into written agreements evidencing the result of discussions of workplace relations; and*

*(c) Establishing standards and procedures that protect the rights of state employees, the Executive Department and the people of the State.*

Sec. 18. 1. *The Commission may adopt rules governing:*

*(a) Proceedings before the Commission pursuant to this chapter;*

*(b) Procedures for fact-finding;*

*(c) The recognition of exclusive representatives;*

*(d) The establishment of workplace relations units; and*

*(e) Such other matters as are necessary for the Commission to carry out its duties pursuant to this chapter.*

2. *The Commission may hear and determine any complaint arising out of the interpretation of, or performance under, the provisions of this chapter by the Executive Department, an employee or an exclusive representative. The Commission shall conduct a hearing within 90 days after it decides to hear a complaint. If the Commission finds, after a hearing, that the complaint has merit, the Commission may order any person to refrain from the action complained of or to restore to the party aggrieved any benefit of which he has been deprived by that action. The Commission shall issue its decision within 120 days after the hearing on the complaint is completed.*

3. *Any party aggrieved by the failure of any person to obey an order of the Commission issued pursuant to subsection 2, or the Commission at the request of such a party, may apply to a court of competent jurisdiction for a prohibitory or mandatory injunction to enforce the order.*

4. *The Commission may not consider any complaint or appeal filed more than 6 months after the occurrence which is the subject of the complaint or appeal.*

5. *The Commission may decide without a hearing a contested matter:*

*(a) In which all of the legal issues have been previously decided by the Commission, if it adopts its previous decision or decisions as precedent; or*

*(b) Upon agreement of all the parties.*

6. *The Commission may award reasonable costs, which may include attorney's fees, to the prevailing party.*

Sec. 19. 1. *For the purpose of hearing and deciding appeals or complaints, the Commission may issue subpoenas requiring the attendance of witnesses before it, together with all books, memoranda, papers and other documents relative to the matters under investigation, administer oaths and take testimony thereunder.*

2. *The district court in and for the county in which any hearing is being conducted by the Commission may compel the attendance of witnesses, the giving of testimony and the production of books and papers as required by any subpoena issued by the Commission.*

3. *If a witness refuses to attend or testify or produce any papers required by such a subpoena, the Commission may report to the district court in and for the county in which the hearing is pending by petition, setting forth:*

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

*(b) That the witness has been subpoenaed in the manner prescribed in this chapter; and*

*(c) That the witness has failed and refused to attend or produce the papers required by the subpoena before the Commission in the hearing named in the subpoena, or has refused to answer questions propounded to him in the course of such hearing,*

*↪ and asking for an order of the court compelling the witness to attend and testify or produce the books or papers before the Commission.*

4. *The court, upon petition of the Commission, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such 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 attended or testified or produced the books or papers before the Commission. A certified copy of the order must be served upon the witness. If it appears to the court that the subpoena was regularly issued by the Commission, the court shall thereupon enter an order that the witness appear before the Commission at the time and place fixed in the order and testify or produce the required books or papers, and upon failure to obey the order, the witness must be dealt with as for contempt of court.*

Sec. 20. *Every hearing and determination of an appeal or complaint by the Commission is a contested case subject to the provisions of law which govern the administrative decision and judicial review of such cases.*

Sec. 21. 1. *For the purposes of discussions of workplace relations, supplemental discussions of workplace relations and other mutual aid or protection, employees have the right to:*

*(a) Organize, form, join and assist employee organizations, engage in discussions of workplace relations and supplemental discussions of workplace relations through exclusive representatives and engage in other concerted activities; and*

*(b) Refrain from engaging in such activity.*

2. *Discussions of workplace relations and supplemental discussions of workplace relations entail a mutual obligation of the Executive Department and an exclusive representative to meet at reasonable times and to discuss workplace relations in good faith with respect to:*

*(a) The terms and conditions of employment;*

*(b) The negotiation of an agreement;*

*(c) The resolution of any question arising under an agreement; and*

*(d) The execution of a written contract incorporating the provisions of an agreement, if requested by either party.*

Sec. 22. 1. *Each workplace relations agreement must be in writing and must include, without limitation:*

*(a) A procedure to resolve grievances which culminates in final and binding arbitration;*

*(b) A provision which provides that an officer of the Executive Department may, upon written authorization by an employee within the workplace relations unit, withhold a sufficient amount of money from the salary or wages of the employee pursuant to NRS 281.129 to pay dues or similar fees to the exclusive representative of the workplace relations unit; and*

*(c) At the election of the exclusive representative, and notwithstanding any other provision of law, a fair share agreement.*

2. *Except as otherwise provided in subsection 3, the procedure to resolve grievances required in an agreement pursuant to paragraph (a) of subsection 1 is the exclusive means available for resolving grievances related to the administration of the agreement.*

3. *An employee in a workplace relations unit may pursue a grievance related to any disciplinary action taken against him by his employer through:*

*(a) The procedure provided in the agreement pursuant to paragraph (a) of subsection 1; or*

*(b) Any procedure available to him pursuant to the provisions of chapter 284 of NRS,*

*↪ but once the employee has properly filed his grievance pursuant to paragraph (a) or (b), he may not proceed to file his grievance in the alternative manner.*

4. *If there is a conflict between a provision of an agreement between the Executive Department and an exclusive representative and:*

*(a) Any regulation adopted by the Executive Department, the provision of the agreement prevails unless the provision of the agreement is outside of the lawful scope of discussions of workplace relations.*

*(b) An existing statute, the provision of the agreement may not be given effect unless the Legislature amends the existing statute in such a way as to eliminate the conflict.*

Sec. 23. 1. *A fair share agreement included in a workplace relations agreement pursuant to section 22 of this act must not be for an amount exceeding the amount of dues uniformly required of members.*

2. *An amount agreed to be paid pursuant to a fair share agreement must not include any fees for contributions relating to the election or support of any candidate for political office.*

3. *This section does not prohibit an employee from making voluntary political contributions in conjunction with his payment pursuant to a fair share agreement.*

Sec. 24. 1. *It is a prohibited practice for the Executive Department or its designated representative willfully to:*

*(a) Refuse to engage in discussions of workplace relations or otherwise fail to discuss workplace relations in good faith with an exclusive representative, including, without limitation, refusing to engage in mediation or arbitration.*

*(b) Interfere with, restrain or coerce an employee in the exercise of any right guaranteed pursuant to this chapter.*

*(c) Dominate, interfere with or assist in the formation or administration of an employee organization.*

*(d) Discriminate in regard to hiring, tenure or any terms and conditions of employment to encourage or discourage membership in an employee organization.*

*(e) Discharge or otherwise discriminate against an employee because the employee has:*

*(1) Signed or filed an affidavit, petition or complaint or has provided any information or given any testimony pursuant to this chapter; or*

*(2) Formed, joined or chosen to be represented by an employee organization.*

*(f) Discriminate because of race, color, religion, sex, sexual orientation, age, disability, national origin, or political or personal reasons or affiliations.*

*(g) Deny rights accompanying a designation as an exclusive representative.*

*2. It is a prohibited practice for an employee organization or its designated agent willfully to:*

*(a) When acting as an exclusive representative, refuse to engage in discussions of workplace relations or otherwise fail to discuss workplace relations in good faith with the Executive Department, including, without limitation, refusing to engage in mediation or arbitration.*

*(b) Interfere with, restrain or coerce an employee in the exercise of any right guaranteed pursuant to this chapter.*

*(c) Discriminate because of race, color, religion, sex, sexual orientation, age, disability, national origin, or political or personal reasons or affiliations.*

*Sec. 25. 1. To establish that a party committed a prohibited practice in violation of section 24 of this act, the party aggrieved by the practice must:*

*(a) File a complaint with the Commission not later than 6 months after the alleged prohibited practice occurred; and*

*(b) Send a copy of the complaint to the other party by certified mail, return receipt requested, or by any other method authorized by the Commission.*

*2. Not later than 10 days after receiving a complaint pursuant to paragraph (b) of subsection 1, a party shall file a response to the complaint with the Commission.*

3. *The Commission shall conduct a preliminary investigation of the complaint. Based on its investigation:*

*(a) If the Commission determines that the complaint has no basis in law or fact, the Commission shall dismiss the complaint.*

*(b) If the Commission determines that the complaint may have a basis in law or fact, the Commission shall order a hearing to be conducted in accordance with:*

*(1) The provisions of chapter 233B of NRS that apply to a contested case; and*

*(2) The rules adopted by the Commission pursuant to section 18 of this act.*

4. *If the Commission finds at the hearing that the party accused in the complaint has committed a prohibited practice, the Commission:*

*(a) Shall order the party to cease and desist from engaging in the prohibited practice; and*

*(b) May order any other affirmative relief that is necessary to remedy the prohibited practice.*

5. *The Commission may petition the district court for enforcement of its orders.*

6. *Any order or decision issued by the Commission pursuant to this section concerning the merits of a complaint is a final decision in a contested case and may be appealed pursuant to the provisions of chapter 233B of NRS that apply to a contested case, except that a party aggrieved by the order or decision of the Commission must file a petition for judicial review not later than 10 days after being served with the order or decision of the Commission.*

Sec. 26. 1. *The Commission may appoint a hearing officer to conduct a hearing that the Commission is otherwise required to conduct pursuant to section 25 of this act.*

2. *A decision of the hearing officer may be appealed to the Commission.*

3. *On appeal to the Commission, the Commission may consider the record of the hearing or may conduct a hearing de novo. A hearing de novo conducted by the Commission must be conducted in accordance with:*

*(a) The provisions of chapter 233B of NRS that apply to a contested case; and*

*(b) The rules adopted by the Commission pursuant to section 18 of this act.*

4. *If the Commission finds at the hearing that the party accused in the complaint has committed a prohibited practice, the Commission:*

*(a) Shall order the party to cease and desist from engaging in the prohibited practice; and*

*(b) May order any other affirmative relief that is necessary to remedy the prohibited practice.*

5. *The Commission may petition the district court for enforcement of its orders.*

6. *Any order or decision issued by the Commission pursuant to this section concerning the merits of a complaint is a final decision in a contested case and may be appealed pursuant to the provisions of chapter 233B of NRS that apply to a contested case, except that a party aggrieved by the order or decision of the Commission must file a petition for judicial review not later than 10 days after being served with the order or decision of the Commission.*

Sec. 27. 1. *The Commission shall, in accordance with the rules adopted pursuant to section 18 of this act, establish workplace relations units on a statewide basis, including, without limitation, the workplace relations units described in subsection 2.*

2. *The Commission shall establish one workplace relations unit for each of the following occupational groups, and each such workplace relations unit must include all supervisory employees at the working level of the occupational group:*

(a) *Labor, maintenance, custodial and institutional employees, including, without limitation, employees of penal and correctional institutions who are not responsible for security at those institutions.*

(b) *Administrative and clerical employees, including, without limitation, legal support staff and employees whose work involves general office work, or keeping or examining records and accounts.*

(c) *Technical aides to professional employees, including, without limitation, computer programmers, tax examiners, conservation employees and crew supervisors.*

(d) *Professional employees, including, without limitation, physical therapists and other employees in medical and other professions related to health.*

(e) *Employees, other than professional employees, who provide health care and personal care, including, without limitation, employees who provide care for children.*

(f) *Category I peace officers and category II peace officers.*

(g) *Category III peace officers.*

(h) *Supervisory employees not otherwise included in other workplace relations units.*

(i) *Employees of the Nevada System of Higher Education, except such employees who are category I peace officers.*

(j) *Employees of the State Department of Conservation and Natural Resources who:*

(1) *Perform emergency fire suppression; or*

(2) *Provide direct support to the employees described in subparagraph*

*(1).*

3. *The Commission shall, in accordance with the rules adopted pursuant to section 18 of this act, establish the exact classifications of*



*employees within each workplace relations unit. The Commission may assign a new classification to a workplace relations unit based upon the similarity of the new classification to other classifications within the workplace relations unit.*

*4. The Commission shall not change an established workplace relations unit arbitrarily.*

*5. The Commission shall determine whether the employment functions of any group of employees performing managerial functions preclude the inclusion of those employees in a workplace relations unit.*

*6. As used in this section:*

*(a) "Category I peace officer" has the meaning ascribed to it in NRS 289.460.*

*(b) "Category II peace officer" has the meaning ascribed to it in NRS 289.470.*

*(c) "Category III peace officer" has the meaning ascribed to it in NRS 289.480.*

*Sec. 28. If no employee organization is designated as the exclusive representative of a workplace relations unit and an employee organization files with the Commission a list of its membership showing that the employee organization represents more than 50 percent of the employees within the workplace relations unit, the Commission shall designate the employee organization as the exclusive representative of the workplace relations unit without ordering an election.*

*Sec. 29. 1. If no employee organization is designated as the exclusive representative of a workplace relations unit, the Commission shall order an election to be conducted within the workplace relations unit if:*

*(a) An employee organization files with the Commission a written request for an election which includes a list of its membership showing that it represents at least 30 percent but not more than 50 percent of the employees within the workplace relations unit; and*

*(b) No other election to choose, change or discontinue representation has been conducted within the workplace relations unit during the preceding 12 months.*

*2. If the Commission designates an employee organization as the exclusive representative of a workplace relations unit following an election pursuant to subsection 1 or pursuant to section 28 of this act, the Commission shall order an election:*

*(a) If either:*

*(1) Another employee organization files with the Commission a written request for an election which includes a list of its membership showing that the employee organization represents at least 50 percent of the employees within the workplace relations unit; or*

*(2) A group of employees within the workplace relations unit files with the Commission a written request for an election which includes a list showing that more than 50 percent of the employees within the workplace*

*relations unit have requested that an election be conducted to change or discontinue representation;*

*(b) If applicable, the request filed pursuant to paragraph (a) is filed not more than 270 days and not less than 225 days before the date on which the current workplace relations agreement in effect for the workplace relations unit expires; and*

*(c) If no other election to choose, change or discontinue representation has been conducted within the workplace relations unit during the preceding 12 months.*

Sec. 30. 1. *If the Commission orders an election within a workplace relations unit pursuant to section 29 of this act, the Commission shall order that each of the following be placed as a choice on the ballot for the election:*

*(a) If applicable, the employee organization that requested the election pursuant to section 29 of this act and the employee organization that is presently designated as the exclusive representative of the workplace relations unit;*

*(b) Any other employee organization that, on or before the date that is prescribed by the rules adopted by the Commission, files with the Commission a written request to be placed on the ballot for the election and includes with the written request a list of its membership showing that the employee organization represents at least 30 percent of the employees within the workplace relations unit; and*

*(c) A choice for “no representation.”*

2. *If a ballot for an election contains more than two choices and none of the choices on the ballot receives a majority of the votes cast at the initial election, the Commission shall order a runoff election between the two choices on the ballot that received the highest number of votes at the initial election.*

3. *If the choice for “no representation” receives a majority of the votes cast at the initial election or at any runoff election, the Commission shall designate the workplace relations unit as being without representation.*

4. *If an employee organization receives a majority of the votes cast at the initial election or at any runoff election, the Commission shall designate the employee organization as the exclusive representative of the workplace relations unit.*

Sec. 31. 1. *The Commission shall preside over all elections that are conducted pursuant to this chapter and shall determine the eligibility requirements for employees to vote in any such election.*

2. *An employee organization that is placed as a choice on the ballot for an election or any employee who is eligible to vote at an election may file with the Commission a written objection to the results of the election. The objection must be filed not later than 10 days after the date on which the notice of the results of the election is given by the Commission.*

3. *In response to a written objection filed pursuant to subsection 2 or upon its own motion, the Commission may invalidate the results of an election and order a new election if the Commission finds that any conduct or circumstances raise substantial doubt that the results of the election are reliable.*

Sec. 32. 1. *Except as otherwise provided in subsection 2, an exclusive representative shall:*

*(a) Act as the agent and exclusive representative of all employees within each workplace relations unit that it represents; and*

*(b) In good faith and on behalf of each workplace relations unit that it represents, individually or collectively, engage in discussions of workplace relations with the Executive Department concerning the terms and conditions of employment for the employees within each workplace relations unit that it represents, including, without limitation, any terms and conditions of employment that are within the scope of supplemental discussions of workplace relations pursuant to section 40 of this act.*

2. *If an employee is within a workplace relations unit that has an exclusive representative, the employee has the right to present grievances to the Executive Department at any time and to have those grievances adjusted without the intervention of the exclusive representative if:*

*(a) The exclusive representative is given an opportunity to be present at any meetings or hearings related to the adjustment of the grievance; and*

*(b) The adjustment of the grievance is not inconsistent with the provisions of the workplace relations agreement or any supplemental workplace relations agreement then in effect.*

Sec. 33. *If the Commission designates an employee organization as the exclusive representative of a workplace relations unit pursuant to this chapter, an officer of the Executive Department shall not, pursuant to NRS 281.129, withhold any amount of money from the salary or wages of an employee within the workplace relations unit to pay dues or similar fees to an employee organization other than the employee organization that is the exclusive representative of the workplace relations unit.*

Sec. 34. *The Executive Department and an exclusive representative shall begin negotiations concerning a workplace relations agreement within 60 days after one party notifies the other party of the desire to negotiate.*

Sec. 35. 1. *If the parties do not reach a workplace relations agreement within 120 days after the date on which the parties began negotiations or any later date which is set by agreement of the parties, either party may request a mediator from the Federal Mediation and Conciliation Service.*

2. *The mediator shall bring the parties together as soon as possible after his appointment and shall attempt to settle each issue in dispute within 30 days after his appointment or any later date which is set by agreement of the parties.*

Sec. 36. 1. *If the mediator determines that his services are no longer helpful or if the parties do not reach a workplace relations agreement through mediation within 30 days after the appointment of the mediator or any later date which is set by agreement of the parties, the mediator shall discontinue mediation and the parties shall attempt to agree upon an impartial arbitrator.*

2. *If the parties do not agree upon an impartial arbitrator within 5 days after the date on which mediation is discontinued pursuant to subsection 1 or on or before any later date which is set by agreement of the parties, the parties shall request from the Federal Mediation and Conciliation Service a list of seven potential arbitrators. The parties shall select an arbitrator from this list by alternately striking one name until the name of only one arbitrator remains, and that arbitrator must hear the dispute in question. The party who will strike the first name must be determined by a coin toss.*

3. *The arbitrator shall begin arbitration proceedings within 60 days after his selection or any later date which is set by agreement of the parties.*

4. *The arbitrator and the parties shall apply and follow the procedures for arbitration that are prescribed by the rules adopted by the Commission. During arbitration, the parties retain their respective duties to negotiate in good faith.*

5. *The arbitrator may administer oaths or affirmations, take testimony and issue and seek enforcement of subpoenas in the same manner as the Commission pursuant to section 19 of this act, and, except as otherwise provided in subsection 6, the provisions of section 19 of this act apply to subpoenas issued by the arbitrator.*

6. *The Executive Department and the exclusive representative shall each pay one-half of the cost of arbitration.*

Sec. 37. 1. *For each separate issue that is in dispute after arbitration proceedings are held pursuant to section 36 of this act, the arbitrator shall incorporate either the final offer of the Executive Department or the final offer of the exclusive representative into his decision. The arbitrator shall not revise or amend the final offer of either party on any issue.*

2. *To determine which final offers to incorporate into his decision, the arbitrator shall assess the reasonableness of:*

- (a) The position of each party as to each issue in dispute; and*
- (b) The contractual terms and provisions contained in each final offer.*

3. *In assessing reasonableness pursuant to subsection 2, the arbitrator shall:*

*(a) Compare the terms and conditions of employment for the employees within the workplace relations unit with the terms and conditions of employment for other employees performing similar services and for other employees generally:*

- (1) In public employment in comparable communities; and*
- (2) In private employment in comparable communities; and*

*(b) Consider, without limitation, such other factors as are normally or traditionally used as part of discussions of workplace relations, mediation, arbitration or other methods of dispute resolution to determine the terms and conditions of employment for employees in public or private employment.*

*4. The arbitrator shall render a written decision within 45 days after the conclusion of the arbitration proceedings or before any later date which is set by agreement of the parties.*

*5. Except as otherwise provided in section 38 of this act, each provision that is included in a decision of the arbitrator is final and binding upon the parties.*

*Sec. 38. 1. Except as otherwise provided in this section, a party may seek judicial review in the district court of the decision of an arbitrator made pursuant to section 37 of this act based upon jurisdictional grounds or upon the grounds that the decision:*

*(a) Was procured by fraud, collusion or other similar unlawful means; or*

*(b) Was not supported by competent, material and substantial evidence on the whole record and based upon the factors set forth in section 37 of this act.*

*2. If a party seeks judicial review pursuant to this section, the district court may stay the contested portion of the decision of the arbitrator until the court rules on the matter.*

*3. The district court may affirm or reverse the contested portion of the decision of the arbitrator, in whole or in part, but the court may not remand the matter to the arbitrator or require any additional fact-finding or decision making by the arbitrator.*

*4. If the district court reverses any part of the contested portion of the decision of the arbitrator, the court shall enter an order invalidating that part of the decision of the arbitrator, and that part of the decision of the arbitrator is void and must not be given effect.*

*Sec. 39. 1. If a provision of a workplace relations agreement does not require an amendment to existing statute by the Legislature to be given effect, the provision becomes effective pursuant to the provisions of the workplace relations agreement.*

*2. If a provision of the workplace relations agreement requires an amendment to existing statute by the Legislature to be given effect, the provision becomes effective, if at all, on the date on which the necessary amendment to existing statute becomes effective.*

*Sec. 40. 1. Except as otherwise provided in this section, the Executive Department and the exclusive representative of the workplace relations unit may engage in supplemental discussions of workplace relations concerning any terms and conditions of employment which are peculiar to or which uniquely affect fewer than all the employees within the workplace relations unit if such supplemental terms and conditions of*

*employment are not included in any provision of the workplace relations agreement then in effect between the Executive Department and the workplace relations unit.*

*2. The Executive Department and an exclusive representative may engage in supplemental discussions of workplace relations pursuant to subsection 1 for fewer than all the employees within two or more workplace relations units that the exclusive representative represents if the requirements of subsection 1 are met for each such workplace relations unit.*

*3. If the parties reach a supplemental workplace relations agreement pursuant to this section, the provisions of the supplemental workplace relations agreement:*

*(a) Must be in writing; and*

*(b) Shall be deemed to be incorporated into the provisions of each workplace relations agreement then in effect between the Executive Department and the employees who are subject to the supplemental workplace relations agreement if the provisions of the supplemental workplace relations agreement do not conflict with the provisions of the workplace relations agreement.*

*4. If any provision of the supplemental workplace relations agreement conflicts with any provision of the workplace relations agreement, the provision of the supplemental workplace relations agreement is void and the provision of the workplace relations agreement must be given effect.*

*5. The provisions of the supplemental workplace relations agreement expire at the same time as the other provisions of the workplace relations agreement into which they are incorporated.*

*6. The Executive Department and an exclusive representative may, during discussions of workplace relations conducted pursuant to this chapter, negotiate and include in a workplace relations agreement any terms and conditions of employment that would otherwise be within the scope of supplemental workplace relations conducted pursuant to this section.*

*Sec. 41. 1. Except as otherwise provided by specific statute, an employee organization and the Executive Department may sue or be sued as an entity pursuant to this chapter.*

*2. If any action or proceeding is brought by or against an employee organization pursuant to this chapter, the district court in and for the county in which the employee organization maintains its principal office or the county in which the claim arose has jurisdiction over the claim.*

*3. A natural person and his assets are not subject to liability for any judgment awarded pursuant to this chapter against the Executive Department or an employee organization.*

*Sec. 42. The terms of any workplace relations agreement remain in effect until a new workplace relations agreement takes effect.*

**Sec. 42.3. Notwithstanding the provisions of any workplace relations agreement negotiated pursuant to this chapter, the State is entitled to take whatever actions may be necessary to carry out its responsibilities in situations of emergency such as a riot, military action, natural disaster or civil disorder. Those actions may include the suspension of any workplace relations agreement for the duration of the emergency. Any action taken under the provisions of this section must not be construed as a failure to negotiate in good faith.**

**Sec. 42.5. Any workplace relations agreement entered into pursuant to this chapter must be posted on the Internet website, if any, of the State of Nevada.**

**Sec. 42.7. Nothing in this chapter shall be construed to authorize the violation of NRS 288.230 to 288.260, inclusive.**

Sec. 43. NRS 281.129 is hereby amended to read as follows:

281.129 1. Any officer of the State, except the Legislative Fiscal Officer, who disburses money in payment of salaries and wages of officers and employees of the State:

(a) May, upon written requests of the officer or employee specifying amounts, withhold those amounts and pay them to:

(1) Charitable organizations;

(2) Employee credit unions;

(3) Except as otherwise provided in paragraph (b), insurers;

(4) The United States for the purchase of savings bonds and similar obligations of the United States; and

(5) ~~[Employee]~~ ***Except as otherwise provided in section 33 of this act, employee*** organizations and labor organizations.

(b) Shall, upon receipt of information from the Public Employees' Benefits Program specifying amounts of premiums or contributions for coverage by the Program, withhold those amounts from the salaries or wages of officers and employees who participate in the Program and pay those amounts to the Program.

2. The State Controller may adopt regulations necessary to withhold money from the salaries or wages of officers and employees of the Executive Department.

Sec. 44. NRS 284.013 is hereby amended to read as follows:

284.013 1. Except as otherwise provided in subsection 4, this chapter does not apply to:

(a) Agencies, bureaus, commissions, officers or personnel in the Legislative Department or the Judicial Department of State Government, including the Commission on Judicial Discipline;

(b) Any person who is employed by a board, commission, committee or council created in chapters 590, 623 to 625A, inclusive, 628, 630 to 644, inclusive, 648, 652, 654 and 656 of NRS; or

(c) Officers or employees of any agency of the Executive Department of the State Government who are exempted by specific statute.

2. Except as otherwise provided in subsection 3, the terms and conditions of employment of all persons referred to in subsection 1, including salaries not prescribed by law and leaves of absence, including, without limitation, annual leave and sick and disability leave, must be fixed by the appointing or employing authority within the limits of legislative appropriations or authorizations.

3. Except as otherwise provided in this subsection, leaves of absence prescribed pursuant to subsection 2 must not be of lesser duration than those provided for other state officers and employees pursuant to the provisions of this chapter. The provisions of this subsection do not govern the Legislative Commission with respect to the personnel of the Legislative Counsel Bureau.

4. Any board, commission, committee or council created in chapters 590, 623 to 625A, inclusive, 628, 630 to 644, inclusive, 648, 652, 654 and 656 of NRS which contracts for the services of a person, shall require the contract for those services to be in writing. The contract must be approved by the State Board of Examiners before those services may be provided.

5. *To the extent that they are inconsistent or otherwise in conflict, the provisions of this chapter do not apply to any terms and conditions of employment that are properly within the scope of and subject to the provisions of a workplace relations agreement or a supplemental workplace relations agreement that is enforceable pursuant to the provisions of sections 2 to 42, inclusive, of this act. As used in this subsection, “terms and conditions of employment” has the meaning ascribed to it in section 15 of this act.*

Sec. 44.3. NRS 284.030 is hereby amended to read as follows:

284.030 ~~1-1~~ There is hereby created in the Department a personnel commission composed of five members appointed ~~by the Governor.~~  
~~2-1~~ as follows:

1. The Governor shall appoint:

(a) ~~Three members~~ **One member** who ~~are representatives~~ **is a representative** of the general public and ~~have~~ **has** a demonstrated interest in or knowledge of the principles of public personnel administration.

(b) One member who is a representative of labor and has a background in personnel administration.

(c) One member who is a representative of employers or managers and has a background in personnel administration.

2. *The Majority Leader of the Senate shall appoint one member who is a representative of the general public and has a demonstrated interest in or knowledge of the principles of public personnel administration.*

3. *The Speaker of the Assembly shall appoint one member who is a representative of the general public and has a demonstrated interest in or knowledge of the principles of public personnel administration.*

Sec. 44.5. NRS 284.040 is hereby amended to read as follows:

284.040 1. The members of the Commission ~~shall~~ serve at the pleasure of the ~~Governor,~~ **appointing authority**, but no appointment ~~shall~~



*may* extend beyond a period of 4 years ~~from~~ *after* the date of expiration of the preceding appointment.

2. Continued absence from meetings ~~shall constitute~~ *constitutes* good and sufficient cause for removal of a member by the ~~Governor~~ *appointing authority*.

Sec. 44.7. NRS 284.065 is hereby amended to read as follows:

284.065 1. The Commission has only such powers and duties as are authorized by law.

2. In addition to the powers and duties set forth elsewhere in this chapter ~~and~~ *and sections 2 to 42, inclusive, of this act*, the Commission shall:

(a) Advise the Director concerning the organization and administration of the Department.

(b) Report to the Governor biennially on all matters which the Commission may deem pertinent to the Department and concerning any specific matters previously requested by the Governor.

(c) Advise and make recommendations to the Governor ~~or~~ *and* the Legislature relative to the personnel policy of the State.

(d) Adopt regulations to carry out the provisions of this chapter.

(e) Foster the interest of institutions of learning and of civic, professional and employee organizations in the improvement of personnel standards in the state service.

(f) Review decisions of the Director in contested cases involving the classification or allocation of particular positions.

(g) Exercise any other advisory powers necessary or reasonably implied within the provisions and purposes of this chapter.

Sec. 45. (Deleted by amendment.)

Sec. 46. (Deleted by amendment.)

Sec. 46.5. The terms of the members of the Personnel Commission appointed by the Governor pursuant to paragraphs (a), (b) and (c) of subsection 2 of NRS 284.030 expire on June 30, 2009.

Sec. 46.7. As soon as practicable on or after July 1, 2009:

1. The Governor shall appoint members to the Personnel Commission pursuant to paragraphs (a), (b) and (c) of subsection 1 of NRS 284.030, as amended by section 44.3 of this act.

2. The Majority Leader of the Senate shall appoint a member to the Personnel Commission pursuant to subsection 2 of NRS 284.030, as amended by section 44.3 of this act.

3. The Speaker of the Assembly shall appoint a member to the Personnel Commission pursuant to subsection 3 of NRS 284.030, as amended by section 44.3 of this act.

Sec. 47. 1. This section and section 46.5 of this act become effective upon passage and approval.

2. Sections 1 to 46, inclusive, ~~and 46.7~~ of this act become effective ~~on July 1, 2009~~ *on July 1, 2009*.

(a) Upon passage and approval for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On January 1, 2010, for all other purposes.

3. Section 46.7 of this act becomes effective on July 1, 2009.

Assemblywoman Kirkpatrick moved that the Assembly concur in the Senate amendment to Assembly Bill No. 395.

Remarks by Assemblywoman Kirkpatrick.

Motion carried by a constitutional majority.

Bill ordered to enrollment.

#### RECEDE FROM ASSEMBLY AMENDMENTS

Assemblywoman Kirkpatrick moved that the Assembly recede from its action on Senate Bill No. 175.

Remarks by Assemblywoman Kirkpatrick.

Motion carried.

#### REPORTS OF CONFERENCE COMMITTEES

*Madam Speaker:*

The Conference Committee concerning Assembly Bill No. 52, consisting of the undersigned members, has met and reports that:

It has agreed to recommend that Amendment No. 615 of the Senate be concurred in.

It has agreed to recommend that the bill be further amended as set forth in Conference Amendment No. 27, which is attached to and hereby made a part of this report.

PEGGY PIERCE  
APRIL MASTROLUCA  
JOE HARDY

*Assembly Conference Committee*

VALERIE WIENER  
SHIRLEY BREEDEN

*Senate Conference Committee*

Conference Amendment No. CA27.

SUMMARY—~~[Requires]~~ **Revises provisions relating to public hospitals and requires** hospitals in certain larger counties to provide a report of certain information concerning patients to the Legislative Committee on Health Care. (BDR ~~IS~~ 40-448)

AN ACT relating to health care; **authorizing a board of county commissioners to adopt procedures to lease the naming rights relating to public hospitals located within the county;** requiring certain hospitals in certain larger counties to report information to the Legislative Committee on Health Care concerning the transfer of patients to another hospital; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

**Existing law authorizes the board of county commissioners in certain larger counties to adopt, by ordinance, procedures for the sale of naming rights relating to a shooting range that is owned by the county. (NRS 244.30701) Under existing law, counties and groups of counties are authorized to establish public hospitals. (Chapter 450 of NRS) Section 1 of this bill authorizes a board of county commissioners to lease the**

**naming rights relating to such a hospital and specifies the purposes for which proceeds from the lease must be used.**

Hospitals in this State are required to provide emergency services and care, and it is unlawful for a hospital or a physician working in a hospital emergency room to refuse to accept or treat a patient in need of emergency services and care. (NRS 439B.410) ~~(This)~~ **Section 2 of this** bill requires certain hospitals located in larger counties to provide a report of certain information to the Legislative Committee on Health Care concerning the transfer of patients from the hospital to another hospital and the availability of specialty medical services in the hospital. Such a report must be made quarterly beginning on October 15, 2009, and cover information from July 1, 2009, through September 30, 2010.

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

**Section 1. Chapter 450 of NRS is hereby amended by adding thereto a new section to read as follows:**

**1. The board of county commissioners of a county in which a public hospital is located may adopt, by ordinance, procedures for the lease of naming rights relating to the public hospital, including, without limitation, the lease of naming rights to:**

**(a) Buildings, improvements, facilities, rooms, features, fixtures and sites located within the boundaries of the public hospital; and**

**(b) Activities, events, programs, chairs, fellowships and memorials held or established at the public hospital.**

**2. If a board of county commissioners leases naming rights in accordance with the procedures adopted pursuant to this section, the board shall create an enterprise fund exclusively for the proceeds of the lease of all such naming rights, for fees or charges for use of the hospital and for any gifts, grants, donations, bequests, devises or money from any other source received for the public hospital. Any interest or other income earned on the money in the fund, after deducting any applicable charges, must be credited to the fund. Money that remains in the fund at the end of a fiscal year does not revert to the county general fund and the balance in the fund must be carried forward to the next fiscal year. The money in the fund may only be used to pay for expenses directly related to the costs of the public hospital for construction, improvement, operation, maintenance or programs.**

**3. The procedures adopted pursuant to subsection 1 must, without limitation:**

**(a) Prohibit the lease of naming rights for a public hospital to that public hospital;**

**(b) Provide that the board of county commissioners may reject any name proposed pursuant to a lease of naming rights;**

(c) Provide for the development of selection criteria for awarding a lease of naming rights, including procedures for circumstances in which more than one request for the lease of naming rights is submitted to the board of county commissioners;

(d) Provide that the name must be consistent with the mission of the public hospital;

(e) Prohibit the use of a name that:

(1) Is false, misleading or deceptive;

(2) Promotes unlawful or illegal goods, service or activities;

(3) Promotes or encourages hate, violence or antisocial behavior;

(4) Implies an endorsement by the county or a public official of any good, service or activity;

(5) Is libelous or defamatory;

(6) Contains text or an image that is likely to be confused with safety, traffic or emergency signage; or

(7) Is associated with a person who has been convicted of a felony;

(f) Provide that the term of a lease does not exceed 20 years; and

(g) Provide that the board of county commissioners:

(1) Shall require the change of a name authorized pursuant to a lease or revoke a lease before the expiration of its term if a change of circumstances results in a violation of the provisions of paragraph (d) or (e); and

(2) May require the change of a name authorized pursuant to a lease or revoke a lease before the expiration of its term for any other purpose in accordance with the procedures adopted pursuant to subsection 1.

4. The terms of a lease granted pursuant to this section may be renegotiated and renewed. Each such renewal must provide that the term of the lease does not exceed 20 years.

5. A lease of naming rights pursuant to this section and the procedures adopted pursuant thereto are not subject to the requirements for competitive bidding set forth in chapter 332 of NRS.

~~{Section 4.}~~ Sec. 2. 1. Each hospital located in a county whose population is 400,000 or more which is licensed to have more than 70 beds shall provide to the Legislative Committee on Health Care reports with information concerning the transfer of patients from one hospital to another hospital. Such information must include:

(a) The number of patients who are transferred from the hospital to another hospital;

(b) The number of patients who were received by the hospital that were transferred from another hospital;

(c) The reason for each transfer of a patient to another hospital;

(d) The availability of specialty services and care in the hospital; and

(e) Whether each patient who was transferred from the hospital had insurance or some other guaranteed form of payment for services.

2. Each hospital subject to the provisions of subsection 1 shall provide a report to the Legislative Committee on Health Care with the information required at least once every 3 months, and the reports must include information from July 1, 2009, through September 30, 2010. The first report must be made by October 15, 2009, and must include information from July 1, 2009, through September 30, 2009. Subsequent reports must include information for the period since the last report.

3. The information reported pursuant to this section must be made available to each person or entity that provides information pursuant to this section to the extent that it is not required to be kept confidential.

4. The information reported pursuant to this section must be maintained and reported in a manner consistent with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

5. As used in this section, "specialty services" includes, without limitation:

- (a) Cardiology services;
- (b) Gastroenterological services;
- (c) General surgical services;
- (d) Neurosurgical services;
- (e) Ophthalmology services;
- (f) Oral and maxillofacial surgical services;
- (g) Orthopedic services;
- (h) Otolaryngology services; and
- (i) Urological services.

~~[Sec. 2.]~~ **Sec. 3.** This act becomes effective on July 1, 2009.

Assemblywoman Pierce moved that the Assembly adopt the report of the Conference Committee concerning Assembly Bill No. 52.

Remarks by Assemblywoman Pierce.

Motion carried by a constitutional majority.

Madam Speaker announced if there were no objections, the Assembly would recess subject to the call of the Chair.

Assembly in recess at 3:40 p.m.

#### ASSEMBLY IN SESSION

At 3:50 p.m.

Madam Speaker presiding.

Quorum present.

#### REPORTS OF COMMITTEES

*Madam Speaker:*

Your Committee on Ways and Means, to which was referred Senate Bill No. 143, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Ways and Means, to which was rereferred Senate Concurrent Resolution No. 37, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and be adopted as amended.

MORSE ARBERRY JR., *Chair*

#### MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, June 1, 2009

*To the Honorable the Assembly:*

I have the honor to inform your honorable body that the Senate on this day sustained the Governor's veto of Assembly Bills Nos. 147, 446.

Also, I have the honor to inform your honorable body that the Senate on this day failed to sustain the Governor's veto of Assembly Bill No. 493.

Also, I have the honor to inform your honorable body that the Senate on this day adopted Senate Concurrent Resolution No. 39.

Also, I have the honor to inform your honorable body that the Senate on this day appointed Senators Schneider, Townsend and Breeden as a Conference Committee concerning Senate Bill No. 242.

Also, I have the honor to inform your honorable body that the Senate on this day adopted the report of the Conference Committee concerning Senate Bill No. 295.

SHERRY L. RODRIGUEZ

*Assistant Secretary of the Senate*

#### GENERAL FILE AND THIRD READING

Senate Bill No. 143.

Bill read third time.

The following amendment was proposed by the Committee on Ways and Means:

Amendment No. 999.

**SUMMARY** ~~[Creates the Legislative Committee for Federal Stimulus Oversight to oversee the use of money allocated to the State from the Federal Government to stimulate the economy.]~~ **Makes an appropriation to the Interim Finance Committee for allocation to pay costs relating to the implementation of certain legislation.** (BDR S-1034)

**AN ACT** ~~[relating to state financial administration; creating the Legislative Committee for Federal Stimulus Oversight to oversee the use of money allocated to the State from the Federal Government to stimulate the economy;]~~ **making an appropriation to the Interim Finance Committee for allocation to pay costs relating to the implementation of certain legislation;** and providing other matters properly relating thereto.

Legislative Counsel's Digest:

~~[ The United States Congress passed the "American Recovery and Reinvestment Act of 2009" which includes allocations of money to states. Section 1 of this bill creates the Legislative Committee for Federal Stimulus Oversight to oversee the use of the money allocated to this State. Section 2 of this bill sets out the duties of the Committee which include considering proposals and plans for the use of allocated funds to ensure that the use maximizes the goals of the State, examining the possibility of participating in certain programs offered by the Federal Government, monitoring spending for transportation and public works projects, and ensuring that more and~~

~~higher paying jobs are created. Section 3 of this bill requires the Committee to hold entities that receive federal funds accountable for the appropriate and effective use of the money allocated to them and authorizes the Committee to require the redirection of the use of money within a program if it determines that the allocation is not being used in the most effective manner.]~~

**This bill makes an appropriation of \$500,000 from the State General Fund to the Interim Finance Committee for allocation to pay costs relating to the implementation of legislation concerning state revenue enacted during the 75th Session of the Nevada Legislature.**

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

Section 1. 1. ~~There is hereby created the Legislative Committee for Federal Stimulus Oversight to oversee the use of funds allocated from money that is received by the State of Nevada from the Federal Government pursuant to the "American Recovery and Reinvestment Act of 2009" to stimulate the economy consisting of:~~

~~(a) Five members who are Senators, three of whom are appointed by the Majority Leader of the Senate and two of whom are appointed by the Minority Leader of the Senate; and~~

~~(b) Five members who are Assemblymen, three of whom are appointed by the Speaker of the Assembly and two of whom are appointed by the Minority Leader of the Assembly.~~

~~2. The members of the Committee shall select a Chairman from one House of the Legislature and a Vice Chairman from the other.~~

~~3. Vacancies on the Committee must be filled in the same manner as original appointments.]~~ **appropriated from the State General Fund to the Interim Finance Committee the sum of \$500,000 for allocation to pay costs relating to the implementation of legislation concerning state revenue enacted during the 75th Session of the Nevada Legislature.**

**2. Any remaining balance of the appropriation made by subsection 1 must not be committed for expenditure after June 30, 2011, 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 16, 2011, 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 16, 2011.**

Sec. 2. ~~[1. The Legislative Committee on Federal Stimulus Oversight shall consider proposals and plans for the use of allocated funds described in section 1 of this act to ensure that the use maximizes the goals of the State to improve the state system of public education and the Nevada System of Higher Education, to provide greater access to health insurance and health~~

~~care, to deliver social services in a more efficient manner, to provide for more efficient use of energy and to create more jobs.~~

~~— 2. The Committee shall examine programs offered by the Federal Government as part of the incentives made available to states to stimulate the economy to determine whether it is beneficial and feasible for the State of Nevada to participate in such programs. Such programs may include, without limitation, a program to allow recently unemployed persons to participate in Medicaid and programs that provide for enhancements of other existing programs.~~

~~— 3. The Committee shall monitor the spending of allocated funds for transportation projects and public works projects to ensure that such projects provide for the maximum increase in job opportunities made available in this State.~~

~~— 4. The Committee shall review the plans of state agencies for spending allocated funds, including, without limitation, plans for spending money designated for:~~

~~— (a) The state system of public education and higher education;~~

~~— (b) Medicaid;~~

~~— (c) Mental health and developmental services;~~

~~— (d) Child and family services;~~

~~— (e) Temporary Assistance to Needy Families; and~~

~~— (f) Other services provided by State Government.~~

~~— 5. The Committee shall review grants that are proposed under various federal programs, establish priorities for the use of any money from such grants that is made available to the State and ensure that any such money is distributed in an equitable manner based on need.~~

~~— 6. The Committee shall review the proposed utilization of the money received through grants from the Federal Government for job training that is focused on energy efficiency and weatherization of homes, schools and other public buildings to ensure that it creates more and higher paying jobs in this State.] (Deleted by amendment.)~~

Sec. 3. [1. ~~The Legislative Committee for Federal Stimulus Oversight shall provide a manner of holding each entity that receives an allocation of funds described in section 1 of this act accountable for the appropriate and effective use of the money. Each such entity shall report to the Committee at such times and intervals as requested by the Committee concerning the manner in which the money is used, the number of jobs that are created as a result of the money, if applicable, other improvements that result from the use of the money and such other information as requested by the Committee.~~

~~— 2. If the Committee determines that money that has been allocated is not being used in the most effective manner, the Committee may require that the remaining money from the allocation be redirected to a more effective use within the program for which the money was allocated.] (Deleted by amendment.)~~



Sec. 4. This act becomes effective upon passage and approval ~~and expires by limitation on June 30, 2011.~~

Assemblyman Arberry moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Arberry moved that Senate Bill No. 143 be taken from the General File and placed on the Chief Clerk's desk.

Motion carried.

GENERAL FILE AND THIRD READING

Senate Bill No. 212.

Bill read third time.

Remarks by Assemblymen Carpenter and Settlemeyer.

Roll call on Senate Bill No. 212:

YEAS—41.

NAYS—Ohrenschall.

Senate Bill No. 212 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

MOTIONS, RESOLUTIONS AND NOTICES

Senate Concurrent Resolution No. 37.

Resolution read.

The following amendment was proposed by the Committee on Ways and Means:

Amendment No. 1006.

SENATE CONCURRENT RESOLUTION—Providing for the Interim Finance Committee to conduct a review of Nevada's revenue structure and to provide long-term stabilization of revenue.

WHEREAS, A prolonged recession has left Nevada with a large general fund deficit; and

WHEREAS, Nevada's existing state revenue sources are insufficient to fund essential state services such as education, health and human services and public safety programs; and

WHEREAS, Nevada's 2009-2011 budget includes nonrecurring federal stimulus funds and tax revenues that will sunset on June 30, 2011; and

WHEREAS, It is essential that the State in the future have a stable, equitable, transparent and competitive revenue system; and

WHEREAS, It is vital that policymakers not be unduly constrained by the current distribution of public revenues or the current mixture of public revenue sources in making decisions regarding the State's fiscal system; and

WHEREAS, It is in the best interest of Nevada that the State's revenue system reflect the long-term needs of the State, the diversity of Nevada's economy and nationally recognized best practices; now, therefore, be it

RESOLVED BY THE SENATE OF THE STATE OF NEVADA, THE ASSEMBLY CONCURRING, That the Interim Finance Committee shall appoint a Subcommittee to conduct a review of Nevada's revenue structure and to provide long-term stabilization of revenue. The Subcommittee shall carry out the following functions:

1. Review proposals for broad-based taxes which are fair and equitable;
2. Examine strategies for mitigating tax burdens on both businesses and consumers, including reductions, if possible, in existing taxes, both state and local;
3. Consider the public's willingness to having existing taxes be decreased as other tax revenues become available;
4. Using current statistical information, propose strategies and recommendations to advance the State of Nevada in nationwide rankings in key quality-of-life areas, including education, health and human services, public safety, economic diversification, job creation, transit and energy use; and
5. Develop a quality-of-life vision for the State of Nevada for a 5-year period, a 10-year period and a 20-year period; and be it further

RESOLVED, That the Subcommittee shall appoint a Nevada Vision Stakeholder Group, with members selected from a list of names submitted by community and statewide groups involved in business, education, health care, human services, economic development, transit and energy, or any other groups deemed appropriate by the Subcommittee, to assist in developing 5-year, 10-year and 20-year strategic plans for improving the State's quality of life; and be it further

RESOLVED, That , with money available for this purpose, the Interim Finance Committee shall, through competitive bidding, retain the services of a qualified, independent consultant to review Nevada's public revenue structure and make recommendations to the Interim Finance Committee relating to:

1. The allocation of revenue from taxation and other sources between the State and local governments;
2. The adequacy of the revenue sources of the State and local governments and each level of government in supplying sufficient revenue for the services provided by the respective governments and governmental agencies;
3. The relative stability of the revenue sources of the State and local governments and each level of government and each governmental agency;
4. The degree to which the revenue sources of the State and local governments reflect the current economic activity of the State;

5. The degree to which the revenue sources of the State and local governments are representative of the way business is conducted today relative to administration and compliance;

6. The extent to which the earmarking of various revenue sources has removed flexibility in efficiently allocating those revenue sources;

7. The extent to which the revenue sources of state and local governmental agencies increase in proportion to increased population and the corresponding increased demand for the services provided by the respective governments and governmental agencies;

8. Any recommendations to improve the equity of the allocation of revenue and the stability of the sources of revenue for State Government and the various local governmental entities and changes which will improve the flexibility, collection and administration of existing revenue sources; and

9. Any other matters that the Interim Finance Committee deems necessary to improve the equity, stability, transparency and competitiveness of the State's tax system; and be it further

RESOLVED, That in conjunction with the revenue stabilization study process, the consultant shall:

1. Collect independent data on Nevada's national rankings in quality-of-life areas; and

2. Coordinate with the Nevada Vision Stakeholder Group to develop strategies to advance Nevada's national standing in critical quality-of-life areas; and be it further

RESOLVED, That the consultant shall deliver a report of his findings concerning revenue stabilization to the Interim Finance Committee on or before July 1, 2010, which must include specific recommendations as well as the impact of implementing those recommendations on the State, local governments and various types of businesses, including, without limitation, large and small businesses, capital-intensive and labor-intensive businesses and high-margin and low-margin businesses and as well the impact on the general population; and be it further

RESOLVED, That the consultant shall deliver a report of his findings concerning quality-of-life areas to the Interim Finance Committee on or before July 1, 2010, including, without limitation, proposed strategies and recommendations from the Nevada Vision Stakeholder Group in key areas such as education, health and human services, public safety, economic diversification, job creation, transit and energy use; and be it further

~~[Resolved, That the Interim Finance Committee shall allocate money from the Contingency Fund to pay for the services of the consultant; and be it further]~~

RESOLVED, That the Interim Finance Committee shall hold at least two public hearings to evaluate the findings of the consultant; and be it further

RESOLVED, That the Subcommittee shall create a Technical Working Group consisting of the Senate Fiscal Analyst, the Assembly Fiscal Analyst, the Chief of the Budget Division of the Department of Administration, the

Executive Director of the Department of Taxation, the Vice Chancellor of Finance of the Nevada System of Higher Education, the Deputy Superintendent of Administrative and Fiscal Services of the Department of Education and the Chairman of the Committee on Local Government Finance; and be it further

RESOLVED, That the Subcommittee shall direct the Technical Working Group to ensure that the State is prepared to implement, on or before July 1, 2011, revenue stabilization recommendations accepted and forwarded by the Subcommittee; and be it further

RESOLVED, That the Technical Working Group shall undertake any work necessary to ensure the State's readiness to implement required modifications to the State's existing revenue system, including, without limitation, any upgrade or replacement of equipment or software required for such a modification; and be it further

RESOLVED, That, upon recommendation of the Subcommittee, the Executive Director of the Department of Taxation may request an allocation from the Contingency Fund pursuant to NRS 353.266, 353.268 and 353.269 to acquire a technologically sound computer system necessary for the collection or allocation of taxes in the State; and be it further

RESOLVED, That the Interim Finance Committee shall, on or before October 1, 2010, submit a report of the results of its review and any recommendations for legislation to the Governor and the Director of the Legislative Counsel Bureau for transmittal to the 76th Session of the Nevada Legislature.

Assemblyman Arberry moved the adoption of the amendment.

Amendment adopted.

Resolution ordered reprinted, engrossed and to the Resolution File.

Senate Concurrent Resolution No. 39.

Assemblyman Ocegura moved that the resolution be referred to the Committee on Health and Human Services.

Motion carried.

Assemblyman Arberry moved that Senate Concurrent Resolution No. 37 be taken from the Resolution File and placed on the Chief Clerk's desk.

Motion carried.

Assemblyman Mortenson moved that Assembly Joint Resolution No. 1 be taken from the Chief Clerk's desk and rereferred to the Committee on Elections, Procedures, Ethics, and Constitutional Amendments.

Motion carried.

Assemblyman Mortenson moved that the Assembly recess subject to the call of the Chair.

Motion carried.

Assembly in recess at 4 p.m.

## ASSEMBLY IN SESSION

At 5:30 p.m.

Madam Speaker presiding.

Quorum present.

Madam. Speaker announced that pursuant to Assembly Standing Rule No. 1, section 2, subsection (d), Assemblyman Oceguela would act as presiding officer.

Assemblyman Oceguela presiding.

## REMARKS FROM THE FLOOR

Assemblyman Conklin requested that the following remarks be entered in the Journal.

Assemblyman Oceguela requested the privilege of the Chair for the purpose of making the following remarks:

Life for our Speaker began in Philadelphia, Pennsylvania, birthplace of our nation. In addition to being the nation's first capital, the city was the site of the first American university, hospital, and public school. Barbara Buckley's life is filled with firsts, so it's not surprising she got her start in such an enterprising city. Most of us have come to know Barbara as a community advocate, then a legislator, and most recently as Speaker of the Nevada Assembly. But before we talk about her many accomplishments in those roles, let me briefly describe a few things you might not know about her, starting with her early years.

Barbara Buckley is the youngest of four children. She attended Catholic school for 12 years and was a cheerleader and a cheerleading coach. I have to wonder if that early training is sometimes still put to work, especially here when we're on our third floor session of the day in the final week of a particularly grueling legislative session.

In 1980 at the age of 19, Barbara made her first trip to Las Vegas. It was intended to be just a short vacation, but she stayed for three months and worked as a hotel maid to finance that stay. Barbara eventually returned to Philadelphia, but only briefly to save enough money so that she could relocate to Las Vegas in 1981. We didn't know it then, but she had already adopted us.

Never one to take things easy, Barbara enrolled in night courses at UNLV, all the while working as a legal secretary. She was the first in her family to graduate from college, but she didn't stop there. She went on to pursue a law degree. She was awarded the Outstanding Female Law Graduate for 1989 at the University of Arizona and received the Danny Lee Chandler Award for promoting the First Amendment in law school. Given her affinity for firsts, I'm not surprised. In 1996, Barbara became the executive director of Legal Aid of Southern Nevada, where she created the Domestic Violence and the Children's Attorney Projects, the first legal programs to assist victims of domestic violence and abuse in Clark County. She was also instrumental in organizing the Affordable Housing Institute and founding the Southern Nevada Homeless Coalition—another theme in Barbara's life, helping those most in need.

Barbara Buckley was elected to the Nevada Assembly in 1994, and in her first term, she was recognized as outstanding freshman in the Assembly. In Barbara's second term, she was named Assistant Majority Floor Leader by Speaker Joe Dini. In 2001, she was asked by Speaker Richard Perkins to serve as the Majority Leader—the first woman to hold that position. And as we all know, in 2006 she became the first woman in Nevada history to be chosen Speaker of the Nevada Assembly.

Barbara's commitment to hard work was never more evident than during her years in the Assembly. In her second term, she became concerned about issues in health care, a topic that dominated letters from her constituents and complaints from her legal clients. That session, Barbara took on health maintenance organizations and helped rewrite the law governing HMOs. Known as the Patient Protection Act, the bill passed both houses unanimously, a remarkable feat given the topic and the times. A few years after that landmark session, Barbara's concern turned

to affordable assisted living for low income seniors. She organized the first public-private partnership between the Housing Division, Harrah's, and BLM, which became the first program in Nevada to serve the needs of that population. During Barbara's service in the Assembly, she has been involved in lowering the cost of prescription drugs, strengthening laws governing the payday loan industry, protecting mobile home park residents, and establishing the Office for Consumer Health Assistance.

Even as she worked to protect consumers, the disadvantaged, and the disabled, Barbara has been a force to be reckoned with for those in the legislative process. When Barbara was just a freshman legislator, one longtime lobbyist said, "Man, is she smart, and are we going to be in trouble." When she sees a need or a problem, Barbara isn't one to sit back and wait for others to take the lead. For example, her parents taught her that this country should be a place where people leave a better life for children, and anyone who knows Barbara knows that making a better life for Nevada's children has been yet another mission of hers, whether it's reforming the child welfare system, furthering all-day kindergarten, or preserving education funding.

Over the years, many personal and professional awards have been bestowed on Barbara Buckley, including Legislator of the Decade; Best Public Servant; Assemblywoman of the Year; the 1994 Women's Political Caucus Good Gal Award; Best Local Politician; Consumer Advocate of the Year; Best Assembly Member for five straight legislative sessions; and my personal favorite, "Best Reason Not to Lose Faith in the Legislature." I've had the pleasure of serving with Speaker Buckley for nine years. Her knowledge and guidance have been invaluable to me. I'll always be grateful for that experience. This session more than any other, she has once again proven to be the best reason not to lose faith in the Legislature.

#### ASSEMBLYMAN ANDERSON:

First of all, this is going to be difficult, not just because I'm Irish and have the right the cry and laugh at the same time, but because Barbara is very, very, very dear to me. In 1995 when Ms. Buckley first came here as a member of the body, she was assigned to Judiciary, and it was my first turn at being the cochair of the committee with Mr. Humke; Mr. Sandoval was his vice chair, and Ms. Buckley was mine. I quickly figured out I had nothing to worry about. Mr. Humke had everything to worry about because I had Buckley, and I knew it. We were safe. I quickly realized that the strength of the committee rested with Ms. Buckley and Mr. Carpenter and that all I had to do was sit there and schedule bills. Since Mr. Humke let me do that, it was going to be an easy life. She did all the work, and I got all the credit. She does all the work; I get all the credit. I think that has been the keystone of the relationship, because I know that she's always there.

Probably the funniest story is from a time Ms. Buckley went away. I'm famous for having a somewhat short temper at times, on a regular basis. Ms. Buckley went to San Francisco for a short holiday on her first wedding anniversary during the session, and she came back and brought me a set of Chinese patience balls. They are gigantic, huge things that I could carry in my hand to try and calm me down. I would roll them around in my hand. I still have them and even use them from time to time, and they do work, for those of you who are wondering. Ms. Buckley and Chan, of course, who is the most important part of her life, and of course their sons Ford and Aiden—I don't even want to talk about Aiden and watching him grow up here.

The most important bill that I want to recount is a very infamous piece of legislation called Tailhook. Some of you may recall there was something of a dramatic incident in one of the hotels in Clark County which led to nationally publicized lawsuits and an increase in the responsibility of the gaming industry to protect guests in their hotels. The bill came into the Senate and then came over to the Assembly with the clear understanding that it was good for the gaming industry and that we would fix it. Little did they realize that Ms. Buckley was not going to put up with that. The naval officer who came here was concerned, rightly so, having seen how she was treated in the Senate. She talked to Ms. Buckley and dropped by my office and clearly understood that that was not going to be the character in this house. That bill was scheduled, I believe, for July 9 or 11. We sine died on the seventh, so I know it was scheduled two weeks in advance, because I wanted to make sure that it was adequately heard and everybody thought that it couldn't happen.

Barbara, we care about you because you care about us. You care about all of us, and that's what it's all about. You love every one of us—the short, fat kid; the cowboy from Elko. Those of us and what we do and our issues—you make them your own. You leave nobody out of the hut, and for that I will personally be ever grateful, and I can hardly wait to see where that star will rise next and hope that I can be close enough just to stand in the shower of it. Thank you for all that you have done for us.

ASSEMBLYMAN HORNE:

When I first came to this body in 2003, like many other people who first meet Barbara, I was in awe. Rather quickly, you learn that she is probably the smartest person in the building, so you need to pay attention. If any of you have not read *The Art of War*, you should because, Madam Speaker, that's what I think about when I see you working. The book *The Art of War* is all about succeeding and finding a way to accomplish your goal. I've watched Barbara do that time and time again, from the very easy things that seem to be out of everyone's view but are such an easy fix, to the things that are so complex. Not only can she figure it out, but she knows the members of her body and who has the talents to make it happen. She knows how to motivate them to do that, and I've watched her do that now for four sessions. Each and every time, she gets the right people to do the right job, and she motivates them to do that. I've seen her motivate people to work bills that they didn't particularly care about, and they do an excellent job. Much like these new glasses that I have, she gently focuses you on what you need to do and what you need to see. She did that with me, even this session. I was so hot about something, I couldn't see straight. You know how Barbara is—she is very calm. You're sitting there explaining your frustration, and she says, "Yep. Uh huh. Yep." Finally after you're done venting, she sits there and explains to you, "You know, there are things that go on in this building that make us all mad, but we need to focus, William. There are bigger things out there than this. Come on, get it together." And it calmed me down, and it worked out just like she always says. I know when she moves on from here that her enormous talent will continue and will benefit this state. Thank you very much, Madam Speaker, for the time that I've served with you.

ASSEMBLYMAN MORTENSON:

Last session I was sitting up in my office, and somebody came in and said, "The Speaker wants to talk to you." I said, "Oh, hell, what have I done now?" So I journeyed down to your office; I sat down and you looked at me and said, "You know, I have been fighting for two of your measures for weeks now. The Senate has insisted that only one of them will get through, and I've been arguing with Raggio and Beers about it. But we've come to an impasse, and it looks like we're not going to get both of them through." "We"—and I'm sitting there, and my mind is blowing. Here's a lady who has 500 bills to worry about and 41 other colleagues to worry about, and she is working this hard on 2 of my measures. She said, "You've got to make a choice." So I made my choice—I choose the harder one, the more difficult one. Raggio even forced a chairman who said he had closed down his committee to open it up to pass my bill, and I got my bill through. From that day on, I was a good soldier. I had decided that this is a fabulous lady who, as the chairman of Judiciary says, looks out for everyone's interests. She does it really seriously, and it just blows my mind. Thank you.

ASSEMBLYWOMAN SMITH:

Madam Speaker, you are such an amazing role model for us and have given us all so much opportunity. I think that is the remarkable thing about what you've taught us and what you leave us with. I was thinking back to the first time that I met you when I had been asked to run for office by Jan Evans. I was picking you up from the airport or someplace and taking you to a meeting at some business location where you were going to introduce me. I had not met you. I didn't know how formidable you were, and I became intimidated fairly quickly, but it also didn't take me very long to figure out that there was no reason for that.

You always find time for everyone, which I think is remarkable, and you always give us a chance to prove ourselves. More importantly, you always back us up. On every occasion that I've had here, including today, you have stood by my decisions and given me the backup so that I could do what I needed to do.

My little seatmate here doesn't have the privilege to speak, but I think we both can attest to all of the qualities that you have. We both appreciate what you have given to us and to our family.

The last thing I would like to say, and I think that my caucus members can appreciate this, is we often hear remarks about this caucus. We've been referred to as sheep that just follow, but that is absolutely not the case. The case is that we have such a good leader who gives us our opportunities, who helps us stretch and have our opinions, but we all come together because of your leadership. It's very much that we go down the path together because you have helped us get there. From my heart and from Erin's heart, we thank you for what you've given to us, and I thank you for what you've given to this state and to this body.

ASSEMBLYMAN HARDY:

When I came here in 2003, I had a wonderful, simple little bill that one person in this body—who shall remain nameless, but I still love Mr. Anderson—had an objection to. I had this gentle visit to a room that I had never heretofore been in. When I came out, my protector at the time, Assemblywoman Chowning—I didn't understand why I needed someone to protect me until I came out—as I came out I referenced the fact that it really did smell like wood. Assemblywoman Chowning said, "Wood?" And I said, "Yeah, that's what a woodshed smells like." I was very gently told by my friend Barbara Buckley, "Your bill is dead until you convince Bernie." And I haven't convinced him yet. It was a good thing for me to realize that I had to convince every single person in this body. I had to do everything to convince everybody and resolve everybody's concern. It was a good lesson in lawmaking, and I appreciated that, and it has stood me well over the years.

Likewise, I appreciate the opportunity to have watched the forgiveness, the tolerance, the "put-up-with-ness" that you've had with me, including "order of business something." It's been a pleasure to watch how you've grown in the calling, I'll call it, the avocation that you have. I appreciate your leadership as you've helped all of us as we've been interested in the process of helping people while we make laws. Thank you, Barbara, I appreciate it.

ASSEMBLYWOMAN DONDERO LOOP:

Well, Madam Speaker, I don't happen to think there is anything wrong with being a cheerleader, and the reason is because if you hadn't cheered me on, I wouldn't be here. I just want to tell you that I appreciate your serious talks. I appreciate the laughter. I appreciate the guidance and you being there for all of us. You're a role model to all women, young and old, and that I appreciate, being the mother of three daughters. I also appreciate that you value being a mother enough to bring your son to where you are. I want to thank you for believing in each and every one of us, because you do, and it's evident in this body that respects you. Thank you for believing in education and putting it at the top and giving it the attention it deserves. Thank you for being what is right in this state because your guidance and your leadership go hand in hand.

ASSEMBLYMAN CARPENTER:

Thank you, Barbara. I really don't know what to say, because I think it's been mostly said. For many sessions you and I sat next to each other in Judiciary, and you taught this cowboy a lot, and I'll certainly remember it all. You've been a great friend, you're a great lady, and thank you so much.

ASSEMBLYMAN ATKINSON:

I was trying to figure out where I should start, because there's a lot. I'll start with something funny. What people don't know is that Speaker Buckley is a very funny person and has a great sense of humor. I was in her office last session one time—and for most of you, this will be the first time you're hearing this but you'll probably get it. She was explaining myself to me, and she used one word. She said, "You know, Kelvin, some people think you're haughty." And because I like myself, I assumed she was talking about a "hottie," so I hunched up and grabbed my jacket and said, "Well, thank you very much." I kind of felt a little uncomfortable, because I thought the Speaker was coming on to me. She quickly yelled out, "That's not what I'm talking about! I'm talking about H-A-U-G-H-T-Y." She called one of her staff in, and she said,



“Clearly Mr. Atkinson does not know what I am talking about. Can you pull the definition and give it to him for me?” Someone brought it in, and I looked at it, and I sat down in the chair and said, “Oh, my gosh.” She looked at me and said, “I didn’t say it. I said people said it.” So it was clear that the Speaker wasn’t coming on to me because the definition clearly, clearly meant something else.

There was an incident at the end of last session, and she said, “You know, Kelvin, you’ve had a good session. We agreed on 99 percent of the issues.” Well, I weighted the issues, and it was probably about 95 percent, so I think I lost a few more points as far as she was concerned. But I want to thank you for everything, Speaker Buckley. You have been a true friend of mine. I remember going through a difficult campaign, and she took time out of her morning—every morning—for about a month and a half at 7:30 in the morning because she knew that was the time that I was headed to work. She called me every single morning to make sure that I was okay, and I don’t know if people know that side of her and know how caring she is. She knew I was having a very difficult time, and you don’t know how much that meant to me.

I agree with my colleague from Reno who said that people seem to think our caucus is full of followers and we’re not able to be ourselves in this caucus. It’s a blatant lie. I think that Speaker Buckley gives us the tools that she believes we need, she puts us in positions that she believes we will excel in, and she helps us through the process. I can’t tell you how many times we disagree because typically we seem to agree on most issues, but we do have issues that we disagree on. I won’t lie and say that she doesn’t win most of those, but we do have them. I can’t remember if I can count on one hand how many times she has dictated to me that I needed to, or needed not to do something as far as my committee has been concerned. I know she has given me the latitude to be me and do the things that I felt were appropriate for my committee. Again, that’s a true leader, because she is not a dictator nor have I ever felt that I didn’t have the latitude to do the things that I needed to do.

I will say this and then I’ll wrap up. Most people don’t know this about me and how I came to be here. I was very close to my father, and when I was 21 years old and away at school in D.C., my father was murdered. He was someone I truly, truly looked up to and admired. I was very close to my father. It was very, very difficult for me and my family. My godmother told me at the time that in life, people come through your life, and you always have to understand that it’s for a reason. She said that my dad wasn’t here to help shape and mold me, but that people would enter in my life, and I needed to be cognizant of that and accept them as they come. I truly believe that you were a godsend and entered my life for a reason. Thank you very much, Speaker.

#### ASSEMBLYWOMAN KIRKPATRICK:

I know when the Speaker is chewing gum, she’s nervous and trying to hold back, so I’m going to be quick. I just want to tell you thank you. I remember the first time you and I met, when Tom Collins said, “Well, I’m not running, but she is.” I went and met with the Speaker, and I had this long, luscious red hair and was a little rough around the edges. I’d never worn a suit jacket in my whole life. She was like, “Hm.” But it was appropriate for my district, and I thought, “That didn’t go over so well. Let me try again in a few days.” So I went back, and she said, “You know, if you could just tone the hair down a little and we could see your face, after the first election, you can do whatever you want.” I did exactly that, and I will tell that as a mentor this session, I had to have that same talk with someone, and it was really tough. After that, I was probably a thorn in her side for the first couple of months, because I was always asking “Why is this?” “How come this?” She said, “Just learn as much as you can.”

I am grateful that you let me have the opportunity to be a chairperson. There were times when she would ask, “Now, why isn’t that bill moving again?” I would say, “Because it’s stupid and doesn’t work.” She would say, “Okay, we can live with that, but is there a better reason?” As long as I could justify why I was not moving something, she let me do whatever I wanted, even having never been a chairman. I don’t know if the green building issue was a curse or a great thing, but it was a task that she gave me that helped make me a better legislator.

I think you’ve left a lot of memories and a lot of work ethic, which I think is one of the most important things that pays off in this building. If you work hard and you understand the issues and you take the time to learn more, you can be successful at whatever you do. I appreciate that.

I wish you the best in everything that you do going forward, and I know that with your work ethic, you'll do whatever you want to do. Thank you for everything that you gave to me.

ASSEMBLYWOMAN GANSERT:

Speaker, you have a great list of remarkable awards and accomplishments—but cheerleader, I like that one; I may use that later.

I just want to tell you that I appreciate your dedication, your work ethic, your organization—we move things through this body. This could have been a very difficult session because we faced a financial crisis and a lot of different things were going on, but we worked very well together. I appreciate the relationship that we've developed and the mutual respect and leadership that you've shown here. Thank you so much for your dedication, your passion, and all the work.

ASSEMBLYWOMAN KOIVISTO:

Barbara, your accomplishments create lofty goals for everyone coming after you to strive for, and that can only improve this body. Thank you.

ASSEMBLYWOMAN LESLIE:

I hate to speak at these things, but I can't resist because I have some funny stories, too. When I first was running for office, I think it was Mr. Anderson who first said to me, "You've got to call Barbara Buckley." Back in those days, the Reno people weren't as connected to the Las Vegas people—at least that was my impression—I wasn't. I think she called me first, and she sent me some money—and that always gets your attention—but I really didn't see much of her during the campaign. Meanwhile, when people realized I was going to win, the lobbyists started saying, "Oh, you and Ms. Buckley are going to clash. You two are interested in the same things. You both have strong personalities. I don't know how this is going to work." Our first session, we had some fun times in Judiciary, but we didn't really work together that much. At the end of the session when they evaluate the freshmen, they called me the Buckley of the north. So the story all during the interim was the Buckley of the north versus the Buckley of the south, there's going to be this huge competition. And that never happened. I can't think of one bill that we ever clashed on. I can't think of one issue where we had a serious disagreement—not one. In fact, we give each other bill ideas. "Barbara, this one is better for you." "Sheila, why don't you do this one?" I appreciate that we've shown that two strong-willed, sometimes obnoxious women with the same interests can work together collaboratively. We often finish each other's thoughts. We'll be sitting in Ways and Means thinking about a problem—not really listening to the testimony but thinking about something else—and she'll lean over and say, "You know what I was thinking?" And I'll finish the sentence, and she'll say, "That's exactly what I was thinking we should do about that." After having worked together for so many years, you develop that kind of relationship.

My funny story happened during my sophomore session. There was a certain senator, and back in those days—for you freshmen, it is a lot worse when the other party has the Senate and you have to go to the Senate. I remember the first time I had to go to the Senate, it was very scary. My sophomore session there was a certain senator who was used to getting all the media attention. He was pretty mad at me because I started siphoning off some of that attention. He took a real disliking to me. That was a session when all my bills ended up in his committee. For whatever reason, all my bills went to him, and I had some big bills that session, too, so I was in the Senate almost every day. He would treat me so badly—you have no idea. I would go in, and he would pretend I wasn't even there, take up the opponents of my bill first, ignore me. When somebody would point me out, he would say "Who? Who is that?" He would pretend he didn't know who I was. It was so bad that the lobbyists would complain to Barbara. I said, "Would you please go talk to him?" So she did—I don't know what you said to him—so for one day, he was really nice to me. The next day I went in on yet another bill, and he was horrible to me again. Having had the experience of having her intervene for me with him just really changed things, and I've always appreciated it.

I don't think tonight we talked enough about Barbara's body of work, though, and I think it's because it's so overwhelming that no one can even begin to talk about it. I'm just going to talk about one thing that she's done that has completely, completely changed our state, and that is the

child welfare integration. If we had not had Barbara Buckley here in the Assembly, we would still have a horrible child welfare system that was not integrated because no one else would have done that work. No one else would have stuck with it. That is a legacy that you leave the state, and thousands and thousands of kids and families are better off for that work. And let's not forget the Canadian prescription drug fight. We could be here all night if we started talking about some of those battles we've had and battles that we've won.

Barbara, you are the smartest person I have ever worked with—I always tell people that; it's true. You're also one of the most ethical people I've ever worked with, and you're here for the right reasons. That's what I've always appreciated about you: You have the right values. You play your legislative tricks—you've taught me some—but you're doing it for the right reasons. You're not doing it to get rich, you're not doing it to help a friend, you're not doing it for evil reasons. You're doing it because it's the right thing to do, and that example is one that I hope you all remember next time. I'm glad I'm leaving when you're leaving because I couldn't imagine being here without you. Thank you.

ASSEMBLYMAN CHRISTENSEN:

It was interesting hearing the previous speaker talk about all of the experiences that the two of you have had, and in the end the two of you really didn't disagree. While you and I have disagreed—we've voted different, we've had disagreements—I know that when we bump into each other around the food table or in the hallway, we are always able to pick up where we left off, just acknowledge that we vote differently. We may see things in a different way, but at the end of the day, we're both committed to the process. My wife Ashley pointed out to me the other day—I can't remember if it was after the basketball game where we took a slight pummeling or if it was after you were with us and you had said something to me—she said, “You know, the Speaker is really funny.” I said “Yes. You didn't know that?” and she said, “No. I guess I just haven't been around her enough.” I said, “She really has her moments. When she pours it on, she has some of the best jabs on me in committee or in the hallway or wherever.” Being the youngest of seven, I am accustomed to that.

I just want to say, “Touché to you, Madam Speaker.” You are a very, very smart woman on the process and moving legislation. I have been able to watch you and learn from how you do things. I appreciate how hard you work. We are all here engaged in this process, and we have a life, too. You are a mother, you have your son, you have a career outside of this. I really admire you for the hard work that you put in here and for the leadership that you offer to your caucus and to this process. It has been an honor serving with you, and I just wanted to share that with you. Thank you.

ASSEMBLYMAN SEGERBLOM:

Speaker Buckley, my grandmother was one of the first women in this body, my mother served here several years, and one of the proudest moments in my life was to vote for the first woman Speaker. That is such an accomplishment in what is really a male-dominated institution, both here and around the country. I want to thank you for the privilege of being able to vote for you.

ASSEMBLYMAN ARBERRY:

Well Barb, I don't have anything funny to say today. As someone who is looking at closing a chapter in his life and thinking of all the successes and failures, I want to say that it is a great honor to be able to say that I closed it out with a lady of your caliber. You have to remember that when I came here, there were only two or three ladies in the Legislature. Every session I would say, “Boy, I sure hope we get some more ladies up here because then I'd have more support.”

Barb, I have been close to you since you came on the scene. I've been very protective of you, because I could see where your heart was from the day we began working on all the bills and issues, and I respected you. I gave you a nickname—most of them don't even know that I call you “my sister from the hood” because you represent the little people. I can say that even if you weren't term-limited out and I was, I would want to have a person carrying the torch who has the feelings that you do, because once I walk out that back door, I would know that the little people would be represented.

I want to say thank you for all your hard work and for giving me the opportunity and trusting in me to be the chair of Ways and Means, for giving me a committee that has worked hard for this body, and for having the confidence that we would deliver a budget to you and to this state that we all can live with. We weren't happy with it, but every day you would say, "Moose, are we going to make it?" We made it, Barb, and I just want to say thank you. You are one hell of a woman. Take care of yourself.

ASSEMBLYMAN CONKLIN:

I would like to echo all of my colleagues' remarks. I could say a lot about being in the Legislature, but it would really sound the same. So what I would like to say is that when we go home from this Legislature every year, I go back and do community work for homeless kids—most people know that. Those homeless kids would have no services without you—none. Every year, we call your office and get help for homeless kids that would otherwise have no help. Last cycle we called and we needed help to raise money, and you were there. I can't tell you how much that means to me. I can't tell you how much that means to those kids. I appreciate all the opportunities you have given me to be here to participate, excel, succeed, and work with great people. I admire you, I love you, and I will always be your soldier. Thank you.

Assemblyman Ocegüera requested the privilege of the Chair for the purpose of making the following remarks:

Madam Speaker, on behalf of all of us—not only all of us in this room but I think all the citizens of the State of Nevada—thank you for your service.

Assemblyman Ocegüera announced if there were no objections, the Assembly would recess subject to the call of the Chair.

Assembly in recess at 5:10 p.m.

#### ASSEMBLY IN SESSION

At 5:30 p.m.

Madam Speaker presiding.

Quorum present.

#### REPORTS OF COMMITTEES

*Madam Speaker:*

Your Committee on Elections, Procedures, Ethics, and Constitutional Amendments, to which was rereferred Assembly Joint Resolution No. 1, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

HARRY MORTENSON, *Chair*

#### GENERAL FILE AND THIRD READING

Assembly Joint Resolution No. 1.

Resolution read third time.

The following amendment was proposed by the Committee on Elections, Procedures, Ethics, and Constitutional Amendments:

Amendment No. 1000.

ASSEMBLY JOINT RESOLUTION—Proposing to amend the Nevada Constitution to revise the provisions governing a petition for a state initiative or a referendum.

Legislative Counsel's Digest:

Pursuant to Section 2 of Article 19 of the Nevada Constitution, the people of the State of Nevada have reserved to themselves the power to propose statutes, amendments to statutes and amendments to the Nevada Constitution by initiative petition. If the petition meets certain criteria, it is placed on the general election ballot where the people of the State of Nevada are then given the right to vote to enact or reject such proposals. In 2006, however, a portion of this provision of the Nevada Constitution was held unconstitutional by the U.S. Court of Appeals for the Ninth Circuit. *ACLU of Nev. v. Lomax*, 471 F.3d 1010 (9th Cir. 2006). The Ninth Circuit Court found that the requirement that an initiative petition contain a certain number of signatures gathered from 75 percent of the counties in this State in order to qualify for the ballot (the “13 Counties Rule”) violated the equal protection principle of “one man, one vote” by diluting the votes of residents of densely populated counties and was not narrowly tailored. *Id.* at 1013. Thus, the Ninth Circuit Court held that Section 2 of Article 19 of the Nevada Constitution violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. *Id.* The Court further indicated that if a certain number of voters were required from state legislative districts rather than counties, it would alleviate the equal protection concerns.

This resolution proposes to amend Article 19 of the Nevada Constitution to remove the unconstitutional provisions and instead require that an initiative petition be signed by a number of the registered voters from each ~~congressional~~ petition district in this State which equals 10 percent of the number of voters who voted at the last preceding general election in the ~~congressional~~ petition district. This resolution further provides that the number of registered voters required to file an initiative or referendum petition must be determined at the time the copy of the petition is filed with the Secretary of State.

RESOLVED BY THE ASSEMBLY AND SENATE OF THE STATE OF NEVADA, JOINTLY, That Section 1 of Article 19 of the Nevada Constitution be amended to read as follows:

Section 1. 1. A person who intends to circulate a petition that a statute or resolution or part thereof enacted by the legislature be submitted to a vote of the people, before circulating the petition for signatures, shall file a copy thereof with the secretary of state. He shall file the copy not earlier than August 1 of the year before the year in which the election will be held.

2. Whenever a number of registered voters of this state equal to 10 percent ~~for more~~ of the number of voters who voted at the last preceding general election shall express their wish by filing with the secretary of state, not less than 120 days before the next general election, a petition in the form provided for in Section 3 of this Article that any statute or resolution or any part thereof enacted by the legislature be submitted to a vote of the people, the officers charged with the duties of announcing and proclaiming elections and of certifying nominations or questions to be voted upon shall submit the question of approval or disapproval of such statute or resolution or any part

thereof to a vote of the voters at the next succeeding election at which such question may be voted upon by the registered voters of the entire State. ***The number of registered voters required to file the petition must be determined at the time the copy of the petition is filed with the secretary of state pursuant to this Section.*** The circulation of the petition shall cease on the day the petition is filed with the secretary of state or such other date as may be prescribed for the verification of the number of signatures affixed to the petition, whichever is earliest.

3. If a majority of the voters voting upon the proposal submitted at such election votes approval of such statute or resolution or any part thereof, such statute or resolution or any part thereof shall stand as the law of the state and shall not be amended, annulled, repealed, set aside, suspended or in any way made inoperative except by the direct vote of the people. If a majority of such voters votes disapproval of such statute or resolution or any part thereof, such statute or resolution or any part thereof shall be void and of no effect.

And be it further

RESOLVED, That Section 2 of Article 19 of the Nevada Constitution be amended to read as follows:

Sec. 2. 1. Notwithstanding the provisions of Section 1 of Article 4 of this Constitution, but subject to the limitations of Section 6 of this Article, the people reserve to themselves the power to propose, by initiative petition, statutes and amendments to statutes and amendments to this Constitution, and to enact or reject them at the polls.

2. An initiative petition shall be in the form required by Section 3 of this Article and shall be proposed by a number of registered voters ***from each*** ~~from each congressional~~ ***petition district in this State*** equal to 10 percent ~~for more~~ of the number of voters who voted at the last preceding general election in ~~not less than 75 percent of the counties in the State, but the total number of registered voters signing the initiative petition shall be equal to 10 percent or more of the voters who voted in the entire State at the last preceding general election.~~ ***the*** ~~congressional~~ ***petition district. Petition districts must be established by the Legislature. The number of registered voters required to file the initiative petition must be determined at the time the copy of the initiative petition is filed with the Secretary of State pursuant to this Section.***

3. If the initiative petition proposes a statute or an amendment to a statute, the person who intends to circulate it shall file a copy with the Secretary of State before beginning circulation and not earlier than January 1 of the year preceding the year in which a regular session of the Legislature is held. After its circulation, it shall be filed with the Secretary of State not less than 30 days prior to any regular session of the Legislature. The circulation of the petition shall cease on the day the petition is filed with the Secretary of State or such other date as may be prescribed for the verification of the number of signatures affixed to the petition, whichever is earliest. The Secretary of State shall transmit such petition to the Legislature as soon as

the Legislature convenes and organizes. The petition shall take precedence over all other measures except appropriation bills, and the statute or amendment to a statute proposed thereby shall be enacted or rejected by the Legislature without change or amendment within 40 days. If the proposed statute or amendment to a statute is enacted by the Legislature and approved by the Governor in the same manner as other statutes are enacted, such statute or amendment to a statute shall become law, but shall be subject to referendum petition as provided in Section 1 of this Article. If the statute or amendment to a statute is rejected by the Legislature, or if no action is taken thereon within 40 days, the Secretary of State shall submit the question of approval or disapproval of such statute or amendment to a statute to a vote of the voters at the next succeeding general election. If a majority of the voters voting on such question at such election votes approval of such statute or amendment to a statute, it shall become law and take effect upon completion of the canvass of votes by the Supreme Court. An initiative measure so approved by the voters shall not be amended, annulled, repealed, set aside or suspended by the Legislature within 3 years from the date it takes effect. If a majority of such voters votes disapproval of such statute or amendment to a statute, no further action shall be taken on such petition. If the Legislature rejects such proposed statute or amendment, the Governor may recommend to the Legislature and the Legislature may propose a different measure on the same subject, in which event, after such different measure has been approved by the Governor, the question of approval or disapproval of each measure shall be submitted by the Secretary of State to a vote of the voters at the next succeeding general election. If the conflicting provisions submitted to the voters are both approved by a majority of the voters voting on such measures, the measure which receives the largest number of affirmative votes shall thereupon become law. If at the session of the Legislature to which an initiative petition proposing an amendment to a statute is presented which the Legislature rejects or upon which it takes no action, the Legislature amends the statute which the petition proposes to amend in a respect which does not conflict in substance with the proposed amendment, the Secretary of State in submitting the statute to the voters for approval or disapproval of the proposed amendment shall include the amendment made by the Legislature.

4. If the initiative petition proposes an amendment to the Constitution, the person who intends to circulate it shall file a copy with the Secretary of State before beginning circulation and not earlier than September 1 of the year before the year in which the election is to be held. After its circulation it shall be filed with the Secretary of State not less than 90 days before any regular general election at which the question of approval or disapproval of such amendment may be voted upon by the voters of the entire State. The circulation of the petition shall cease on the day the petition is filed with the Secretary of State or such other date as may be prescribed for the verification of the number of signatures affixed to the petition, whichever is earliest. The Secretary of State shall cause to be published in a newspaper of general

circulation, on three separate occasions, in each county in the State, together with any explanatory matter which shall be placed upon the ballot, the entire text of the proposed amendment. If a majority of the voters voting on such question at such election votes disapproval of such amendment, no further action shall be taken on the petition. If a majority of such voters votes approval of such amendment, the Secretary of State shall publish and resubmit the question of approval or disapproval to a vote of the voters at the next succeeding general election in the same manner as such question was originally submitted. If a majority of such voters votes disapproval of such amendment, no further action shall be taken on such petition. If a majority of such voters votes approval of such amendment, it shall, unless precluded by subsection 5 or 6, become a part of this Constitution upon completion of the canvass of votes by the Supreme Court.

5. If two or more measures which affect the same section of a statute or of the Constitution are finally approved pursuant to this Section, or an amendment to the Constitution is finally so approved and an amendment proposed by the Legislature is ratified which affect the same section, by the voters at the same election:

(a) If all can be given effect without contradiction in substance, each shall be given effect.

(b) If one or more contradict in substance the other or others, the measure which received the largest favorable vote, and any other approved measure compatible with it, shall be given effect. If the one or more measures that contradict in substance the other or others receive the same number of favorable votes, none of the measures that contradict another shall be given effect.

6. If, at the same election as the first approval of a constitutional amendment pursuant to this Section, another amendment is finally approved pursuant to this Section, or an amendment proposed by the Legislature is ratified, which affects the same section of the Constitution but is compatible with the amendment given first approval, the Secretary of State shall publish and resubmit at the next general election the amendment given first approval as a further amendment to the section as amended by the amendment given final approval or ratified. If the amendment finally approved or ratified contradicts in substance the amendment given first approval, the Secretary of State shall not submit the amendment given first approval to the voters again.

Assemblyman Mortenson moved the adoption of the amendment.

Remarks by Assemblyman Mortenson.

Amendment adopted.

Resolution ordered reprinted, engrossed and to the General File.

Assembly Joint Resolution No. 1.

Resolution read third time.



Roll call on Assembly Joint Resolution No. 1:

YEAS—41.

NAYS—Ohrenschall.

Assembly Joint Resolution No. 1 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Resolution ordered transmitted to the Senate.

#### REPORTS OF COMMITTEES

*Madam Speaker:*

Your Committee on Health and Human Services, to which was referred Senate Concurrent Resolution No. 39, has had the same under consideration, and begs leave to report the same back with the recommendation: Be adopted.

DEBBIE SMITH, *Chair*

Assemblyman Ocegüera moved that the Assembly recess until 7 p.m.

Motion carried.

Assembly in recess at 5:34 p.m.

#### ASSEMBLY IN SESSION

At 8:31 p.m.

Madam Speaker presiding.

Quorum present.

#### MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, June 1, 2009

*To the Honorable the Assembly:*

I have the honor to inform your honorable body that the Senate on this day sustained the Governor's veto of Assembly Bills Nos. 22, 135, 141, 319, 381.

Also, I have the honor to inform your honorable body that the Senate on this day passed, as amended, Senate Bills Nos. 52, 113, 306.

Also, I have the honor to inform your honorable body that the Senate on this day adopted the report of the Conference Committee concerning Senate Bill No. 269; Senate Bill No. 403.

SHERRY L. RODRIGUEZ

*Assistant Secretary of the Senate*

#### UNFINISHED BUSINESS

#### REPORTS OF CONFERENCE COMMITTEES

*Madam Speaker:*

The Conference Committee concerning Assembly Bill No. 561, consisting of the undersigned members, has met and reports that:

It has agreed to recommend that Amendment No. 973 of the Senate be receded from and a 3rd reprint be created in accordance with this action.

MARCUS CONKLIN

KATHY MCCLAIN

PETE GOICOECHEA

*Assembly Conference Committee*

JOYCE WOODHOUSE

WARREN HARDY

*Senate Conference Committee*

Assemblyman Conklin moved that the Assembly adopt the report of the Conference Committee concerning Assembly Bill No. 561.

Remarks by Assemblyman Conklin.

Motion carried by a constitutional majority.

*Madam Speaker:*

The Conference Committee concerning Assembly Bill No. 223, consisting of the undersigned members, has met and reports that:

It has agreed to recommend that Amendment No. 963 of the Senate be concurred in.

It has agreed to recommend that the bill be further amended as set forth in Conference Amendment No. 34, which is attached to and hereby made a part of this report.

DEBBIE SMITH  
MARILYN KIRKPATRICK  
JOE HARDY

*Assembly Conference Committee*

JOHN LEE  
WILLIAM RAGGIO

*Senate Conference Committee*

Conference Amendment No. CA34.

AN ACT relating to state governmental procurement; establishing a bidder's preference for local businesses **owned by service-disabled veterans** with respect to state purchasing contracts. ~~It establishing a bidder's preference for local businesses owned by service-disabled veterans with respect to~~ **and** state public works contracts; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law, with respect only to contracts for public works for which the estimated cost exceeds \$250,000, provides a mechanism by which a contractor who has paid certain taxes may earn a 5-percent preference in bidding on public works. (NRS 338.1389, 338.147, 338.1693, 338.1727) **Sections 18-25** of this bill establish a limited preference in bidding on public works for local businesses owned by service-disabled veterans. This new preference in bidding on public works does not overlap with the existing preference in bidding on public works because the new preference is limited to public works for which the estimated cost is \$100,000 or less.

Under existing law, the State of Nevada imposes an inverse preference against a person who submits a bid or proposal on a state purchasing contract if that person is a resident of a state that denies a preference to bidders or contractors who are residents of this State. (NRS 333.336) **Section 31** of this bill repeals that inverse preference.

In place of the former inverse preference, **sections 5-13** of this bill establish a 5-percent preference in bidding on state purchasing contracts for local businesses. ~~It~~ **owned by service-disabled veterans.** **Section 14** of this bill requires advertisements for bids or proposals to include notices of this new preference.

**Section 30** of this bill directs the Office of Veterans' Services to perform certain duties with respect to gathering information and making recommendations to the Legislative Commission concerning the ~~preference~~ **preferences** in bidding on **state purchasing contracts and** public works for local businesses owned by service-disabled veterans.

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

Section 1. Chapter 333 of NRS is hereby amended by adding thereto the provisions set forth as sections 5 to 13, inclusive, of this act.

Sec. 2. (Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

Sec. 4. (Deleted by amendment.)

Sec. 5. *As used in sections 5 to 13, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections ~~46~~ 5.5 to 9, inclusive, of this act have the meanings ascribed to them in those sections.*

*Sec. 5.5. "Business owned by a service-disabled veteran" has the meaning ascribed to it in section 19 of this act.*

Sec. 6. (Deleted by amendment.)

Sec. 7. *"Local business" means a business that:*

- 1. Employs at least one person in this State; and*
- 2. Has employed at least one person in this State for not fewer than 2 years.*

*Sec. 7.5. "Service-disabled veteran" has the meaning ascribed to it in section 21 of this act.*

Sec. 8. (Deleted by amendment.)

Sec. 9. *"State purchasing contract" means a contract awarded pursuant to the provisions of this chapter.*

Sec. 10. *For the purpose of awarding a formal contract solicited pursuant to subsection 2 of NRS 333.300, if a local business owned by a service-disabled veteran submits a bid or proposal and is a responsive and responsible bidder, the bid or proposal shall be deemed to be 5 percent lower than the bid or proposal actually submitted.*

Sec. 11. *1. If the Purchasing Division determines that a business has made a material misrepresentation or otherwise committed a fraudulent act in applying for a preference described in section 10 of this act, the business is thereafter permanently prohibited from:*

*(a) Applying for or receiving the preference described in section 10 of this act; and*

*(b) Bidding on a state purchasing contract.*

*2. If the Purchasing Division determines, as described in subsection 1, that a business has made a material misrepresentation or otherwise committed a fraudulent act in applying for a preference described in section 10 of this act, the business may apply to the Chief to review the decision pursuant to chapter 233B of NRS.*

Sec. 12. *The Purchasing Division shall report every 6 months to the Legislature, if it is in session, or to the Interim Finance Committee, if the Legislature is not in session. The report must contain, for the period since the last report:*

1. *The number of state purchasing contracts that were subject to the provisions of sections 5 to 13, inclusive, of this act.*

2. *The total dollar amount of state purchasing contracts that were subject to the provisions of sections 5 to 13, inclusive, of this act.*

3. *The number of local businesses owned by service-disabled veterans that submitted a bid or proposal on a state purchasing contract.*

4. *The number of state purchasing contracts that were awarded to local businesses that owned by service-disabled veterans.*

5. *The total number of dollars worth of state purchasing contracts that were awarded to local businesses that owned by service-disabled veterans.*

6. *Any other information deemed relevant by the Director of the Legislative Counsel Bureau.*

Sec. 13. *The Purchasing Division may adopt such regulations as it determines to be necessary or advisable to carry out the provisions of sections 5 to 13, inclusive, of this act. The regulations may include, without limitation, provisions setting forth:*

1. *The method by which a business may apply to receive a preference described in section 10 of this act;*

2. *The documentation or other proof that a business must submit to demonstrate that it qualifies for a preference described in section 10 of this act; and*

3. *Such other matters as the Purchasing Division deems relevant.*

↪ *In carrying out the provisions of this section, the Purchasing Division shall, to the extent practicable, cooperate and coordinate with the State Public Works Board so that any regulations adopted pursuant to this section and section 25 of this act are reasonably consistent.*

Sec. 14. NRS 333.310 is hereby amended to read as follows:

333.310 1. An advertisement must contain a general description of the classes of commodities or services for which a bid or proposal is wanted and must state:

(a) The name and location of the department, agency, local government, district or institution for which the purchase is to be made.

(b) Where and how specifications and quotation forms may be obtained.

(c) If the advertisement is for bids, whether the Chief is authorized by the using agency to be supplied to consider a bid for an article that is an alternative to the article listed in the original request for bids if:

(1) The specifications of the alternative article meet or exceed the specifications of the article listed in the original request for bids;

(2) The purchase of the alternative article results in a lower price; and

(3) The Chief deems the purchase of the alternative article to be in the best interests of the State of Nevada.

(d) ~~[A summary]~~ *Notice of the [provisions of NRS 333.336.] preference set forth in section 10 of this act.*

(e) The date and time not later than which responses must be received by the Purchasing Division.

(f) The date and time when responses will be opened.

↪ The Chief or his designated agent shall approve the copy for the advertisement.

2. Each advertisement must be published in at least one newspaper of general circulation in the State. The selection of the newspaper to carry the advertisement must be made in the manner provided by this chapter for other purchases, on the basis of the lowest price to be secured in relation to the paid circulation.

Sec. 15. NRS 333.335 is hereby amended to read as follows:

333.335 1. Each proposal must be evaluated by:

(a) The chief of the using agency, or a committee appointed by the chief of the using agency in accordance with the regulations adopted pursuant to NRS 333.135, if the proposal is for a using agency; or

(b) The Chief of the Purchasing Division, or a committee appointed by the Chief in accordance with the regulations adopted pursuant to NRS 333.135, if he is responsible for administering the proposal.

2. A committee appointed pursuant to subsection 1 must consist of not less than two members. A majority of the members of the committee must be state officers or employees. The committee may include persons who are not state officers or employees and possess expert knowledge or special expertise that the chief of the using agency or the Chief of the Purchasing Division determines is necessary to evaluate a proposal. The members of the committee are not entitled to compensation for their service on the committee, except that members of the committee who are state officers or employees are entitled to receive their salaries as state officers and employees. No member of the committee may have a financial interest in a proposal.

3. In making an award, the chief of the using agency, the Chief of the Purchasing Division or each member of the committee, if a committee is established, shall consider and assign a score for each of the following factors for determining whether the proposal is in the best interests of the State of Nevada:

(a) The experience and financial stability of the person submitting the proposal;

(b) Whether the proposal complies with the requirements of the request for proposals as prescribed in NRS 333.311;

(c) The price of the proposal ; ~~including the imposition of an inverse preference described in NRS 333.336, if applicable;~~ and

(d) Any other factor disclosed in the request for proposals.

4. The chief of the using agency, the Chief of the Purchasing Division or the committee, if a committee is established, shall determine the relative weight of each factor set forth in subsection 3 before a request for proposals is advertised. The weight of each factor must not be disclosed before the date proposals are required to be submitted.

5. The chief of the using agency, the Chief of the Purchasing Division or the committee, if a committee is established, shall award the contract based on the best interests of the State, as determined by the total scores assigned pursuant to subsection 3, and is not required to accept the lowest-priced proposal.

6. Except as otherwise provided in NRS 239.0115, each proposal evaluated pursuant to the provisions of this section is confidential and may not be disclosed until the contract is awarded.

Sec. 16. NRS 333.340 is hereby amended to read as follows:

333.340 1. Every contract or order for goods must be awarded to the lowest responsible bidder. To determine the lowest responsible bidder, the Chief:

(a) Shall consider, if applicable, the ~~imposition~~ **granting** of the ~~inverse preference~~ **preference** described in ~~NRS 333.336~~ **section 10 of this act**.

(b) May consider:

(1) The location of the using agency to be supplied.

(2) The qualities of the articles to be supplied.

(3) The total cost of ownership of the articles to be supplied.

(4) Except as otherwise provided in subparagraph (5), the conformity of the articles to be supplied with the specifications.

(5) If the articles are an alternative to the articles listed in the original request for bids, whether the advertisement for bids included a statement that bids for an alternative article will be considered if:

(I) The specifications of the alternative article meet or exceed the specifications of the article listed in the original request for bids;

(II) The purchase of the alternative article results in a lower price; and

(III) The Chief deems the purchase of the alternative article to be in the best interests of the State of Nevada.

(6) The purposes for which the articles to be supplied are required.

(7) The dates of delivery of the articles to be supplied.

2. If a contract or an order is not awarded to the lowest bidder, the Chief shall provide the lowest bidder with a written statement which sets forth the specific reasons that the contract or order was not awarded to him.

3. As used in this section, “total cost of ownership” includes, but is not limited to:

(a) The history of maintenance or repair of the articles;

(b) The cost of routine maintenance and repair of the articles;

(c) Any warranties provided in connection with the articles;

(d) The cost of replacement parts for the articles; and

(e) The value of the articles as used articles when given in trade on a subsequent purchase.

Sec. 17. Chapter 338 of NRS is hereby amended by adding thereto the provisions set forth as sections 18 to 25, inclusive, of this act.

Sec. 18. *As used in sections 18 to 25, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 19, 20 and 21 of this act have the meanings ascribed to them in those sections.*

Sec. 19. *"Business owned by a service-disabled veteran" means a business:*

- 1. Of which at least 51 percent of the ownership interest is held by one or more service-disabled veterans;*
- 2. That is organized to engage in commercial transactions; and*
- 3. That is managed and operated on a day-to-day basis by one or more service-disabled veterans.*

*↪ The term includes a business which meets the above requirements that is transferred to the spouse of a service-disabled veteran upon the death of the service-disabled veteran, as determined by the United States Department of Veterans Affairs.*

Sec. 20. *"Local business" has the meaning ascribed to it in section 7 of this act.*

Sec. 21. *"Service-disabled veteran" means a veteran of the Armed Forces of the United States who has a service-connected disability of at least zero percent as determined by the United States Department of Veterans Affairs.*

Sec. 22. *1. For the purpose of awarding a contract for a public work of this State for which the estimated cost is \$100,000 or less, as governed by NRS 338.13862, if a local business owned by a service-disabled veteran submits a bid, the bid shall be deemed to be 5 percent lower than the bid actually submitted.*

*2. The preference described in subsection 1 may not be combined with any other preference.*

Sec. 23. *1. If the State Public Works Board determines that a business has made a material misrepresentation or otherwise committed a fraudulent act in applying for the preference described in section 22 of this act, the business is thereafter permanently prohibited from:*

*(a) Applying for or receiving the preference described in section 22 of this act; and*

*(b) Bidding on a contract for a public work of this State.*

*2. If the State Public Works Board determines, as described in subsection 1, that a business has made a material misrepresentation or otherwise committed a fraudulent act in applying for the preference described in section 22 of this act, the business may apply to the Manager to review the decision pursuant to chapter 233B of NRS.*

*3. As used in this section, "Manager" has the meaning ascribed to it in NRS 341.015.*

Sec. 24. *The State Public Works Board shall report every 6 months to the Legislature, if it is in session, or to the Interim Finance Committee, if the Legislature is not in session. The report must contain, for the period since the last report:*

1. *The number of contracts for public works of this State that were subject to the provisions of sections 18 to 25, inclusive, of this act.*

2. *The total dollar amount of contracts for public works of this State that were subject to the provisions of sections 18 to 25, inclusive, of this act.*

3. *The number of local businesses owned by service-disabled veterans that submitted a bid or proposal on a contract for a public work of this State.*

4. *The number of contracts for public works of this State that were awarded to local businesses owned by service-disabled veterans.*

5. *The total number of dollars worth of contracts for public works of this State that were awarded to local businesses owned by service-disabled veterans.*

6. *Any other information deemed relevant by the Director of the Legislative Counsel Bureau.*

Sec. 25. *The State Public Works Board may adopt such regulations as it determines to be necessary or advisable to carry out the provisions of sections 18 to 25, inclusive, of this act. The regulations may include, without limitation, provisions setting forth:*

1. *The method by which a business may apply to receive the preference described in section 22 of this act;*

2. *The documentation or other proof that a business must submit to demonstrate that it qualifies for the preference described in section 22 of this act; and*

3. *Such other matters as the State Public Works Board deems relevant.*

↪ *In carrying out the provisions of this section, the State Public Works Board shall, to the extent practicable, cooperate and coordinate with the Purchasing Division of the Department of Administration so that any regulations adopted pursuant to this section and section 13 of this act are reasonably consistent.*

Sec. 26. NRS 338.1375 is hereby amended to read as follows:

338.1375 1. The State Public Works Board shall not accept a bid on a contract for a public work unless the contractor who submits the bid has qualified pursuant to NRS 338.1379 to bid on that contract.

2. The State Public Works Board shall by regulation adopt criteria for the qualification of bidders on contracts for public works of this State. The criteria adopted by the State Public Works Board pursuant to this section must be used by the State Public Works Board to determine the qualification of bidders on contracts for public works of this State.

3. The criteria adopted by the State Public Works Board pursuant to this section:

(a) Must be adopted in such a form that the determination of whether an applicant is qualified to bid on a contract for a public work does not require or allow the exercise of discretion by any one person.

(b) May include only:

(1) The financial ability of the applicant to perform a contract;



- (2) The principal personnel of the applicant;
- (3) Whether the applicant has breached any contracts with a public body or person in this State or any other state;
- (4) Whether the applicant has been disqualified from being awarded a contract pursuant to NRS 338.017 or 338.13895 ~~[-]~~ **or section 23 of this act;**
- (5) The performance history of the applicant concerning other recent, similar contracts, if any, completed by the applicant; and
- (6) The truthfulness and completeness of the application.

Sec. 27. NRS 338.1385 is hereby amended to read as follows:

338.1385 1. Except as otherwise provided in subsection 9 and NRS 338.1906 and 338.1907, this State, or a governing body or its authorized representative that awards a contract for a public work in accordance with paragraph (a) of subsection 1 of NRS 338.1373 shall not:

(a) Commence a public work for which the estimated cost exceeds \$100,000 unless it advertises in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed for bids for the public work. If no qualified newspaper is published in the county where the public work will be performed, the required advertisement must be published in some qualified newspaper that is printed in the State of Nevada and has a general circulation in the county.

(b) Commence a public work for which the estimated cost is \$100,000 or less unless it complies with the provisions of NRS 338.1386, 338.13862 and 338.13864 ~~[-]~~ **and, with respect to the State, sections 18 to 25, inclusive, of this act.**

(c) Divide a public work into separate portions to avoid the requirements of paragraph (a) or (b).

2. At least once each quarter, the authorized representative of a public body shall report to the public body any contract that the authorized representative awarded pursuant to subsection 1 in the immediately preceding quarter.

3. Each advertisement for bids must include a provision that sets forth the requirement that a contractor must be qualified pursuant to NRS 338.1379 or 338.1382 to bid on the contract.

4. Approved plans and specifications for the bids must be on file at a place and time stated in the advertisement for the inspection of all persons desiring to bid thereon and for other interested persons. Contracts for the public work must be awarded on the basis of bids received.

5. Except as otherwise provided in subsection 6 and NRS 338.1389, a public body or its authorized representative shall award a contract to the lowest responsive and responsible bidder.

6. Any bids received in response to an advertisement for bids may be rejected if the public body or its authorized representative responsible for awarding the contract determines that:

(a) The bidder is not a qualified bidder pursuant to NRS 338.1379 or 338.1382;

- (b) The bidder is not responsive or responsible;
- (c) The quality of the services, materials, equipment or labor offered does not conform to the approved plans or specifications; or
- (d) The public interest would be served by such a rejection.

7. A public body may let a contract without competitive bidding if no bids were received in response to an advertisement for bids and:

- (a) The public body publishes a notice stating that no bids were received and that the contract may be let without further bidding;
- (b) The public body considers any bid submitted in response to the notice published pursuant to paragraph (a);
- (c) The public body lets the contract not less than 7 days after publishing a notice pursuant to paragraph (a); and
- (d) The contract is awarded to the bidder who has submitted the lowest responsive and responsible bid.

8. Before a public body may commence the performance of a public work itself pursuant to the provisions of this section, based upon a determination that the public interest would be served by rejecting any bids received in response to an advertisement for bids, the public body shall prepare and make available for public inspection a written statement containing:

- (a) A list of all persons, including supervisors, whom the public body intends to assign to the public work, together with their classifications and an estimate of the direct and indirect costs of their labor;
- (b) A list of all equipment that the public body intends to use on the public work, together with an estimate of the number of hours each item of equipment will be used and the hourly cost to use each item of equipment;
- (c) An estimate of the cost of administrative support for the persons assigned to the public work;
- (d) An estimate of the total cost of the public work, including the fair market value of or, if known, the actual cost of all materials, supplies, labor and equipment to be used for the public work; and
- (e) An estimate of the amount of money the public body expects to save by rejecting the bids and performing the public work itself.

9. This section does not apply to:

- (a) Any utility subject to the provisions of chapter 318 or 710 of NRS;
- (b) Any work of construction, reconstruction, improvement and maintenance of highways subject to NRS 408.323 or 408.327;
- (c) Normal maintenance of the property of a school district;
- (d) The Las Vegas Valley Water District created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley Water District created pursuant to chapter 477, Statutes of Nevada 1983 or the Virgin Valley Water District created pursuant to chapter 100, Statutes of Nevada 1993;
- (e) The design and construction of a public work for which a public body contracts with a design-build team pursuant to NRS 338.1711 to 338.1727, inclusive;

(f) A constructability review of a public work, which review a local government or its authorized representative is required to perform pursuant to NRS 338.1435; or

(g) The preconstruction or construction of a public work for which a public body enters into a contract with a construction manager at risk pursuant to NRS 338.169 to 338.1699, inclusive.

Sec. 28. NRS 338.1385 is hereby amended to read as follows:

338.1385 1. Except as otherwise provided in subsection 9, this State, or a governing body or its authorized representative that awards a contract for a public work in accordance with paragraph (a) of subsection 1 of NRS 338.1373 shall not:

(a) Commence a public work for which the estimated cost exceeds \$100,000 unless it advertises in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed for bids for the public work. If no qualified newspaper is published in the county where the public work will be performed, the required advertisement must be published in some qualified newspaper that is printed in the State of Nevada and having a general circulation within the county.

(b) Commence a public work for which the estimated cost is \$100,000 or less unless it complies with the provisions of NRS 338.1386, 338.13862 and 338.13864 ~~[-]~~ ***and, with respect to the State, sections 18 to 25, inclusive, of this act.***

(c) Divide a public work into separate portions to avoid the requirements of paragraph (a) or (b).

2. At least once each quarter, the authorized representative of a public body shall report to the public body any contract that the authorized representative awarded pursuant to subsection 1 in the immediately preceding quarter.

3. Each advertisement for bids must include a provision that sets forth the requirement that a contractor must be qualified pursuant to NRS 338.1379 or 338.1382 to bid on the contract.

4. Approved plans and specifications for the bids must be on file at a place and time stated in the advertisement for the inspection of all persons desiring to bid thereon and for other interested persons. Contracts for the public work must be awarded on the basis of bids received.

5. Except as otherwise provided in subsection 6 and NRS 338.1389, a public body or its authorized representative shall award a contract to the lowest responsive and responsible bidder.

6. Any bids received in response to an advertisement for bids may be rejected if the public body or its authorized representative responsible for awarding the contract determines that:

(a) The bidder is not a qualified bidder pursuant to NRS 338.1379 or 338.1382;

(b) The bidder is not responsive or responsible;

(c) The quality of the services, materials, equipment or labor offered does not conform to the approved plans or specifications; or

(d) The public interest would be served by such a rejection.

7. A public body may let a contract without competitive bidding if no bids were received in response to an advertisement for bids and:

(a) The public body publishes a notice stating that no bids were received and that the contract may be let without further bidding;

(b) The public body considers any bid submitted in response to the notice published pursuant to paragraph (a);

(c) The public body lets the contract not less than 7 days after publishing a notice pursuant to paragraph (a); and

(d) The contract is awarded to the lowest responsive and responsible bidder.

8. Before a public body may commence the performance of a public work itself pursuant to the provisions of this section, based upon a determination that the public interest would be served by rejecting any bids received in response to an advertisement for bids, the public body shall prepare and make available for public inspection a written statement containing:

(a) A list of all persons, including supervisors, whom the public body intends to assign to the public work, together with their classifications and an estimate of the direct and indirect costs of their labor;

(b) A list of all equipment that the public body intends to use on the public work, together with an estimate of the number of hours each item of equipment will be used and the hourly cost to use each item of equipment;

(c) An estimate of the cost of administrative support for the persons assigned to the public work;

(d) An estimate of the total cost of the public work, including, the fair market value of or, if known, the actual cost of all materials, supplies, labor and equipment to be used for the public work; and

(e) An estimate of the amount of money the public body expects to save by rejecting the bids and performing the public work itself.

9. This section does not apply to:

(a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

(b) Any work of construction, reconstruction, improvement and maintenance of highways subject to NRS 408.323 or 408.327;

(c) Normal maintenance of the property of a school district;

(d) The Las Vegas Valley Water District created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley Water District created pursuant to chapter 477, Statutes of Nevada 1983 or the Virgin Valley Water District created pursuant to chapter 100, Statutes of Nevada 1993;

(e) The design and construction of a public work for which a public body contracts with a design-build team pursuant to NRS 338.1711 to 338.1727, inclusive;

(f) A constructability review of a public work, which review a local government or its authorized representative is required to perform pursuant to NRS 338.1435; or

(g) The preconstruction or construction of a public work for which a public body enters into a contract with a construction manager at risk pursuant to NRS 338.169 to 338.1699, inclusive.

Sec. 29. NRS 338.13862 is hereby amended to read as follows:

338.13862 1. Before this State or a local government awards a contract for the completion of a public work in accordance with subsection 1 of NRS 338.1386, the State or the local government must:

(a) If the estimated cost of the public work is more than \$25,000 but not more than \$100,000, solicit bids from at least three properly licensed contractors; and

(b) If the estimated cost of the public work is \$25,000 or less, solicit a bid from at least one properly licensed contractor.

2. Any bids received in response to a solicitation for bids made pursuant to this section may be rejected if the State or the local government determines that:

(a) The quality of the services, materials, equipment or labor offered does not conform to the approved plan or specifications;

(b) The bidder is not responsive or responsible; or

(c) The public interest would be served by such a rejection.

3. At least once each quarter, the State and each local government shall prepare a report detailing, for each public work over \$25,000 for which a contract for its completion is awarded pursuant to paragraph (a) of subsection 1, if any:

(a) The name of the contractor to whom the contract was awarded;

(b) The amount of the contract awarded;

(c) A brief description of the public work; and

(d) The names of all contractors from whom bids were solicited.

4. A report prepared pursuant to subsection 3 is a public record and must be maintained on file at the administrative offices of the applicable public body.

5. The provisions of this section do not relieve this State from the duty to award the contract for the public work to a bidder who is:

(a) Qualified pursuant to the applicable provisions of NRS 338.1375 to 338.1382, inclusive; and

(b) The lowest responsive and responsible bidder, if bids are required to be solicited from more than one properly licensed contractor pursuant to subsection 1. ***For the purposes of this paragraph, the lowest responsive and responsible bidder must be determined in consideration of any applicable bidder's preference granted pursuant to section 22 of this act.***

Sec. 30. Chapter 417 of NRS is hereby amended by adding thereto a new section to read as follows:

1. *Each year on or before October 1, the Office of Veterans' Services shall review the reports submitted pursuant to ~~section~~ sections 12 and 24 of this act.*

2. *In carrying out the provisions of subsection 1, the Office of Veterans' Services shall seek input from:*

(a) *The Purchasing Division of the Department of Administration.*

(b) *The State Public Works Board.*

~~((b))~~ (c) *The Commission on Economic Development.*

~~((c))~~ (d) *Groups representing the interests of veterans of the Armed Forces of the United States.*

~~((d))~~ (e) *The business community.*

~~((e))~~ (f) *Local businesses owned by service-disabled veterans.*

3. *After performing the duties described in subsections 1 and 2, the Office of Veterans' Services shall make recommendations to the Legislative Commission regarding the continuation, modification, promotion or expansion of the ~~preference~~ preferences for local businesses owned by service-disabled veterans which ~~are~~ are described in ~~section~~ sections 10 and 22 of this act.*

4. *As used in this section:*

(a) *"Business owned by a service-disabled veteran" has the meaning ascribed to it in section 19 of this act.*

(b) *"Local business" has the meaning ascribed to it in section 7 of this act.*

(c) *"Service-disabled veteran" has the meaning ascribed to it in section 21 of this act.*

Sec. 31. NRS 333.336 is hereby repealed.

Sec. 32. 1. This section and sections 1 to ~~26~~ 27, inclusive, 29, 30 and 31 of this act become effective on October 1, 2009.

2. Section 27 of this act expires by limitation on April 30, 2013.

3. Section 28 of this act becomes effective on May 1, 2013.

#### TEXT OF REPEALED SECTION

#### **333.336 Inverse preference imposed on certain bidders resident outside State of Nevada.**

For the purpose of awarding a contract pursuant to this chapter, if a person who submits a bid or proposal:

1. Is a resident of a state other than the State of Nevada; and

2. That other state, with respect to contracts awarded by that other state or agencies of that other state, applies to bidders or contractors who are residents of that state a preference which is not afforded to bidders or contractors who are residents of the State of Nevada,

↪ the person or entity responsible for awarding the contract pursuant to this chapter shall, insofar as is practicable, increase the person's bid or proposal by an amount that is substantially equivalent to the preference that the other

state of which the person is a resident denies to bidders or contractors who are residents of the State of Nevada.

Assemblywoman Smith moved that the Assembly adopt the report of the Conference Committee concerning Assembly Bill No. 223.

Remarks by Assemblywoman Smith.

Motion carried by a constitutional majority.

*Madam Speaker:*

The Conference Committee concerning Senate Bill No. 403, consisting of the undersigned members, has met and reports that:

It has agreed to recommend that Amendment No. 955 of the Assembly be concurred in.

It has agreed to recommend that the bill be further amended as set forth in Conference Amendment No. 33, which is attached to and hereby made a part of this report.

SHEILA LESLIE  
MORSE ARBERRY  
HEIDI GANSERT

*Assembly Conference Committee*

BOB COFFIN  
WARREN HARDY  
JOYCE WOODHOUSE

*Senate Conference Committee*

Conference Amendment No. CA33.

SUMMARY ~~[Makes various appropriations from the State General Fund.]~~ **Revises provisions relating to state financial administration.**  
(BDR S-1264)

AN ACT **relating to state financial administration; clarifying the provisions governing the temporary suspension of longevity pay for state employees;** making appropriations to restore certain fund balances and for certain costs related to changes in various taxes; and providing other matters properly relating thereto.

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

**Sec. 0.5. Section 1 of Senate Bill No. 421 of this session is hereby amended to read as follows:**

Section ~~1.~~ 1. The four semiannual payments to which a state employee would otherwise be entitled pursuant to NRS 284.177 ~~[must not be made]~~ **for service** during the period beginning on July 1, 2009, and ending on June 30, 2011 ~~[.]~~ **, must not be made.** For the purposes of payments made pursuant to NRS 284.177 on or after July 1, 2011, any service during that 2-year period must be considered in determining the length of continuous service of an employee, but an employee is not entitled to semiannual payments that would otherwise have been made during the period during which the semiannual payments are suspended. **The payment for the period beginning on January 1, 2009, and ending on June 30, 2009, must be made regardless of the date of the actual payment.**

2. No merit pay increases to which a state employee would otherwise be entitled pursuant to chapter 284 of NRS and the regulations adopted pursuant thereto may be granted during the period beginning on July 1, 2009, and ending on June 30, 2011. For the purposes of merit pay increases granted on

or after July 1, 2011, an employee is not entitled to any increases that would otherwise have been granted during that period.

Section 1. There is hereby appropriated from the State General Fund to the:

1. Stale Claims Account created by NRS 353.097 the sum of \$5,500,000 to restore the balance in the Account.

2. Emergency Account created by NRS 353.263 the sum of \$150,000 to restore the balance in the Account.

3. Reserve for Statutory Contingency Account created by NRS 353.264 the sum of \$3,000,000 to restore the balance in the Account.

4. Contingency Fund created by NRS 353.266 the sum of \$7,500,000 to restore the balance in the fund attributable to the State General Fund.

Sec. 2. There is hereby appropriated from the State General Fund to the:

1. Department of Motor Vehicles the sum of \$24,000 for the costs of implementing changes to the provisions governing the governmental services tax.

2. Department of Taxation the sum of \$95,000 for the costs of implementing changes to the provisions governing the local school support tax.

3. Interim Finance Committee the sum of \$527,850 for allocation to the Department of Taxation for the costs of additional duties and modifications necessary to implement laws revised during this session.

Sec. 3. Any remaining balance of the appropriations made by section 2 of this act must not be committed for expenditure after June 30, 2011, 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 16, 2011, 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 16, 2011.

Sec. 4. 1. This section and sections ~~0.5.1~~ 2 and 3 of this act become effective upon passage and approval.

2. Section 1 of this act becomes effective on July 1, 2009.

Assemblywoman Leslie moved that the Assembly adopt the report of the Conference Committee concerning Senate Bill No. 403.

Remarks by Assemblywoman Leslie.

Motion carried by a constitutional majority.

*Madam Speaker:*

The Conference Committee concerning Assembly Bill No. 350, consisting of the undersigned members, has met and reports that:

It has agreed to recommend that Amendment No. 737 of the Senate be concurred in.



It has agreed to recommend that the bill be further amended as set forth in Conference Amendment No. 26, which is attached to and hereby made a part of this report.

TICK SEGERBLOM  
RUBEN KIHUEN

DAVID PARKS  
ALLISON COPENING

*Assembly Conference Committee*

*Senate Conference Committee*

Conference Amendment No. CA26.

SUMMARY—Makes various changes relating to ~~common interest communities;~~ **real property.** (BDR 10-620)

AN ACT relating to ~~common interest communities;~~ **real property;** revising provisions relating to ~~costs of collection,~~ interest on certain past due assessments, ~~and copies of certain documents;~~ providing that punitive damages may not be awarded against the members of the executive board or the officers of an association under certain circumstances; **establishing certain standards for management agreements; establishing the duties, responsibilities and standards of practice for community managers; making various other changes relating to common-interest communities; revising provisions relating to swimming pools;** and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1.7 of this bill authorizes an association to charge reasonable fees for costs associated with collecting any past due obligation. Section 3.5 of this bill provides that in addition to complying with the business-judgment rule, officers and members of the executive board of an association are required to act on an informed basis, in good faith and in the honest belief that their actions are in the best interest of the association. (NRS 116.3103)

Existing law authorizes an executive board to impose fines for certain violations of the governing documents and to assess interest on any unpaid fines at a rate established by the association, not to exceed the legal rate per annum. (NRS 116.31031) Section 4.5 of this bill eliminates the authority to charge interest on any past due fines.

Existing law provides that: (1) punitive damages may not be recovered against an association, but may be recovered against persons whose activity gave rise to the damages; and (2) punitive damages may be awarded for a willful and material failure to comply with any provision of chapter 116 of NRS. (NRS 116.31036, 116.4117) **Sections 5.5 and 16.5** of this bill provide that punitive damages may not be recovered against the members of the executive board or the officers of an association for acts or omissions that occur in their capacity as members or officers.

Existing law provides that any past due assessment for common expenses or installment thereof bears interest at the rate established by the association, which must not exceed 18 percent per year. **Section 9** of this bill provides that the association may charge the prime rate plus 2 percent on such a past due assessment, beginning when the assessment is 60 days past due.

Sections 6.5 and 7.5 of this bill provide that: (1) a unit's owner may receive a copy or summary of the minutes of a meeting of the units' owners or executive board in electronic format at no cost to the unit's owner or, if the association is unable to provide a copy or summary in electronic format, in paper format at a cost not to exceed 25 cents per page for the first 10 pages, and at 10 cents per page thereafter; and (2) a meeting of the executive board must be held at a time other than during normal business hours at least twice per year. (NRS 116.3108, 116.31083)

Section 10.5 of this bill requires the budget of an association to be available for review at a location not to exceed 60 miles from the common-interest community. (NRS 116.31151) Section 12.2 of this bill also requires the books, records and other papers of an association to be available for review at the business office of the association or a location not to exceed 60 miles from the common-interest community. (NRS 116.31175)

Section 12.5 of this bill provides that if a unit's owner is the subject of retaliatory action based on certain complaints or requests, he may bring an action to recover compensatory damages and attorney's fees and costs. (NRS 116.31183)

Sections 13.7 and 15.5 of this bill require a public offering or a resale package to include a statement listing all current and expected fees for each unit. (NRS 116.4103, 116.4109)

Section 19.3 of this bill establishes the requirements concerning the disclosures that a community manager must make before entering into a management agreement and incorporates into statute the existing requirements contained in the Nevada Administrative Code. (NAC 116.310)

Section 19.4 of this bill sets forth the requirements of a management agreement and incorporates into statute the existing requirements contained in the Nevada Administrative Code. (NAC 116.305)

Section 19.5 of this bill sets forth the responsibilities and duties of a community manager, incorporates into statute many of the existing provisions of the Nevada Administrative Code and adds certain new responsibilities and duties. (NAC 116.300) Section 19.5 also provides that a community manager acts as a fiduciary at all times and must exercise ordinary and reasonable care in performing his duties.

Section 19.6 of this bill incorporates into statute many of the existing provisions of the Nevada Administrative Code pertaining to standards of practice for community managers and conduct warranting disciplinary action and establishes certain new requirements, such as provisions governing the acceptance of any compensation, gift or any other item of material value by the community manager. (NAC 116.341)

Section 21.3 of this bill exempts privately owned swimming pools used only by members of a private club from the definition of “public swimming pool” for purposes of supervision by the Health Authority.

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

Section 1. (Deleted by amendment.)

Sec. 1.5. (Deleted by amendment.)

Sec. 1.7. Chapter 116 of NRS is hereby amended by adding thereto a new section to read as follows:

1. An association may charge a unit's owner reasonable fees to cover the costs of collecting any past due obligation. The Commission shall adopt regulations establishing the amount of the fees that an association may charge pursuant to this section.

2. The provisions of this section apply to any costs of collecting a past due obligation charged to a unit's owner, regardless of whether the past due obligation is collected by the association itself or by any person acting on behalf of the association, including, without limitation, an officer or employee of the association, a community manager or a collection agency.

3. As used in this section:

(a) "Costs of collecting" includes any fee, charge or cost, by whatever name, including, without limitation, any collection fee, filing fee, recording fee, fee related to the preparation, recording or delivery of a lien or lien rescission, title search lien fee, bankruptcy search fee, referral fee, fee for postage or delivery and any other fee or cost that an association charges a unit's owner for the investigation, enforcement or collection of a past due obligation. The term does not include any costs incurred by an association if a lawsuit is filed to enforce any past due obligation or any costs awarded by a court.

(b) "Obligation" means any assessment, fine, construction penalty, fee, charge or interest levied or imposed against a unit's owner pursuant to any provision of this chapter or the governing documents.

Sec. 2. (Deleted by amendment.)

Sec. 2.5. NRS 116.3102 is hereby amended to read as follows:

116.3102 1. Except as otherwise provided in subsection 2, and subject to the provisions of the declaration, the association may do any or all of the following:

- (a) Adopt and amend bylaws, rules and regulations.
- (b) Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from the units' owners.
- (c) Hire and discharge managing agents and other employees, agents and independent contractors.
- (d) Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common-interest community.

- (e) Make contracts and incur liabilities.
- (f) Regulate the use, maintenance, repair, replacement and modification of common elements.
- (g) Cause additional improvements to be made as a part of the common elements.
- (h) Acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but:
  - (1) Common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to NRS 116.3112; and
  - (2) Part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to NRS 116.3112.
- (i) Grant easements, leases, licenses and concessions through or over the common elements.
- (j) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of NRS 116.2102, and for services provided to the units' owners.
- (k) Impose charges for late payment of assessments ~~that~~ pursuant to NRS 116.3115.
- (l) Impose construction penalties when authorized pursuant to NRS 116.310305.
- (m) Impose reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in NRS 116.31031.
- (n) Impose reasonable charges for the preparation and recordation of any amendments to the declaration or any statements of unpaid assessments, and impose reasonable fees, not to exceed the amounts authorized by NRS 116.4109, for preparing and furnishing the documents and certificate required by that section.
- (o) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance.
- (p) Assign its right to future income, including the right to receive assessments for common expenses, but only to the extent the declaration expressly so provides.
- (q) Exercise any other powers conferred by the declaration or bylaws.
- (r) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association.
- (s) Direct the removal of vehicles improperly parked on property owned or leased by the association, as authorized pursuant to NRS 487.038, or improperly parked on any road, street, alley or other thoroughfare within the common-interest community in violation of the governing documents. In addition to complying with the requirements of NRS 487.038 and any requirements in the governing documents, if a vehicle is improperly parked

as described in this paragraph, the association must post written notice in a conspicuous place on the vehicle or provide oral or written notice to the owner or operator of the vehicle at least 48 hours before the association may direct the removal of the vehicle, unless the vehicle:

(1) Is blocking a fire hydrant, fire lane or parking space designated for the handicapped; or

(2) Poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community.

(t) Exercise any other powers necessary and proper for the governance and operation of the association.

2. The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

Sec. 3. (Deleted by amendment.)

**Sec. 3.5. NRS 116.3103 is hereby amended to read as follows:**

116.3103 1. Except as otherwise provided in the declaration, the bylaws, this section or other provisions of this chapter, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board are fiduciaries ~~[-] and shall act on an informed basis, in good faith and in the honest belief that their actions are in the best interest of the association.~~ The members of the executive board are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business-judgment rule.

2. The executive board may not act on behalf of the association to amend the declaration, to terminate the common-interest community, or to elect members of the executive board or determine their qualifications, powers and duties or terms of office, but the executive board may fill vacancies in its membership for the unexpired portion of any term.

Sec. 4. (Deleted by amendment.)

**Sec. 4.5. NRS 116.31031 is hereby amended to read as follows:**

116.31031 1. Except as otherwise provided in this section, if a unit's owner or a tenant or guest of a unit's owner violates any provision of the governing documents of an association, the executive board may, if the governing documents so provide:

(a) Prohibit, for a reasonable time, the unit's owner or the tenant or guest of the unit's owner from:

(1) Voting on matters related to the common-interest community.

(2) Using the common elements. The provisions of this subparagraph do not prohibit the unit's owner or the tenant or guest of the unit's owner from using any vehicular or pedestrian ingress or egress to go to or from the unit, including any area used for parking.

(b) Impose a fine against the unit's owner or the tenant or guest of the unit's owner for each violation, except that a fine may not be imposed for a

violation that is the subject of a construction penalty pursuant to NRS 116.310305. If the violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents. If the violation does not pose an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents, but the amount of the fine must not exceed \$100 for each violation or a total amount of \$1,000, whichever is less. The limitations on the amount of the fine do not apply to any ~~interest~~ charges or costs that may be collected by the association pursuant to this section if the fine becomes past due.

2. The executive board may not impose a fine pursuant to subsection 1 unless:

(a) Not less than 30 days before the violation, the person against whom the fine will be imposed had been provided with written notice of the applicable provisions of the governing documents that form the basis of the violation; and

(b) Within a reasonable time after the discovery of the violation, the person against whom the fine will be imposed has been provided with:

(1) Written notice specifying the details of the violation, the amount of the fine, and the date, time and location for a hearing on the violation; and

(2) A reasonable opportunity to contest the violation at the hearing.

3. The executive board must schedule the date, time and location for the hearing on the violation so that the person against whom the fine will be imposed is provided with a reasonable opportunity to prepare for the hearing and to be present at the hearing.

4. The executive board must hold a hearing before it may impose the fine, unless the person against whom the fine will be imposed:

(a) Pays the fine;

(b) Executes a written waiver of the right to the hearing; or

(c) Fails to appear at the hearing after being provided with proper notice of the hearing.

5. If a fine is imposed pursuant to subsection 1 and the violation is not cured within 14 days, or within any longer period that may be established by the executive board, the violation shall be deemed a continuing violation. Thereafter, the executive board may impose an additional fine for the violation for each 7-day period or portion thereof that the violation is not cured. Any additional fine may be imposed without notice and an opportunity to be heard.

6. If the governing documents so provide, the executive board may appoint a committee, with not less than three members, to conduct hearings

on violations and to impose fines pursuant to this section. While acting on behalf of the executive board for those limited purposes, the committee and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the executive board and its members.

7. The provisions of this section establish the minimum procedural requirements that the executive board must follow before it may impose a fine. The provisions of this section do not preempt any provisions of the governing documents that provide greater procedural protections.

8. Any past due fine ~~is~~

~~(a) Bears interest at the rate established by the association, not to exceed the legal rate per annum.~~

~~(b) May include any costs of collecting the past due fine at a rate established by the association. If the past due fine is for a violation that does not threaten the health, safety or welfare of the residents of the common interest community, the rate established by the association for the costs of collecting the past due fine:~~

~~(1) May not exceed \$20, if the outstanding balance is less than \$200.~~

~~(2) May not exceed \$50, if the outstanding balance is \$200 or more, but is less than \$500.~~

~~(3) May not exceed \$100, if the outstanding balance is \$500 or more, but is less than \$1,000.~~

~~(4) May not exceed \$250, if the outstanding balance is \$1,000 or more, but is less than \$5,000.~~

~~(5) May not exceed \$500, if the outstanding balance is \$5,000 or more.~~

~~(c) May~~ **must not bear interest, but may** include any costs incurred by the association during a civil action to enforce the payment of the past due fine.

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

~~(a) "Costs of collecting" includes, without limitation, any collection fee, filing fee, recording fee, referral fee, fee for postage or delivery, and any other fee or cost that an association may reasonably charge to the unit's owner for the collection of a past due fine. The term does not include any costs incurred by an association during a civil action to enforce the payment of a past due fine.~~

~~(b) "Outstanding balance" means the amount of a past due fine that remains unpaid before any interest, charges for late payment or costs of collecting the past due fine are added.]~~

Sec. 5. (Deleted by amendment.)

Sec. 5.5. NRS 116.31036 is hereby amended to read as follows:

116.31036 1. Notwithstanding any provision of the declaration or bylaws to the contrary, any member of the executive board, other than a member appointed by the declarant, may be removed from the executive board, with or without cause, if at a removal election held pursuant to this section the number of votes cast in favor of removal constitutes:

(a) At least 35 percent of the total number of voting members of the association; and

(b) At least a majority of all votes cast in that removal election.

2. The removal of any member of the executive board must be conducted by secret written ballot unless the declaration of the association provides that voting rights may be exercised by delegates or representatives as set forth in NRS 116.31105. If the removal of a member of the executive board is conducted by secret written ballot:

(a) The secretary or other officer specified in the bylaws of the association shall cause a secret ballot and a return envelope to be sent, prepaid by United States mail, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner.

(b) Each unit's owner must be provided with at least 15 days after the date the secret written ballot is mailed to the unit's owner to return the secret written ballot to the association.

(c) Only the secret written ballots that are returned to the association may be counted to determine the outcome.

(d) The secret written ballots must be opened and counted at a meeting of the association. A quorum is not required to be present when the secret written ballots are opened and counted at the meeting.

(e) The incumbent members of the executive board, including, without limitation, the member who is subject to the removal, may not possess, be given access to or participate in the opening or counting of the secret written ballots that are returned to the association before those secret written ballots have been opened and counted at a meeting of the association.

3. If a member of an executive board is named as a respondent or sued for liability for actions undertaken in his role as a member of the board, the association shall indemnify him for his losses or claims, and undertake all costs of defense, unless it is proven that he acted with willful or wanton misfeasance or with gross negligence. After such proof, the association is no longer liable for the cost of defense, and may recover costs already expended from the member of the executive board who so acted. Members of the executive board are not personally liable to the victims of crimes occurring on the property. Punitive damages may not be recovered against ~~the~~ :

(a) ~~The association [, but may be recovered from persons whose activity gave rise to the damages.] ;~~

(b) *The members of the executive board for acts or omissions that occur in their capacity as members of the executive board; or*

(c) *The officers of the association for acts or omissions that occur in their capacity as officers of the association.*

4. The provisions of this section do not prohibit the Commission from taking any disciplinary action against a member of an executive board pursuant to NRS 116.745 to 116.795, inclusive.

Sec. 6. (Deleted by amendment.)



**Sec. 6.5. NRS 116.3108 is hereby amended to read as follows:**

116.3108 1. A meeting of the units' owners must be held at least once each year. If the governing documents do not designate an annual meeting date of the units' owners, a meeting of the units' owners must be held 1 year after the date of the last meeting of the units' owners. If the units' owners have not held a meeting for 1 year, a meeting of the units' owners must be held on the following March 1.

2. Special meetings of the units' owners may be called by the president, by a majority of the executive board or by units' owners constituting at least 10 percent, or any lower percentage specified in the bylaws, of the total number of voting members of the association. The same number of units' owners may also call a removal election pursuant to NRS 116.31036. To call a special meeting or a removal election, the units' owners must submit a written petition which is signed by the required percentage of the total number of voting members of the association pursuant to this section and which is mailed, return receipt requested, or served by a process server to the executive board or the community manager for the association. If the petition calls for a special meeting, the executive board shall set the date for the special meeting so that the special meeting is held not less than 15 days or more than 60 days after the date on which the petition is received. If the petition calls for a removal election and:

(a) The voting rights of the units' owners will be exercised by delegates or representatives as set forth in NRS 116.31105, the executive board shall set the date for the removal election so that the removal election is held not less than 15 days or more than 60 days after the date on which the petition is received; or

(b) The voting rights of the units' owners will be exercised through the use of secret written ballots pursuant to NRS 116.31036, the secret written ballots for the removal election must be sent in the manner required by NRS 116.31036 not less than 15 days or more than 60 days after the date on which the petition is received, and the executive board shall set the date for the meeting to open and count the secret written ballots so that the meeting is held not more than 15 days after the deadline for returning the secret written ballots.

3. Not less than 15 days or more than 60 days in advance of any meeting of the units' owners, the secretary or other officer specified in the bylaws shall cause notice of the meeting to be hand-delivered, sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner or, if the association offers to send notice by electronic mail, sent by electronic mail at the request of the unit's owner to an electronic mail address designated in writing by the unit's owner. The notice of the meeting must state the time and place of the meeting and include a copy of the agenda for the meeting. The notice must include notification of the right of a unit's owner to:

(a) Have a copy of the minutes or a summary of the minutes of the meeting provided to the unit's owner upon request ~~[and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.]~~, **in electronic format at no charge to the unit's owner or, if the association is unable to provide the copy or summary in electronic format, in paper format at a cost not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.**

(b) Speak to the association or executive board, unless the executive board is meeting in executive session.

4. The agenda for a meeting of the units' owners must consist of:

(a) A clear and complete statement of the topics scheduled to be considered during the meeting, including, without limitation, any proposed amendment to the declaration or bylaws, any fees or assessments to be imposed or increased by the association, any budgetary changes and any proposal to remove an officer of the association or member of the executive board.

(b) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items. In an emergency, the units' owners may take action on an item which is not listed on the agenda as an item on which action may be taken.

(c) A period devoted to comments by units' owners and discussion of those comments. Except in emergencies, no action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to paragraph (b).

5. If the association adopts a policy imposing fines for any violations of the governing documents of the association, the secretary or other officer specified in the bylaws shall prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner, a schedule of the fines that may be imposed for those violations.

6. The secretary or other officer specified in the bylaws shall cause minutes to be recorded or otherwise taken at each meeting of the units' owners. Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the minutes or a summary of the minutes of the meeting to be made available to the units' owners. ~~[A]~~ **Except as otherwise provided in this subsection, a** copy of the minutes or a summary of the minutes must be provided to any unit's owner upon request ~~[and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.]~~, **in electronic format at no charge to the unit's owner or, if the association is unable to provide the copy or summary in electronic format, in paper format at a cost not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.**

7. Except as otherwise provided in subsection 8, the minutes of each meeting of the units' owners must include:

- (a) The date, time and place of the meeting;
- (b) The substance of all matters proposed, discussed or decided at the meeting; and
- (c) The substance of remarks made by any unit's owner at the meeting if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.

8. The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of a meeting of the units' owners.

9. The association shall maintain the minutes of each meeting of the units' owners until the common-interest community is terminated.

10. A unit's owner may record on audiotape or any other means of sound reproduction a meeting of the units' owners if the unit's owner, before recording the meeting, provides notice of his intent to record the meeting to the other units' owners who are in attendance at the meeting.

11. The units' owners may approve, at the annual meeting of the units' owners, the minutes of the prior annual meeting of the units' owners and the minutes of any prior special meetings of the units' owners. A quorum is not required to be present when the units' owners approve the minutes.

12. As used in this section, "emergency" means any occurrence or combination of occurrences that:

- (a) Could not have been reasonably foreseen;
- (b) Affects the health, welfare and safety of the units' owners or residents of the common-interest community;
- (c) Requires the immediate attention of, and possible action by, the executive board; and
- (d) Makes it impracticable to comply with the provisions of subsection 3 or 4.

Sec. 7. (Deleted by amendment.)

**Sec. 7.5. NRS 116.31083 is hereby amended to read as follows:**

116.31083 1. A meeting of the executive board must be held at least once every 90 days ~~[-]~~ **and must be held at a time other than during standard business hours at least twice annually.**

2. Except in an emergency or unless the bylaws of an association require a longer period of notice, the secretary or other officer specified in the bylaws of the association shall, not less than 10 days before the date of a meeting of the executive board, cause notice of the meeting to be given to the units' owners. Such notice must be:

- (a) Sent prepaid by United States mail to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner;

(b) If the association offers to send notice by electronic mail, sent by electronic mail at the request of the unit's owner to an electronic mail address designated in writing by the unit's owner; or

(c) Published in a newsletter or other similar publication that is circulated to each unit's owner.

3. In an emergency, the secretary or other officer specified in the bylaws of the association shall, if practicable, cause notice of the meeting to be sent prepaid by United States mail to the mailing address of each unit within the common-interest community. If delivery of the notice in this manner is impracticable, the notice must be hand-delivered to each unit within the common-interest community or posted in a prominent place or places within the common elements of the association.

4. The notice of a meeting of the executive board must state the time and place of the meeting and include a copy of the agenda for the meeting or the date on which and the locations where copies of the agenda may be conveniently obtained by the units' owners. The notice must include notification of the right of a unit's owner to:

(a) Have a copy of the minutes or a summary of the minutes of the meeting provided to the unit's owner upon request ~~and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.~~ **in electronic format at no charge to the unit's owner or, if the association is unable to provide the copy or summary in electronic format, in paper format at a cost not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.**

(b) Speak to the association or executive board, unless the executive board is meeting in executive session.

5. The agenda of the meeting of the executive board must comply with the provisions of subsection 4 of NRS 116.3108. The period required to be devoted to comments by the units' owners and discussion of those comments must be scheduled for the beginning of each meeting. In an emergency, the executive board may take action on an item which is not listed on the agenda as an item on which action may be taken.

6. At least once every 90 days, unless the declaration or bylaws of the association impose more stringent standards, the executive board shall review, at a minimum, the following financial information at one of its meetings:

- (a) A current year-to-date financial statement of the association;
- (b) A current year-to-date schedule of revenues and expenses for the operating account and the reserve account, compared to the budget for those accounts;
- (c) A current reconciliation of the operating account of the association;
- (d) A current reconciliation of the reserve account of the association;
- (e) The latest account statements prepared by the financial institutions in which the accounts of the association are maintained; and

(f) The current status of any civil action or claim submitted to arbitration or mediation in which the association is a party.

7. The secretary or other officer specified in the bylaws shall cause minutes to be recorded or otherwise taken at each meeting of the executive board. Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the minutes or a summary of the minutes of the meetings to be made available to the units' owners. ~~[A]~~ **Except as otherwise provided in this subsection, a copy of the minutes or a summary of the minutes must be provided to any unit's owner upon request [and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner], in electronic format at no charge to the unit's owner or, if the association is unable to provide the copy or summary in electronic format, in paper format at a cost not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.**

8. Except as otherwise provided in subsection 9 and NRS 116.31085, the minutes of each meeting of the executive board must include:

- (a) The date, time and place of the meeting;
- (b) Those members of the executive board who were present and those members who were absent at the meeting;
- (c) The substance of all matters proposed, discussed or decided at the meeting;
- (d) A record of each member's vote on any matter decided by vote at the meeting; and
- (e) The substance of remarks made by any unit's owner who addresses the executive board at the meeting if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.

9. The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of its meetings.

10. The association shall maintain the minutes of each meeting of the executive board until the common-interest community is terminated.

11. A unit's owner may record on audiotape or any other means of sound reproduction a meeting of the executive board, unless the executive board is meeting in executive session, if the unit's owner, before recording the meeting, provides notice of his intent to record the meeting to the members of the executive board and the other units' owners who are in attendance at the meeting.

12. As used in this section, "emergency" means any occurrence or combination of occurrences that:

- (a) Could not have been reasonably foreseen;
- (b) Affects the health, welfare and safety of the units' owners or residents of the common-interest community;
- (c) Requires the immediate attention of, and possible action by, the executive board; and

(d) Makes it impracticable to comply with the provisions of subsection 2 or 5.

Sec. 8. (Deleted by amendment.)

Sec. 9. NRS 116.3115 is hereby amended to read as follows:

116.3115 1. Until the association makes an assessment for common expenses, the declarant shall pay all common expenses. After an assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association in accordance with the requirements set forth in NRS 116.31151. Unless the declaration imposes more stringent standards, the budget must include a budget for the daily operation of the association and a budget for the reserves required by paragraph (b) of subsection 2.

2. Except for assessments under subsections 4 to 7, inclusive:

(a) All common expenses, including the reserves, must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to subsections 1 and 2 of NRS 116.2107.

(b) The association shall establish adequate reserves, funded on a reasonable basis, for the repair, replacement and restoration of the major components of the common elements. The reserves may be used only for those purposes, including, without limitation, repairing, replacing and restoring roofs, roads and sidewalks, and must not be used for daily maintenance. The association may comply with the provisions of this paragraph through a funding plan that is designed to allocate the costs for the repair, replacement and restoration of the major components of the common elements over a period of years if the funding plan is designed in an actuarially sound manner which will ensure that sufficient money is available when the repair, replacement and restoration of the major components of the common elements are necessary.

3. Any ~~[past due]~~ assessment for common expenses or installment thereof ***that is 60 days or more past due*** bears interest at ~~[the rate established by the association not exceeding 18 percent per year.]~~ ***a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions on January 1 or July 1, as the case may be, immediately preceding the date the assessment becomes past due, plus 2 percent. The rate must be adjusted accordingly on each January 1 and July 1 thereafter until the balance is satisfied.***

4. To the extent required by the declaration:

(a) Any common expense associated with the maintenance, repair, restoration or replacement of a limited common element must be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides;

(b) Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited; and

(c) The costs of insurance must be assessed in proportion to risk and the costs of utilities must be assessed in proportion to usage.

5. Assessments to pay a judgment against the association may be made only against the units in the common-interest community at the time the judgment was entered, in proportion to their liabilities for common expenses.

6. If any common expense is caused by the misconduct of any unit's owner, the association may assess that expense exclusively against his unit.

7. The association of a common-interest community created before January 1, 1992, is not required to make an assessment against a vacant lot located within the community that is owned by the declarant.

8. If liabilities for common expenses are reallocated, assessments for common expenses and any installment thereof not yet due must be recalculated in accordance with the reallocated liabilities.

9. The association shall provide written notice to each unit's owner of a meeting at which an assessment for a capital improvement is to be considered or action is to be taken on such an assessment at least 21 calendar days before the date of the meeting.

Sec. 10. (Deleted by amendment.)

**Sec. 10.5. NRS 116.31151 is hereby amended to read as follows:**

116.31151 1. Except as otherwise provided in subsection 2 and unless the declaration of a common-interest community imposes more stringent standards, the executive board shall, not less than 30 days or more than 60 days before the beginning of the fiscal year of the association, prepare and distribute to each unit's owner a copy of:

(a) The budget for the daily operation of the association. The budget must include, without limitation, the estimated annual revenue and expenditures of the association and any contributions to be made to the reserve account of the association.

(b) The budget to provide adequate funding for the reserves required by paragraph (b) of subsection 2 of NRS 116.3115. The budget must include, without limitation:

(1) The current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the common elements;

(2) As of the end of the fiscal year for which the budget is prepared, the current estimate of the amount of cash reserves that are necessary, and the current amount of accumulated cash reserves that are set aside, to repair, replace or restore the major components of the common elements;

(3) A statement as to whether the executive board has determined or anticipates that the levy of one or more special assessments will be necessary to repair, replace or restore any major component of the common elements or to provide adequate funding for the reserves designated for that purpose; and

(4) A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to subparagraph (2), including, without limitation, the qualifications of the person responsible for the preparation of the study of the reserves required by NRS 116.31152.

2. In lieu of distributing copies of the budgets of the association required by subsection 1, the executive board may distribute to each unit's owner a summary of those budgets, accompanied by a written notice that:

(a) The budgets are available for review at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties, ~~but~~ **but not to exceed 60 miles from the physical location of the common-interest community;** and

(b) Copies of the budgets will be provided upon request.

3. Within 60 days after adoption of any proposed budget for the common-interest community, the executive board shall provide a summary of the proposed budget to each unit's owner and shall set a date for a meeting of the units' owners to consider ratification of the proposed budget not less than 14 days or more than 30 days after the mailing of the summaries. Unless at that meeting a majority of all units' owners, or any larger vote specified in the declaration, reject the proposed budget, the proposed budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the units' owners must be continued until such time as the units' owners ratify a subsequent budget proposed by the executive board.

Sec. 11. (Deleted by amendment.)

Sec. 12. (Deleted by amendment.)

**Sec. 12.2. NRS 116.31175 is hereby amended to read as follows:**

116.31175 1. Except as otherwise provided in this subsection, the executive board of an association shall, upon the written request of a unit's owner, make available the books, records and other papers of the association for review **at the business office of the association or a designated business location not to exceed 60 miles from the physical location of the common-interest community and** during the regular working hours of the association, including, without limitation, all contracts to which the association is a party and all records filed with a court relating to a civil or criminal action to which the association is a party. The provisions of this subsection do not apply to:

(a) The personnel records of the employees of the association, except for those records relating to the number of hours worked and the salaries and benefits of those employees;

(b) The records of the association relating to another unit's owner, except for those records described in subsection 2; and

(c) A contract between the association and an attorney.

2. The executive board of an association shall maintain a general record concerning each violation of the governing documents, other than a violation involving a failure to pay an assessment, for which the executive board has imposed a fine, a construction penalty or any other sanction. The general record:



(a) Must contain a general description of the nature of the violation and the type of the sanction imposed. If the sanction imposed was a fine or construction penalty, the general record must specify the amount of the fine or construction penalty.

(b) Must not contain the name or address of the person against whom the sanction was imposed or any other personal information which may be used to identify the person or the location of the unit, if any, that is associated with the violation.

(c) Must be maintained in an organized and convenient filing system or data system that allows a unit's owner to search and review the general records concerning violations of the governing documents.

3. If the executive board refuses to allow a unit's owner to review the books, records or other papers of the association, the Ombudsman may:

(a) On behalf of the unit's owner and upon written request, review the books, records or other papers of the association during the regular working hours of the association; and

(b) If he is denied access to the books, records or other papers, request the Commission, or any member thereof acting on behalf of the Commission, to issue a subpoena for their production.

4. The books, records and other papers of an association must be maintained for at least 10 years. The provisions of this subsection do not apply to:

(a) The minutes of a meeting of the units' owners which must be maintained in accordance with NRS 116.3108; or

(b) The minutes of a meeting of the executive board which must be maintained in accordance with NRS 116.31083.

5. The executive board shall not require a unit's owner to pay an amount in excess of \$10 per hour to review any books, records, contracts or other papers of the association pursuant to the provisions of this section.

Sec. 12.3. (Deleted by amendment.)

**Sec. 12.5. NRS 116.31183 is hereby amended to read as follows:**

116.31183 1. An executive board, a member of an executive board or an officer, employee or agent of an association shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner because the unit's owner has:

~~1.~~ (a) Complained in good faith about any alleged violation of any provision of this chapter or the governing documents of the association; or

~~2.~~ (b) Requested in good faith to review the books, records or other papers of the association.

**2. In addition to any other remedy provided by law, upon a violation of this section, a unit's owner may bring a separate action to recover:**

**(a) Compensatory damages; and**

**(b) Attorney's fees and costs of bringing the separate action.**

Sec. 12.7. (Deleted by amendment.)

**Sec. 12.8. NRS 116.31185 is hereby amended to read as follows:**

116.31185 1. Except as otherwise provided in subsection 2, a member of an executive board, an officer of an association or a community manager shall not solicit or accept any form of compensation, gratuity or other remuneration that:

(a) Would improperly influence or would appear to a reasonable person to improperly influence the decisions made by those persons; or

(b) Would result or would appear to a reasonable person to result in a conflict of interest for those persons.

2. Notwithstanding the provisions of subsection 1, a member of an executive board, an officer of an association, a community manager or any person working for a community manager shall not accept, directly or indirectly, any gifts, incentives, gratuities, rewards or other items of value from:

(a) An attorney, law firm or vendor, or any person working directly or indirectly for the attorney, law firm or vendor, which total more than the amount established by the Commission by regulation, not to exceed \$100 per year per such attorney, law firm or vendor; or

(b) A declarant, an affiliate of a declarant or any person responsible for the construction of the applicable community or association which total more than the amount established by the Commission by regulation, not to exceed \$100 per year per such declarant, affiliate or person.

3. An attorney, law firm or vendor, or any person working directly or indirectly for the attorney, law firm or vendor, shall not provide, directly or indirectly, any gifts, incentives, gratuities, rewards or other items of value to a member of the executive board, an officer of the association, the community manager or any person working for the community manager which total more than the amount established by the Commission by regulation, not to exceed \$100 per year per such member, officer, community manager or person.

4. A declarant, an affiliate of a declarant or any person responsible for the construction of a community or association, shall not provide, directly or indirectly, any gifts, incentives, gratuities, rewards or other items of value to a member of the executive board, an officer of the association, the community manager or any person working for the community manager which total more than the amount established by the Commission by regulation, not to exceed \$100 per year per such member, officer, community manager or person.

5. In addition to the limitations set forth in subsection 1, a community manager shall not solicit or accept any form of compensation, fee or other remuneration that is based, in whole or in part, on:

(a) The number or amount of fines imposed against or collected from units' owners or tenants or guests of units' owners pursuant to NRS 116.31031 for violations of the governing documents of the association; or

(b) Any percentage or proportion of those fines.

6. The provisions of this section do not prohibit a community manager from being paid compensation, a fee or other remuneration under the terms of a contract between the community manager and an association if:

(a) The scope of the respective rights, duties and obligations of the parties under the contract comply with the standards of practice for community managers set forth as sections 19.5 and 19.6 of this act and any additional standards of practice adopted by the Commission by regulation pursuant to NRS 116A.400;

(b) The compensation, fee or other remuneration is being paid to the community manager for providing management of the common-interest community; and

(c) The compensation, fee or other remuneration is not structured in a way that would violate the provisions of subsection 1 or 5.

Sec. 13. (Deleted by amendment.)

Sec. 13.5. (Deleted by amendment.)

**Sec. 13.7. NRS 116.4103 is hereby amended to read as follows:**

116.4103 1. Except as otherwise provided in NRS 116.41035, a public offering statement must set forth or fully and accurately disclose each of the following:

(a) The name and principal address of the declarant and of the common-interest community, and a statement that the common-interest community is either a condominium, cooperative or planned community.

(b) A general description of the common-interest community, including to the extent possible, the types, number and declarant's schedule of commencement and completion of construction of buildings, and amenities that the declarant anticipates including in the common-interest community.

(c) The estimated number of units in the common-interest community.

(d) Copies of the declaration, bylaws, and any rules or regulations of the association, but a plat or plan is not required.

(e) A current year-to-date financial statement, including the most recent audited or reviewed financial statement, and the projected budget for the association, either within or as an exhibit to the public offering statement, for 1 year after the date of the first conveyance to a purchaser, and thereafter the current budget of the association. The budget must include, without limitation:

(1) A statement of the amount included in the budget as reserves for repairs, replacement and restoration pursuant to NRS 116.3115; and

(2) The projected monthly assessment for common expenses for each type of unit, including the amount established as reserves pursuant to NRS 116.3115.

(f) A description of any services or subsidies being provided by the declarant or an affiliate of the declarant, not reflected in the budget.

(g) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee.

(h) The terms and significant limitations of any warranties provided by the declarant, including statutory warranties and limitations on the enforcement thereof or on damages.

(i) A statement that unless the purchaser or his agent has personally inspected the unit, the purchaser may cancel, by written notice, his contract for purchase until midnight of the fifth calendar day following the date of execution of the contract, and the contract must contain a provision to that effect.

(j) A statement of any unsatisfied judgments or pending suits against the association, and the status of any pending suits material to the common-interest community of which a declarant has actual knowledge.

(k) Any current or expected fees or charges to be paid by units' owners for the use of the common elements and other facilities related to the common-interest community.

(l) **In addition to any other document, a statement describing all current and expected fees or charges for each unit, including, without limitation, association fees, fines, assessments, late charges or penalties, interest rates on delinquent assessments, additional costs for collecting past due fines and charges for opening or closing any file for each unit.**

**(m)** The information statement set forth in NRS 116.41095.

2. A declarant is not required to revise a public offering statement more than once each calendar quarter, if the following warning is given prominence in the statement: "THIS PUBLIC OFFERING STATEMENT IS CURRENT AS OF (insert a specified date). RECENT DEVELOPMENTS REGARDING (here refer to particular provisions of NRS 116.4103 and 116.4105) MAY NOT BE REFLECTED IN THIS STATEMENT."

Sec. 14. (Deleted by amendment.)

Sec. 15. (Deleted by amendment.)

**Sec. 15.5. NRS 116.4109 is hereby amended to read as follows:**

116.4109 1. Except in the case of a sale in which delivery of a public offering statement is required, or unless exempt under subsection 2 of NRS 116.4101, a unit's owner or his authorized agent shall, at the expense of the unit's owner, furnish to a purchaser a resale package containing all of the following:

(a) A copy of the declaration, other than any plats and plans, the bylaws, the rules or regulations of the association and the information statement required by NRS 116.41095;

(b) A statement setting forth the amount of the monthly assessment for common expenses and any unpaid assessment of any kind currently due from the selling unit's owner;

(c) A copy of the current operating budget of the association and current year-to-date financial statement for the association, which must include a summary of the reserves of the association required by NRS 116.31152 and which must include, without limitation, a summary of the information

described in paragraphs (a) to (e), inclusive, of subsection 3 of NRS 116.31152;

(d) A statement of any unsatisfied judgments or pending legal actions against the association and the status of any pending legal actions relating to the common-interest community of which the unit's owner has actual knowledge; ~~and~~

(e) A statement of any transfer fees, transaction fees or any other fees associated with the resale of a unit ~~to~~; and

**(f) In addition to any other document, a statement describing all current and expected fees or charges for each unit, including, without limitation, association fees, fines, assessments, late charges or penalties, interest rates on delinquent assessments, additional costs for collecting past due fines and charges for opening or closing any file for each unit.**

2. The purchaser may, by written notice, cancel the contract of purchase until midnight of the fifth calendar day following the date of receipt of the resale package described in subsection 1, and the contract for purchase must contain a provision to that effect. If the purchaser elects to cancel a contract pursuant to this subsection, he must hand deliver the notice of cancellation to the unit's owner or his authorized agent or mail the notice of cancellation by prepaid United States mail to the unit's owner or his authorized agent. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly. If the purchaser has accepted a conveyance of the unit, the purchaser is not entitled to:

(a) Cancel the contract pursuant to this subsection; or

(b) Damages, rescission or other relief based solely on the ground that the unit's owner or his authorized agent failed to furnish the resale package, or any portion thereof, as required by this section.

3. Within 10 days after receipt of a written request by a unit's owner or his authorized agent, the association shall furnish all of the following to the unit's owner or his authorized agent for inclusion in the resale package:

(a) Copies of the documents required pursuant to paragraphs (a) and (c) of subsection 1; and

(b) A certificate containing the information necessary to enable the unit's owner to comply with paragraphs (b), (d) and (e) of subsection 1.

4. If the association furnishes the documents and certificate pursuant to subsection 3:

(a) The unit's owner or his authorized agent shall include the documents and certificate in the resale package provided to the purchaser, and neither the unit's owner nor his authorized agent is liable to the purchaser for any erroneous information provided by the association and included in the documents and certificate.

(b) The association may charge the unit's owner a reasonable fee to cover the cost of preparing the certificate furnished pursuant to subsection 3. Such a fee must be based on the actual cost the association incurs to fulfill the requirements of this section in preparing the certificate. The Commission

shall adopt regulations establishing the maximum amount of the fee that an association may charge for preparing the certificate.

(c) The association may charge the unit's owner a reasonable fee, not to exceed 25 cents per page, to cover the cost of copying the other documents furnished pursuant to subsection 3.

(d) Except for the fees allowed pursuant to paragraphs (b) and (c), the association may not charge the unit's owner any other fees for preparing or furnishing the documents and certificate pursuant to subsection 3.

5. Neither a purchaser nor the purchaser's interest in a unit is liable for any unpaid assessment or fee greater than the amount set forth in the documents and certificate prepared by the association. If the association fails to furnish the documents and certificate within the 10 days allowed by this section, the seller is not liable for the delinquent assessment.

6. Upon the request of a unit's owner or his authorized agent, or upon the request of a purchaser to whom the unit's owner has provided a resale package pursuant to this section or his authorized agent, the association shall make the entire study of the reserves of the association which is required by NRS 116.31152 reasonably available for the unit's owner, purchaser or authorized agent to inspect, examine, photocopy and audit. The study must be made available at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties.

Sec. 16. (Deleted by amendment.)

Sec. 16.5. NRS 116.4117 is hereby amended to read as follows:

116.4117 1. If a declarant or any other person subject to this chapter fails to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons suffering actual damages from the failure to comply has a claim for appropriate relief.

2. Subject to the requirements set forth in NRS 38.310 and except as otherwise provided in NRS 116.3111, a civil action for damages caused by a failure or refusal to comply with any provision of this chapter or the governing documents of an association may be brought:

(a) By the association against:

- (1) A declarant; or
- (2) A unit's owner.

(b) By a unit's owner against:

- (1) The association;
- (2) A declarant; or
- (3) Another unit's owner of the association.

3. ~~Punitive~~ ***Except as otherwise provided in NRS 116.31036, punitive*** damages may be awarded for a willful and material failure to comply with this chapter if the failure is established by clear and convincing evidence.

4. The court may award reasonable attorney's fees to the prevailing party.

5. The civil remedy provided by this section is in addition to, and not exclusive of, any other available remedy or penalty.

Sec. 17. (Deleted by amendment.)

Sec. 18. (Deleted by amendment.)

Sec. 18.05. (Deleted by amendment.)

Sec. 18.1. (Deleted by amendment.)

Sec. 18.2. (Deleted by amendment.)

Sec. 18.3. (Deleted by amendment.)

Sec. 18.4. (Deleted by amendment.)

Sec. 18.5. (Deleted by amendment.)

Sec. 18.6. (Deleted by amendment.)

Sec. 18.7. (Deleted by amendment.)

Sec. 18.8. (Deleted by amendment.)

Sec. 18.9. (Deleted by amendment.)

Sec. 19. (Deleted by amendment.)

Sec. 19.05. Chapter 116A of NRS is hereby amended by adding thereto the provisions set forth as sections 19.1 to 19.6, inclusive, of this act.

Sec. 19.1. "Client" means an association that has entered into a management agreement with a community manager.

Sec. 19.2. "Management agreement" means an agreement for the management of a common-interest community.

Sec. 19.3. Before entering into a management agreement, a community manager shall disclose in writing to the prospective client any material and relevant information which he knows, or by the exercise of reasonable care and diligence should know, relate to the performance of the management agreement, including any matters which may affect his ability to comply with the provisions of this chapter or chapter 116 or 116B of NRS. Such written disclosure must include, without limitation:

1. Whether he, or any member of his organization, expects to receive any direct or indirect compensation, gifts or profits from any person who will perform services for the client and, if so, the identity of the person and the nature of the services rendered.

2. Any affiliation with or financial interest in any person or business who furnishes any goods or services to the client.

3. Any pecuniary relationships with any unit's owner, member of the executive board or officer of the client.

Sec. 19.4. 1. Any management agreement must:

(a) Be in writing and signed by all parties;

(b) Be entered into between the client and the community manager or the employer of the community manager if the community manager is acting on behalf of a corporation, partnership, limited partnership, limited-liability partnership, limited-liability company or other entity;

(c) State the term of the management agreement;

(d) State the basic consideration for the services to be provided and the payment schedule;

(e) Include a complete schedule of all fees, costs, expenses and charges to be imposed by the community manager, whether direct or indirect, including, without limitation:

(1) The costs for any new client or start-up costs;

(2) The fees for special or nonroutine services, such as the mailing of collection letters, the recording of liens and foreclosing of property;

(3) Reimbursable expenses;

(4) The fees for the sale or resale of a unit or for setting up the account of a new member; and

(5) The portion of fees that are to be retained by the client and the portion to be retained by the community manager;

(f) State the identity and the legal status of the contracting parties;

(g) State any limitations on the liability of each contracting party;

(h) Include a statement of the scope of work of the community manager;

(i) State the spending limits of the community manager;

(j) Include provisions relating to the grounds and procedures for termination of the community manager;

(k) Identify the types and amounts of insurance coverage to be carried by each contracting party, including, without limitation:

(1) A requirement that the community manager or his employer shall maintain insurance covering liability for errors or omissions, professional liability or a surety bond to compensate for losses actionable pursuant to this chapter in an amount of \$1,000,000 or more;

(2) An indication of which contracting party will maintain fidelity bond coverage; and

(3) A statement as to whether the client will maintain directors and officers liability coverage for the executive board;

(l) Include provisions for dispute resolution;

(m) Acknowledge that all records and books of the client are the property of the client, except any proprietary information and software belonging to the community manager;

(n) State the physical location, including the street address, of the records of the client, which must be within 60 miles from the physical location of the common-interest community;

(o) State the frequency and extent of regular inspections of the common-interest community; and

(p) State the extent, if any, of the authority of the community manager to sign checks on behalf of the client in an operating account.

2. In addition to any other requirements under this section, a management agreement may:

(a) Provide for mandatory binding arbitration; or

(b) Allow the provisions of the management agreement to apply month to month following the end of the term of the management agreement, but



the management agreement may not contain an automatic renewal provision.

3. Not later than 10 days after the effective date of a management agreement, the community manager shall provide each member of the executive board evidence of the existence of the required insurance, including, without limitation:

(a) The names and addresses of all insurance companies;

(b) The total amount of coverage; and

(c) The amount of any deductible.

4. After signing a management agreement, the community manager shall provide a copy of the management agreement to each member of the executive board. Within 30 days after an election or appointment of a new member to the executive board, the community manager shall provide the new member with a copy of the management agreement.

5. Any changes to a management agreement must be initialed by the contracting parties. If there are any changes after the execution of a management agreement, those changes must be in writing and signed by the contracting parties.

6. Except as otherwise provided in the management agreement, upon the termination or assignment of a management agreement, the community manager shall, within 30 days after the termination or assignment, transfer possession of all books, records and other papers of the client to the succeeding community manager, or to the client if there is no succeeding community manager, regardless of any unpaid fees or charges to the community manager or management company.

7. Notwithstanding any provision in a management agreement to the contrary, a management agreement may be terminated by the client without penalty upon 30 days' notice following a violation by the community manager of any provision of this chapter or chapter 116 of NRS.

Sec. 19.5. In addition to any additional standards of practice for community managers adopted by the Commission by regulation pursuant to NRS 116A.400, a community manager shall:

1. Except as otherwise provided by specific statute, at all times:

(a) Act as a fiduciary in any client relationship; and

(b) Exercise ordinary and reasonable care in the performance of his duties.

2. Comply with all applicable:

(a) Federal, state and local laws, regulations and ordinances; and

(b) Lawful provisions of the governing documents of each client.

3. Keep informed of new developments in the management of a common-interest community through continuing education, including, without limitation, new developments in law, insurance coverage and accounting principles.

4. Advise a client to obtain advice from an independent expert relating to matters that are beyond the expertise of the community manager.

5. Under the direction of a client, uniformly enforce the provisions of the governing documents of the association.

6. At all times ensure that:

(a) The financial transactions of a client are current, accurate and properly documented; and

(b) There are established policies and procedures that are designed to provide reasonable assurances in the reliability of the financial reporting, including, without limitation:

(1) Proper maintenance of accounting records;

(2) Documentation of the authorization for any purchase orders, expenditures or disbursements;

(3) Verification of the integrity of the data used in business decisions;

(4) Facilitation of fraud detection and prevention; and

(5) Compliance with all applicable laws and regulations governing financial records.

7. Prepare or cause to be prepared interim and annual financial statements that will allow the Division, the executive board, the units' owners and the accountant or auditor to determine whether the financial position of an association is fairly presented in accordance with all applicable laws and regulations.

8. Cause to be prepared, if required by the Division, a financial audit performed by an independent certified public accountant of the records of the community manager pertaining to the common-interest community, which must be made available to the Division.

9. Make the financial records of an association available for inspection by the Division in accordance with the applicable laws and regulations.

10. Cooperate with the Division in resolving complaints filed with the Division.

11. Upon written request, make the financial records of an association available to the units' owners electronically or during regular business hours required for inspection at a reasonably convenient location, which must be within 60 miles from the physical location of the common-interest community, and provide copies of such records in accordance with the applicable laws and regulations. As used in this subsection, "regular business hours" means Monday through Friday, 9 a.m. to 5 p.m., excluding legal holidays.

12. Maintain and invest association funds in a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation, National Credit Union Share Insurance Fund, Securities Investor Protection Corporation, or a private insurer approved pursuant to NRS 678.755, or in government securities that are backed by the full faith and credit of the United States Government.

13. Except as required under collection agreements, maintain the various funds of the client in separate financial accounts in the name of the client and ensure that the association is authorized to have direct access to those accounts.

14. Provide notice to each unit's owner that the executive board is aware of all legal requirements pursuant to the applicable laws and regulations.

15. Maintain internal accounting controls, including, without limitation, segregation of incompatible accounting functions.

16. Ensure that the executive board develops and approves written investment policies and procedures.

17. Recommend in writing to each client that the client register with the Division, maintain its registration and file all papers with the Division and the Secretary of State as required by law.

18. Comply with the directions of a client, unless the directions conflict with the governing documents of the client or the applicable laws or regulations of this State.

19. Recommend in writing to each client that the client be in compliance with all applicable federal, state and local laws, regulations and ordinances and the governing documents of the client.

20. Obtain, when practicable, at least three qualified bids for any capital improvement project for the client.

21. Develop written collection policies, approved by the executive board, to comply with all applicable federal, state and local laws, regulations and ordinances relating to the collection of debt. The collection policies must require:

(a) That the executive board approve all write-offs of debt; and

(b) That the community manager provide timely updates and reports as necessary.

Sec. 19.6. In addition to the standards of practice for community managers set forth in section 19.5 of this act and any additional standards of practice adopted by the Commission by regulation pursuant to NRS 116A.400, a community manager shall not:

1. Except as otherwise required by law or court order, disclose confidential information relating to a client, which includes, without limitation, the business affairs and financial records of the client, unless the client agrees to the disclosure in writing.

2. Impede or otherwise interfere with an investigation of the Division by:

(a) Failing to comply with a request of the Division to provide documents;

(b) Supplying false or misleading information to an investigator, auditor or any other officer or agent of the Division; or

(c) Concealing any facts or documents relating to the business of a client.

3. Commingle money or other property of a client with the money or other property of another client, another association, the community manager or the employer of the community manager.

4. Use money or other property of a client for his own personal use.

5. Be a signer on a withdrawal from a reserve account of a client.

6. Except as otherwise permitted by the provisions of the court rules governing the legal profession, establish an attorney-client relationship with an attorney or law firm which represents a client that employs the community manager or with whom the community manager has a management agreement.

7. Provide or attempt to provide to a client a service concerning a type of property or service:

(a) That is outside his field of experience or competence without the assistance of a qualified authority unless the fact of his inexperience or incompetence is disclosed fully to the client and is not otherwise prohibited by law; or

(b) For which he is not properly licensed.

8. Intentionally apply a payment of an assessment from a unit's owner towards any fine, fee or other charge that is due.

9. Refuse to accept from a unit's owner payment of any assessment, fine, fee or other charge that is due because there is an outstanding payment due.

10. Collect any fees or other charges from a client not specified in the management agreement.

11. Accept any compensation, gift or any other item of material value as payment or consideration for a referral or in the furtherance or performance of his normal duties unless:

(a) Acceptance of the compensation, gift or other item of material value complies with the provisions of NRS 116.31185 or 116B.695 and all other applicable federal, state and local laws, regulations and ordinances; and

(b) Before acceptance of the compensation, gift or other item of material value, the community manager provides full disclosure to the client and the client consents, in writing, to the acceptance of the compensation, gift or other item of material value by the community manager.

Sec. 19.7. NRS 116A.010 is hereby amended to read as follows:

116A.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 116A.020 to 116A.130, inclusive, and sections 19.1 and 19.2 of this act have the meanings ascribed to them in those sections.

Sec. 19.8. NRS 116A.400 is hereby amended to read as follows:

116A.400 1. Except as otherwise provided in this section, a person shall not act as a community manager unless the person holds a certificate.

2. ~~{The}~~ In addition to the standards of practice for community managers set forth in sections 19.5 and 19.6 of this act, the Commission shall by regulation ~~{provide for the}~~ adopt any additional standards of

practice for community managers who hold certificates ~~that~~ that the Commission deems appropriate and necessary.

3. The Division may investigate any community manager who holds a certificate to ensure that the community manager is complying with the provisions of this chapter and chapters 116 and 116B of NRS and ~~the~~ any additional standards of practice adopted by the Commission.

4. In addition to any other remedy or penalty, if the Commission or a hearing panel, after notice and hearing, finds that a community manager who holds a certificate has violated any provision of this chapter or chapter 116 or 116B of NRS or any of the additional standards of practice adopted by the Commission, the Commission or the hearing panel may take appropriate disciplinary action against the community manager.

5. In addition to any other remedy or penalty, the Commission may:

(a) Refuse to issue a certificate to a person who has failed to pay money which the person owes to the Commission or the Division.

(b) Suspend, revoke or refuse to renew the certificate of a person who has failed to pay money which the person owes to the Commission or the Division.

6. The provisions of this section do not apply to:

(a) A financial institution that is engaging in an activity permitted by law.

(b) An attorney who is licensed to practice in this State and who is acting in that capacity.

(c) A trustee with respect to the property of the trust.

(d) A receiver with respect to property subject to the receivership.

(e) A member of an executive board or an officer of an association who is acting solely within the scope of his duties as a member of the executive board or an officer of the association.

**Sec. 19.9. NRS 116B.695 is hereby amended to read as follows:**

116B.695 1. Except as otherwise provided in subsection 2, a member of an executive board, an officer of an association or a community manager shall not solicit or accept any form of compensation, gratuity or other remuneration that:

(a) Would improperly influence or would appear to a reasonable person to improperly influence the decisions made by those persons; or

(b) Would result or would appear to a reasonable person to result in a conflict of interest for those persons.

2. Notwithstanding the provisions of subsection 1, a member of an executive board, an officer of an association or a community manager shall not accept, directly or indirectly, any gifts, incentives, gratuities, rewards or other items of value from:

(a) An attorney, law firm or vendor, or any person working directly or indirectly for the attorney, law firm or vendor, which total more than the amount established by the Commission by regulation, not to exceed \$100 per year per such attorney, law firm or vendor; or

(b) A declarant, an affiliate of a declarant or any person responsible for the construction of the applicable condominium hotel or association which total more than the amount established by the Commission by regulation, not to exceed \$100 per year per such declarant, affiliate or person.

3. An attorney, law firm or vendor, or any person working directly or indirectly for the attorney, law firm or vendor, shall not provide, directly or indirectly, any gifts, incentives, gratuities, rewards or other items of value to a member of the executive board or an officer of the association, the community manager or any person working for the community manager which total more than the amount established by the Commission by regulation, not to exceed \$100 per year per such member, officer, community manager or person.

4. A declarant, an affiliate of a declarant or any person responsible for the construction of a condominium hotel or association ~~is~~ shall not provide, directly or indirectly, any gifts, incentives, gratuities, rewards or other items of value to a member of the executive board or an officer of the association, the community manager or any person working for the community manager which total more than the amount established by the Commission by regulation, not to exceed \$100 per year per such member, officer, community manager or person.

5. In addition to the limitations set forth in subsection 1, a community manager shall not solicit or accept any form of compensation, fee or other remuneration that is based, in whole or in part, on:

(a) The number or amount of fines imposed against or collected from units' owners or tenants or guests of units' owners pursuant to this chapter for violations of the governing documents of the association; or

(b) Any percentage or proportion of those fines.

6. The provisions of this section do not prohibit a community manager from being paid compensation, a fee or other remuneration under the terms of a contract between the community manager and an association if:

(a) The scope of the respective rights, duties and obligations of the parties under the contract comply with the standards of practice for community managers set forth in sections 19.5 and 19.6 of this act and any additional standards of practice adopted by the Commission by regulation pursuant to NRS 116A.400;

(b) The compensation, fee or other remuneration is being paid to the community manager for providing management of the association of the condominium hotel; and

(c) The compensation, fee or other remuneration is not structured in a way that would violate the provisions of subsection 1 or 5.

Sec. 20. (Deleted by amendment.)

Sec. 21. (Deleted by amendment.)

**Sec. 21.3. NRS 444.065 is hereby amended to read as follows:**

444.065 1. Except as otherwise provided in subsection 2, as used in NRS 444.065 to 444.120, inclusive, "public swimming pool" means any

structure containing an artificial body of water that is intended to be used collectively by persons for swimming or bathing, regardless of whether a fee is charged for its use.

2. The term does not include any such structure at:

(a) A private residence if the structure is controlled by the owner or other authorized occupant of the residence and the use of the structure is limited to members of the family of the owner or authorized occupant of the residence or invited guests of the owner or authorized occupant of the residence.

(b) A family foster home as defined in NRS 424.013.

(c) A child care facility, as defined in NRS 432A.024, furnishing care to 12 children or less.

(d) Any other residence or facility as determined by the State Board of Health.

(e) Any location if the structure is a privately-owned pool used by members of a private club or invited guests of the members.

Sec. 21.7. Senate Bill No. 253 of this session is hereby amended by adding thereto a new section to read as follows:

Sec. 10. 1. This section and section 8 of this act become effective upon passage and approval.

2. Sections 1 to 7, inclusive, and 9 of this act become effective on October 1, 2009.

Sec. 22. 1. This ~~act becomes~~ section and sections 21.3 and 21.7 of this act become effective upon passage and approval.

2. Section 1.7 of this act becomes effective upon passage and approval for the purpose of adopting regulations and on January 1, 2010, for all other purposes.

3. Sections 2.5 to 21, inclusive, of this act become effective on July 1, 2009.

Assemblyman Segerblom moved that the Assembly adopt the report of the Conference Committee concerning Assembly Bill No. 350.

Remarks by Assemblyman Segerblom.

Motion carried by a constitutional majority.

*Madam Speaker:*

The Conference Committee concerning Assembly Bill No. 309, consisting of the undersigned members, has met and reports that:

It has agreed to recommend that Amendment No. 876 of the Senate be concurred in.

It has agreed to recommend that the bill be further amended as set forth in Conference Amendment No. 35, which is attached to and hereby made a part of this report.

MARILYN DONDERO LOOP

JOHN HAMBRICK

*Assembly Conference Committee*

MARK AMODEI

TERRY CARE

*Senate Conference Committee*

Conference Amendment No. CA35.

SUMMARY—Revises provisions relating to ~~the crime of stalking~~ crimes. (BDR 15-994)

AN ACT relating to crimes; revising provisions relating to the crime of stalking; revising provisions relating to the Nevada Clean Indoor Air Act; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

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) ~~[This bill adds]~~ Section 1 of this bill includes within the definition of the crime of stalking a course of conduct which would cause a reasonable person to feel fearful for the immediate safety of a member of the person's family or household and which actually causes a victim to feel such fear. Sections 1, 3 and 4 of this bill add text messaging to the existing crime of stalking with the use of a communication device, which is punishable as a category C felony.

The Nevada Clean Indoor Air Act, which is currently codified as NRS 202.2483, was proposed by an initiative petition and approved by the voters at the 2006 General Election and therefore is not subject to legislative amendment or repeal until after December 8, 2009. The Act generally prohibits the smoking of tobacco in certain locations, such as within indoor places of employment, within school buildings and on school property.

Section 1.5 of this bill revises the provisions of the Act by authorizing the smoking of tobacco in certain convention facilities during certain meetings and trade shows.

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~~ or fearful for the immediate safety of a family or household member, and that actually causes the victim to feel terrorized, frightened, intimidated, ~~or~~ harassed ~~or~~ or fearful for the immediate safety of a family or household member, 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 misdemeanor.

(b) For any subsequent offense, is guilty of a gross misdemeanor.

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, ~~for~~ 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. 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) **"Family or household member" means a spouse, a former spouse, a parent or other person who is related by blood or marriage or is or was actually residing with the person.**

(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 from a telephone or computer to another person's telephone or computer by addressing the communication to the recipient's telephone number.**

~~((f))~~ (g) "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. 1.5. NRS 202.2483 is hereby amended to read as follows:**

202.2483 1. Except as otherwise provided in subsection 3, smoking tobacco in any form is prohibited within indoor places of employment including, but not limited to, the following:

- (a) Child care facilities;
- (b) Movie theatres;
- (c) Video arcades;
- (d) Government buildings and public places;
- (e) Malls and retail establishments;
- (f) All areas of grocery stores; and
- (g) All indoor areas within restaurants.

2. Without exception, smoking tobacco in any form is prohibited within school buildings and on school property.

3. Smoking tobacco is not prohibited in:

- (a) Areas within casinos where loitering by minors is already prohibited by state law pursuant to NRS 463.350;
- (b) Stand-alone bars, taverns and saloons;
- (c) Strip clubs or brothels;
- (d) Retail tobacco stores; and
- (e) Private residences, including private residences which may serve as an office workplace, except if used as a child care, an adult day care or a health care facility ~~or~~; and

**(f) The area of a convention facility in which a meeting or trade show is being held, during the time the meeting or trade show is occurring, if the meeting or trade show:**

**(1) Is not open to the public;**

**(2) Is being produced or organized by a business relating to tobacco or a professional association for convenience stores; and**

**(3) Involves the display of tobacco products.**

4. In areas or establishments where smoking is not prohibited by this section, nothing in state law shall be construed to prohibit the owners of said establishments from voluntarily creating nonsmoking sections or designating the entire establishment as smoke free.

5. Nothing in state law shall be construed to restrict local control or otherwise prohibit a county, city or town from adopting and enforcing local tobacco control measures that meet or exceed the minimum applicable standards set forth in this section.

6. "No Smoking" signs or the international "No Smoking" symbol shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this section. Each public place and place of employment where smoking is prohibited shall post, at every entrance, a conspicuous sign clearly stating that smoking is prohibited. All

ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited.

7. Health authorities, police officers of cities or towns, sheriffs and their deputies shall, within their respective jurisdictions, enforce the provisions of this section and shall issue citations for violations of this section pursuant to NRS 202.2492 and NRS 202.24925.

8. No person or employer shall retaliate against an employee, applicant or customer for exercising any rights afforded by, or attempts to prosecute a violation of, this section.

9. For the purposes of this section, the following terms have the following definitions:

(a) "Casino" means an entity that contains a building or large room devoted to gambling games or wagering on a variety of events. A casino must possess a nonrestricted gaming license as described in NRS 463.0177 and typically uses the word 'casino' as part of its proper name.

(b) "Child care facility" has the meaning ascribed to it in NRS 432A.024.

(c) "Completely enclosed area" means an area that is enclosed on all sides by any combination of solid walls, windows or doors that extend from the floor to the ceiling.

(d) "Government building" means any building or office space owned or occupied by:

(1) Any component of the Nevada System of Higher Education and used for any purpose related to the System;

(2) The State of Nevada and used for any public purpose; or

(3) Any county, city, school district or other political subdivision of the State and used for any public purpose.

(e) "Health authority" has the meaning ascribed to it in NRS 202.2485.

(f) "Incidental food service or sales" means the service of prepackaged food items including, but not limited to, peanuts, popcorn, chips, pretzels or any other incidental food items that are exempt from food licensing requirements pursuant to subsection 2 of NRS 446.870.

(g) "Place of employment" means any enclosed area under the control of a public or private employer which employees frequent during the course of employment including, but not limited to, work areas, restrooms, hallways, employee lounges, cafeterias, conference and meeting rooms, lobbies and reception areas.

(h) "Public places" means any enclosed areas to which the public is invited or in which the public is permitted.

(i) "Restaurant" means a business which gives or offers for sale food, with or without alcoholic beverages, to the public, guests or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere.

(j) "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

(k) "School building" means all buildings on the grounds of any public school described in NRS 388.020 and any private school as defined in NRS 394.103.

(l) "School property" means the grounds of any public school described in NRS 388.020 and any private school as defined in NRS 394.103.

(m) "Stand-alone bar, tavern or saloon" means an establishment devoted primarily to the sale of alcoholic beverages to be consumed on the premises, in which food service is incidental to its operation, and provided that smoke from such establishments does not infiltrate into areas where smoking is prohibited under the provisions of this section. In addition, a stand-alone bar, tavern or saloon must be housed in either:

(1) A physically independent building that does not share a common entryway or indoor area with a restaurant, public place or any other indoor workplaces where smoking is prohibited by this section; or

(2) A completely enclosed area of a larger structure, such as a strip mall or an airport, provided that indoor windows must remain shut at all times and doors must remain closed when not actively in use.

(n) "Video arcade" has the meaning ascribed to it in paragraph (d) of subsection 3 of NRS 453.3345.

10. Any statute or regulation inconsistent with this section is null and void.

11. The provisions of this section are severable. If any provision of this section or the application thereof is declared by a court of competent jurisdiction to be invalid or unconstitutional, such declaration shall not affect the validity of the section as a whole or any provision thereof other than the part declared to be invalid or unconstitutional.

Sec. 2. (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, ~~for~~ 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, ~~for~~ 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.*

**Sec. 5. 1. This section and sections 1, 3 and 4 of this act become effective on October 1, 2009.**

**2. Section 1.5 of this act becomes effective on December 9, 2009.**

Assemblyman Anderson moved that the Assembly adopt the report of the Conference Committee concerning Assembly Bill No. 309.

Remarks by Assemblyman Anderson.

Motion carried by a constitutional majority.

*Madam Speaker:*

The Conference Committee concerning Senate Bill No. 295, consisting of the undersigned members, has met and reports that:

It has agreed to recommend that Amendment No. 932 of the Assembly be concurred in.

It has agreed to recommend that the bill be further amended as set forth in Conference Amendment No. 29, which is attached to and hereby made a part of this report.

KELVIN ATKINSON  
KATHY MCCLAIN

MAGGIE CARLTON  
STEVEN HORSFORD  
WARREN HARDY

*Assembly Conference Committee*

*Senate Conference Committee*

Conference Amendment No. CA29.

AN ACT relating to dentistry; providing certain exceptions from the list of persons deemed to be practicing dentistry; providing that certain acts are not precluded pursuant to the statutes governing dentistry; providing for the revocation of the state business license, under certain circumstances, of a person who manages the business of a dental practice, office or clinic; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law sets forth the acts which constitute the practice of dentistry and a list of related acts which may be performed by persons not licensed by the Board of Dental Examiners of Nevada. (NRS 631.215) **Section 5** of this bill revises that list to provide that a person may provide certain goods or services to a dental practice, office or clinic owned or operated by a licensed dentist or certain entities, with certain limitations.

**Section 2** of this bill provides that a person or entity is not precluded by the provisions of chapter 631 of NRS from providing certain goods or services to a dental practice, office or clinic.

**Section 3** of this bill provides that the contracting for, provision of and payment for certain goods or services to a dental practice, office or clinic under certain circumstances do not constitute violations of law or cause for disciplinary action under chapter 631 of NRS.

**Section 3.5 of this bill requires a person who provides management services to a dental practice, office or clinic to register certain information with the Board.**

Sections 4.5 and 6 of this bill provide for the revocation of the state business license of a person who manages the business of a dental practice, office or clinic if the person commits certain prohibited acts.

Section 4.7 of this bill revises the powers of the Board as they relate to the appointment of attorneys to authorize, but not require, the Attorney General, in his sole discretion, to serve as legal counsel for the Board at any time and in any and all matters.

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

Section 1. Chapter 631 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 4.5, inclusive, of this act.

Sec. 2. *Nothing in this chapter precludes a person or entity not licensed by the Board from providing goods or services for the support of the business of a dental practice, office or clinic if the person or entity does not manage or control the clinical practice of dentistry. Such goods and services may include, without limitation, transactions involving:*

1. Real and personal property, other than the ownership of the clinical records of patients; and

2. Personnel, other than licensed dentists and dental hygienists.

Sec. 3. 1. *It is not a violation of NRS 631.395, or an act of dishonorable or unprofessional conduct under NRS 631.346 to 631.349, inclusive, for a person described in paragraph (f) of subsection 2 of NRS 631.215 to provide, or receive payment for providing, goods or services in accordance with the conditions set forth in paragraph (f) of subsection 2 of NRS 631.215.*

2. *It is not a violation of NRS 631.346 for a dentist or a professional entity organized by a dentist pursuant to the provisions of chapter 89 of NRS to contract with a person described in and operating in accordance with the conditions set forth in paragraph (f) of subsection 2 of NRS 631.215.*

Sec. 3.5. A person who manages the business of a dental practice, office or clinic shall register with the Board:

1. The name and business address of the person;

2. The address of the dental practice, office or clinic of the business which the person manages; and

3. The names of the licensed dentist or other entity not prohibited from owning or operating a dental practice, office or clinic whose business the person manages.

Sec. 4. (Deleted by amendment.)

Sec. 4.5. 1. *If the Board determines that a person who provides goods or services for the support of the business of a dental practice, office or clinic has committed any act described in subparagraph (1) ~~for~~ or (2) ~~for~~ (3) of paragraph (f) of subsection 2 of NRS 631.215, the Board may seek revocation of any state business license held by that person by submitting a*

*request for such revocation to the ~~{Department}~~ Secretary of {Taxation} State.*

*2. Upon receipt of a request for a revocation of a state business license pursuant to subsection 1, the ~~{Department}~~ Secretary of {Taxation} State shall ~~{commence proceedings to}~~ revoke that license in accordance with the provisions of this section and in the manner provided in ~~{subsections 2, 3 and 4 of NRS 360.798}~~ section 18 of Assembly Bill No. 146 of this session as if the holder of the license had failed to comply with a provision of ~~{NRS 360.760}~~ sections 6 to ~~{360.798}~~ 18, inclusive. ~~{In addition to providing notice of a hearing to the holder of the license pursuant to NRS 360.798, the Department of Taxation shall provide notice of the hearing to the Board and allow the Board to show cause why the license should be revoked.}~~ of Assembly Bill No. 146 of this session.*

*3. The ~~{Department}~~ Secretary of {Taxation} State shall not issue a new license to the former holder of a state business license revoked pursuant to this section unless the ~~{Department}~~ Secretary of State receives notification from the Board that the Board is satisfied that the person:*

*(a) Will comply with any regulations of the Board adopted pursuant to the provisions of this chapter; and*

*(b) Will not commit any act described in subparagraph (1) ~~{or}~~ or (2) ~~{or}~~ ~~{3}~~ of paragraph (f) of subsection 2 of NRS 631.215 or any act prohibited by regulations of the Board adopted pursuant to the provisions of this chapter.*

*4. As used in this section, "state business license" has the meaning ascribed to it in ~~{NRS 360.773}~~ section 9 of Assembly Bill No. 146 of this session.*

**Sec. 4.7. NRS 631.190 is hereby amended to read as follows:**

631.190 In addition to the powers and duties provided in this chapter, the Board shall:

1. Adopt rules and regulations necessary to carry out the provisions of this chapter.

2. Appoint such committees, examiners, officers, employees, agents, attorneys, investigators and other professional consultants and define their duties and incur such expense as it may deem proper or necessary to carry out the provisions of this chapter, the expense to be paid as provided in this chapter. **Notwithstanding the provisions of this subsection, the Attorney General in his sole discretion may, but is not required to, serve as legal counsel for the Board at any time and in any and all matters.**

3. Fix the time and place for and conduct examinations for the granting of licenses to practice dentistry and dental hygiene.

4. Examine applicants for licenses to practice dentistry and dental hygiene.

5. Collect and apply fees as provided in this chapter.



6. Keep a register of all dentists and dental hygienists licensed in this State, together with their addresses, license numbers and renewal certificate numbers.

7. Have and use a common seal.

8. Keep such records as may be necessary to report the acts and proceedings of the Board. Except as otherwise provided in NRS 631.368, the records must be open to public inspection.

9. Maintain offices in as many localities in the State as it finds necessary to carry out the provisions of this chapter.

10. Have discretion to examine work authorizations in dental offices or dental laboratories.

Sec. 5. NRS 631.215 is hereby amended to read as follows:

631.215 1. Any person shall be deemed to be practicing dentistry who:

(a) Uses words or any letters or title in connection with his name which in any way represents him as engaged in the practice of dentistry, or any branch thereof;

(b) Advertises or permits to be advertised by any medium that he can or will attempt to perform dental operations of any kind;

(c) Diagnoses, professes to diagnose or treats or professes to treat any of the diseases or lesions of the oral cavity, teeth, gingiva or the supporting structures thereof;

(d) Extracts teeth;

(e) Corrects malpositions of the teeth or jaws;

(f) Takes impressions of the teeth, mouth or gums, unless the person is authorized by the regulations of the Board to engage in such activities without being a licensed dentist;

(g) Examines a person for, or supplies artificial teeth as substitutes for natural teeth;

(h) Places in the mouth and adjusts or alters artificial teeth;

(i) Does any practice included in the clinical dental curricula of accredited dental colleges or a residency program for those colleges;

(j) Administers or prescribes such remedies, medicinal or otherwise, as are needed in the treatment of dental or oral diseases;

(k) Uses X-ray radiation or laser radiation for dental treatment or dental diagnostic purposes, unless the person is authorized by the regulations of the Board to engage in such activities without being a licensed dentist;

(l) Determines:

(1) Whether a particular treatment is necessary or advisable; or

(2) Which particular treatment is necessary or advisable; or

(m) Dispenses tooth whitening agents or undertakes to whiten or bleach teeth by any means or method, unless the person is:

(1) Dispensing or using a product that may be purchased over the counter for a person's own use; or

(2) Authorized by the regulations of the Board to engage in such activities without being a licensed dentist.

2. Nothing in this section:

(a) Prevents a dental assistant, dental hygienist or qualified technician from making radiograms or X-ray exposures or using X-ray radiation or laser radiation for dental treatment or dental diagnostic purposes upon the direction of a licensed dentist.

(b) Prohibits the performance of mechanical work, on inanimate objects only, by any person employed in or operating a dental laboratory upon the written work authorization of a licensed dentist.

(c) Prevents students from performing dental procedures that are part of the curricula of an accredited dental school or college or an accredited school of dental hygiene or an accredited school of dental assisting.

(d) Prevents a licensed dentist or dental hygienist from another state or country from appearing as a clinician for demonstrating certain methods of technical procedures before a dental society or organization, convention or dental college or an accredited school of dental hygiene or an accredited school of dental assisting.

(e) Prohibits the manufacturing of artificial teeth upon receipt of a written authorization from a licensed dentist if the manufacturing does not require direct contact with the patient.

(f) *Prohibits a person from providing goods or services for the support of the business of a dental practice, office or clinic owned or operated by a licensed dentist or any entity not prohibited from owning or operating a dental practice, office or clinic if the person does not:*

(1) *Provide such goods or services in exchange for payments based on a percentage or share of revenues or profits of the dental practice, office or clinic; or*

(2) ~~*Share in the profits or revenue of the dental practice, office or clinic; or*~~

~~*(3) Exercise any authority or control over the clinical practice of dentistry.*~~

3. *The Board shall adopt regulations identifying activities that constitute the exercise of authority or control over the clinical practice of dentistry, including, without limitation, activities which:*

(a) *Exert authority or control over the clinical judgment of a licensed dentist; or*

(b) *Relieve a licensed dentist of responsibility for the clinical aspects of the dental practice.*

*↳ Such regulations must not prohibit or regulate aspects of the business relationship, other than the clinical practice of dentistry, between a licensed dentist or professional entity organized pursuant to the provisions of chapter 89 of NRS and the person or entity providing goods or services for the support of the business of a dental practice, office or clinic owned or operated by the licensed dentist or professional entity.*

Sec. 6. ~~*NRS 360.798 is hereby amended to read as follows:*~~

~~*360.798 1. If a person who holds a state business license fails to comply with a provision of NRS 360.760 to 360.798, inclusive, or a*~~

~~regulation of the Department adopted pursuant thereto, the Department may revoke or suspend the state business license of the person.~~

~~2. Before [so doing,] **revoking or suspending the state business license of a person**, the Department must hold a hearing after 10 days' written notice to the licensee. The notice must specify the time and place of the hearing and require the licensee to show cause why his license should not be revoked.~~

~~[2.] 3. If the license is suspended or revoked, the Department shall give written notice of the action to the person who holds the state business license.~~

~~[3.] 4. The notices required by this section may be served personally or by mail in the manner provided in NRS 360.350 for the service of a notice of the determination of a deficiency.~~

~~[4.] 5. The Department shall not issue a new license to the former holder of a revoked state business license unless the Department is satisfied that the person will comply with the provisions of this chapter and the regulations of the Department adopted pursuant thereto.] **(Deleted by amendment.)**~~

Assemblyman Atkinson moved that the Assembly adopt the report of the Conference Committee concerning Senate Bill No. 295.

Remarks by Assemblyman Atkinson.

Motion carried by a constitutional majority.

*Madam Speaker:*

The Conference Committee concerning Senate Bill No. 269, consisting of the undersigned members, has met and reports that:

It has agreed to recommend that Amendment Nos. 783 and 905 of the Assembly be concurred in.

It has agreed to recommend that the bill be further amended as set forth in Conference Amendment No. 21, which is attached to and hereby made a part of this report.

DEBBIE SMITH  
BERNIE ANDERSON  
JOE HARDY

*Assembly Conference Committee*

ALLISON OPENING

DEAN RHODS

*Senate Conference Committee*

Conference Amendment No. CA21.

AN ACT relating to professions; requiring a provider of health care to disclose the results of certain tests to a designated investigator or member of the State Board of Osteopathic Medicine; providing for the licensure of perfusionists; prohibiting a person from engaging in the practice of perfusion without a license issued by the Board of Medical Examiners; providing for the immediate suspension of a license to practice medicine upon the conviction of the holder of the license of certain violations; expanding the ~~definition~~ **definitions** of "practice of medicine" **and "practice of osteopathic medicine"** to include the performance of an autopsy; revising other provisions governing the issuance of a license to practice medicine by the Board of Medical Examiners; authorizing any person to file with the Board a complaint against a physician, perfusionist, physician assistant or practitioner of respiratory care under certain circumstances; revising

provisions governing osteopathic medicine and psychologists; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill makes extensive changes to existing law governing the practice of medicine and osteopathic medicine. This bill also provides for the licensing and regulation of perfusionists by the Board of Medical Examiners. A perfusionist is a medical professional who, under the order and supervision of a physician, performs various medical functions to ensure the safe management of a patient's cardiovascular, circulatory or respiratory system or other organs during surgical and other medical procedures. **Sections 1, 3-13, 15, 16, 19-21, 24, 29, 33, 34, 39, 45, 46, 50-52, 55, 59-65, 70 and 79-85** of this bill amend various provisions of NRS to ensure that perfusionists are licensed and regulated by the Board of Medical Examiners in approximately the same manner as physicians, physician assistants and practitioners of respiratory care. (NRS 629.031, 630.003, 630.005, 630.045, 630.047, 630.120, 630.137, 630.167, 630.197, 630.268, 630.307, 630.309, 630.326, 630.329, 630.336, 630.346, 630.358, 630.366, 630.388, 630.390, 630.400, 630A.090, 632.472, 633.171, 652.210, 200.471, 200.5093, 200.50935, 372.7285, 374.731, 432B.220)

This bill also makes various changes relating to the Board of Medical Examiners and the practice of medicine. **Section 14** of this bill adds a new section to chapter 630 of NRS that provides for the immediate suspension of a license issued by the Board upon the conviction of the licensee of a felony for a violation of a federal or state law or regulation relating to his practice. **Section 17** of this bill expands the definition of "practice of medicine" to include the performance of an autopsy. (NRS 630.020) **Section 18** of this bill deletes existing provisions of law that authorize the Board to revoke a license only in accordance with certain provisions. (NRS 630.045) **Section 22** of this bill changes the fiscal year for the Board to commence on January 1 and end on December 31. (NRS 630.123) **Section 25** of this bill authorizes the Executive Director of the Board to sign subpoenas issued in connection with hearings and investigations conducted by the Board. (NRS 630.140) **Sections 26-28, 30-32 and 35** of this bill make various changes concerning the requirements for the issuance of licenses by the Board, including the information required to be submitted for a license, the submission of the fingerprints of the applicant and the appeal of a denial of an application. (NRS 630.160, 630.1605, 630.167, 630.170, 630.173, 630.195, 630.200) **Sections 13.5 and 36-38** of this bill revise certain categories of licenses issued by the Board, including the issuance of a special volunteer medical license to a physician who participates in disaster relief operations and the issuance of an authorized facility license. (NRS 630.258, 630.261, 630.262) **Section 40** of this bill requires a person who wishes to practice respiratory care to complete an educational program for respiratory care approved by the Commission on Accreditation of Allied Health Education Programs or the Committee on Accreditation for Respiratory Care. (NRS 630.277) **Sections**

**41-45, 47-49, 53, 54, 57 and 58** of this bill make numerous changes concerning the investigation of complaints against licensees, the grounds for the imposition of disciplinary action and the procedures to be followed in disciplinary proceedings. (NRS 630.299, 630.306, 630.3062, 630.307, 630.311, 630.318, 630.326, 630.339, 630.342, 630.352, 630.356)

**Sections 66-78** of this bill make similar changes relating to the State Board of Osteopathic Medicine and the practice of osteopathy. **Section 66.1 includes the performance of an autopsy within the definition of the “practice of osteopathic medicine.” Sections 66.3, 66.5 and 66.7 authorize the issuance of certain categories of licenses by the Board, including a special volunteer license to practice osteopathic medicine to an osteopathic physician who participates in disaster relief operations and an authorized facility license.** **Section 67** adds a new section to chapter 633 of NRS which authorizes the Board or an investigative committee of the Board to issue to a person who violates or is violating the provisions of that chapter a letter of warning, a letter of concern or a nonpunitive admonishment. **Section 68** also adds a new section to that chapter which establishes the standard of proof in disciplinary proceedings that are conducted pursuant to that chapter. **Sections 69-78** make various changes concerning unprofessional conduct, the requirements for licensure to practice osteopathic medicine, examinations, the grounds for disciplinary action and the imposition of penalties after a disciplinary proceeding. (NRS 633.131, 633.171, 633.322, 633.331, 633.411, 633.511, 633.561, 633.625, 633.651, 633.691)

**Section 78.1** of this bill defines “national examination” to mean the Examination for Professional Practice in Psychology in the form administered by the Association of State and Provincial Psychology Boards and approved for use in this State by the Board of Psychological Examiners.

**Section 78.3** of this bill revises the requirements for an application for a license to practice psychology in this State to add the submission of a complete set of fingerprints and written permission authorizing the Board of Psychological Examiners to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report or verification that the set of fingerprints was directly forwarded to the Central Repository by the entity taking the prints.

Existing law provides that the Board of Psychological Examiners may require an applicant for a license to pass an oral examination in whatever applied or theoretical fields it deems appropriate, in addition to a written examination. **Section 78.4** of this bill eliminates: (1) the requirement that the additional examination be conducted orally; (2) the provisions relating to the frequency, time, location and supervision of the examination; (3) the requirement that the Board supply each applicant with a copy of the results of his written examination provided to the Board by the Association; and (4) the

right of the applicant to request that the Board review his examination if he fails the examination.

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

**Section 1. NRS 622.100 is hereby amended to read as follows:**

622.100 1. Each regulatory body shall, on or before the 20th day of January, April, July and October, submit to the Director of the Legislative Counsel Bureau in an electronic format prescribed by the Director:

(a) A summary of each disciplinary action taken by the regulatory body during the immediately preceding calendar quarter against any licensee of the regulatory body; and

(b) A report that includes:

(1) The number of licenses issued by the regulatory body during the immediately preceding calendar quarter; and

(2) Any other information that is requested by the Director or which the regulatory body determines would be helpful to the Legislature in evaluating whether the continued existence of the regulatory body is necessary.

2. *In addition to the information required pursuant to subsection 1, the Board of Medical Examiners and the State Board of Osteopathic Medicine shall further submit the number and types of remediation agreements each has approved pursuant to NRS 630.299 and section 67 of this act, respectively, at the same time and in the format prescribed by the Director pursuant to subsection 1.*

3. The Director shall:

(a) Provide any information he receives pursuant to subsection 1 or 2 to a member of the public upon request;

(b) Cause a notice of the availability of such information to be posted on the public website of the Nevada Legislature on the Internet; and

(c) Transmit a compilation of the information he receives pursuant to ~~subsection 1~~ subsections 1 and 2 to the Legislative Commission quarterly, unless otherwise directed by the Commission.

~~3.~~ 4. The Director, on or before the first day of each regular session of the Legislature and at such other times as directed, shall compile the reports he has received pursuant to paragraph (b) of subsection 1 and the information he has received pursuant to subsection 2 and distribute copies of the compilation to the Senate Standing Committee on Commerce and Labor and the Assembly Standing Committee on Commerce and Labor, each of which shall review the compilation to determine whether the continued existence of each regulatory body is necessary.

**Sec. 1.3. NRS 622.100 is hereby amended to read as follows:**

622.100 1. Each regulatory body shall, on or before the 20th day of January, April, July and October, submit to the Director of the Legislative Counsel Bureau in an electronic format prescribed by the Director:

(a) A summary of each disciplinary action taken by the regulatory body during the immediately preceding calendar quarter against any licensee of the regulatory body; and

(b) A report that includes:

(1) The number of licenses issued by the regulatory body during the immediately preceding calendar quarter; and

(2) Any other information that is requested by the Director or which the regulatory body determines would be helpful to the Legislature in evaluating whether the continued existence of the regulatory body is necessary.

~~2. [In addition to the information required pursuant to subsection 1, the Board of Medical Examiners and the State Board of Osteopathic Medicine shall further submit the number and types of remediation agreements each has approved pursuant to NRS 630.299 and section 67 of this act, respectively, at the same time and in the format prescribed by the Director pursuant to subsection 1.~~

~~3.]~~ The Director shall:

(a) Provide any information he receives pursuant to subsection 1 or 2 to a member of the public upon request;

(b) Cause a notice of the availability of such information to be posted on the public website of the Nevada Legislature on the Internet; and

(c) Transmit a compilation of the information he receives pursuant to ~~[subsections]~~ **subsection 1** ~~[and 2]~~ to the Legislative Commission quarterly, unless otherwise directed by the Commission.

3. The Director, on or before the first day of each regular session of the Legislature and at such other times as directed, shall compile the reports he has received pursuant to paragraph (b) of subsection 1 ~~[and the information he has received pursuant to subsection 2]~~ and distribute copies of the compilation to the Senate Standing Committee on Commerce and Labor and the Assembly Standing Committee on Commerce and Labor, each of which shall review the compilation to determine whether the continued existence of each regulatory body is necessary.

~~[Section 1.]~~ **Sec. 1.7.** NRS 629.031 is hereby amended to read as follows:

629.031 Except as otherwise provided by **a** specific statute:

1. "Provider of health care" means a physician licensed pursuant to chapter 630, 630A or 633 of NRS, dentist, licensed nurse, dispensing optician, optometrist, practitioner of respiratory care, registered physical therapist, podiatric physician, licensed psychologist, licensed marriage and family therapist, chiropractor, athletic trainer, **perfusionist**, doctor of Oriental medicine in any form, medical laboratory director or technician, pharmacist or a licensed hospital as the employer of any such person.

2. For the purposes of NRS 629.051, 629.061 and 629.065, the term includes a facility that maintains the health care records of patients.

Sec. 2. NRS 629.069 is hereby amended to read as follows:

629.069 1. A provider of health care shall disclose the results of all tests performed pursuant to NRS 441A.195 to:

(a) The person who was tested and, upon request, a member of the family of a decedent who was tested;

(b) The law enforcement officer, correctional officer, emergency medical attendant, firefighter, county coroner or medical examiner or their employee, other person who is employed by an agency of criminal justice or other public employee whose duties may require him to come into contact with human blood or bodily fluids who filed the petition or on whose behalf the petition was filed pursuant to NRS 441A.195;

(c) The designated health care officer for the employer of the person described in paragraph (b) or, if there is no designated health care officer, the person designated by the employer to document and verify possible exposure to contagious diseases; [and]

(d) If the person who was tested is incarcerated or detained, the person in charge of the facility in which the person is incarcerated or detained and the chief medical officer of the facility in which the person is incarcerated or detained, if any ~~[-]~~; *and*

(e) *A designated investigator or member of the State Board of Osteopathic Medicine during any period in which the Board is investigating the holder of a license pursuant to chapter 633 of NRS.*

2. A provider of health care and an agent or employee of a provider of health care are immune from civil liability for a disclosure made in accordance with the provisions of this section.

Sec. 3. Chapter 630 of NRS is hereby amended by adding thereto the provisions set forth as sections 4 to 14, inclusive, of this act.

Sec. 4. *1. "Perfusion" means the performance of functions which are necessary to provide for the support, treatment, measurement or supplementation of a patient's cardiovascular, circulatory or respiratory system or other organs, or any combination of those activities, and to ensure the safe management of the patient's physiological functions by monitoring and analyzing the parameters of the patient's systems or organs under the order and supervision of a physician.*

*2. The term includes, without limitation:*

*(a) The use of extracorporeal circulation and any associated therapeutic and diagnostic technologies; and*

*(b) The use of long-term cardiopulmonary support techniques.*

*3. As used in this section, "extracorporeal circulation" means the diversion of a patient's blood through a heart-lung bypass machine or a similar device that assumes the functions of the patient's heart, lungs, kidney, liver or other organs.*

*Sec. 5. "Perfusionist" means a person who is licensed to practice perfusion by the Board.*



Sec. 6. *"Temporarily licensed perfusionist" means a person temporarily licensed to practice perfusion by the Board pursuant to section 13 of this act.*

Sec. 7. *The Board shall adopt regulations regarding the licensure of perfusionists, including, without limitation:*

1. *The criteria for licensure as a perfusionist and the standards of professional conduct for holders of such a license;*

2. *The qualifications and fitness of applicants for licenses, renewal of licenses and reciprocal licenses;*

3. *The requirements for any practical, oral or written examination for a license that the Board may require pursuant to section 9 of this act, including, without limitation, the passing grade for such an examination;*

4. *The fees for examination and for reinstatement of expired licenses;*

5. *The requirements for continuing education for the renewal of a license;*

6. *A code of ethics for perfusionists; and*

7. *The procedures for the revocation, suspension or denial of a license for a violation of this chapter or the regulations of the Board.*

Sec. 8. *To be eligible for licensing by the Board as a perfusionist, an applicant must:*

1. *Be a natural person of good moral character;*

2. *Submit a completed application as required by the Board by the date established by the Board;*

3. *Submit any required fees by the date established by the Board;*

4. *Have successfully completed a perfusion education program approved by the Board, which must:*

(a) *Have been approved by the Committee on Allied Health Education and Accreditation of the American Medical Association before June 1, 1994; or*

(b) *Be a program that has educational standards that are at least as stringent as those established by the Accreditation Committee-Perfusion Education and approved by the Commission on Accreditation of Allied Health Education Programs of the American Medical Association, or its successor;*

5. *Pass an examination required pursuant to section 9 of this act; and*

6. *Comply with any other requirements set by the Board.*

Sec. 9. 1. *The Board shall use the certification examinations given by the American Board of Cardiovascular Perfusion or its successor in determining the qualifications for granting a license to practice perfusion.*

2. *The Board shall notify each applicant of the results of the examination.*

3. *If a person who fails the examination makes a written request, the Board shall furnish the person with an analysis of his performance on the examination.*

Sec. 10. *The Board shall waive the examination required pursuant to section 9 of this act for an applicant who at the time of application:*

1. *Is licensed as a perfusionist in another state, territory or possession of the United States, if the requirements for licensure are substantially similar to those required by the Board; or*

2. *Holds a current certificate as a certified clinical perfusionist issued by the American Board of Cardiovascular Perfusion or its successor before October 1, 2009.*

Sec. 11. 1. *The Board shall issue a license as a perfusionist to each applicant who proves to the satisfaction of the Board that the applicant is qualified for licensure. The license authorizes the applicant to represent himself as a licensed perfusionist and to practice perfusion in this State subject to the conditions and limitations of this chapter.*

2. *Each licensed perfusionist shall:*

(a) *Display his current license in a location which is accessible to the public;*

(b) *Keep a copy of his current license on file at any health care facility where he provides services; and*

(c) *Notify the Board of any change of address in accordance with NRS 630.254.*

3. *As used in this section, "health care facility" means a medical facility or facility for the dependent licensed pursuant to chapter 449 of NRS.*

Sec. 12. 1. *Each license issued pursuant to section 11 of this act expires on July 1 of every odd-numbered year and may be renewed if, before the license expires, the holder of the license submits to the Board:*

(a) *A completed application for renewal on a form prescribed by the Board;*

(b) *Proof of his completion of the requirements for continuing education prescribed by regulations adopted by the Board pursuant to section 7 of this act; and*

(c) *The applicable fee for renewal of the license prescribed by the Board pursuant to section 8 of this act.*

2. *A license that expires pursuant to this section not more than 2 years before an application for renewal is made is automatically suspended and may be reinstated only if the applicant:*

(a) *Complies with the provisions of subsection 1; and*

(b) *Submits to the Board the fees:*

(1) *For the reinstatement of an expired license, prescribed by regulations adopted by the Board pursuant to section 7 of this act; and*

(2) *For each biennium that the license was expired, for the renewal of the license.*

3. *If a license has been expired for more than 2 years, a person may not renew or reinstate the license but must apply for a new license and submit to the examination required pursuant to section 9 of this act.*

4. The Board shall send a notice of renewal to each licensee not later than 60 days before his license expires. The notice must include the amount of the fee for renewal of the license.

Sec. 13. 1. The Board may issue a temporary license to practice perfusion in this State to a person who has not yet completed the examination required pursuant to section 9 of this act but who:

- (a) Has completed an approved perfusion education program;
- (b) Files an application; and
- (c) Pays the required fee.

2. A perfusionist shall supervise and direct a temporarily licensed perfusionist at all times during which the temporarily licensed perfusionist performs perfusion.

3. A temporary license is valid for 1 year after the date it is issued and may be extended subject to regulation by the Board. The application for renewal must be signed by a supervising licensed perfusionist.

4. If a temporarily licensed perfusionist fails any portion of the examination required pursuant to section 9 of this act, he shall immediately surrender the temporary license to the Board.

Sec. 13.5. 1. Except as otherwise provided in NRS 630.161, the Board may issue an authorized facility license to a person who intends to practice medicine in this State as a physician in an institution of the Department of Corrections under the direct supervision of a physician who holds an unrestricted license to practice medicine pursuant to this chapter or to practice osteopathic medicine pursuant to chapter 633 of NRS.

2. A person who applies for an authorized facility license pursuant to this section is not required to take or pass a written examination as to his qualifications to practice medicine pursuant to paragraph (e) of subsection 2 of NRS 630.160, but the person must meet all other conditions and requirements for an unrestricted license to practice medicine pursuant to this chapter.

3. If the Board issues an authorized facility license pursuant to this section, the person who holds the license may practice medicine in this State only as a physician in an institution of the Department of Corrections and only under the direct supervision of a physician who holds an unrestricted license to practice medicine pursuant to this chapter or to practice osteopathic medicine pursuant to chapter 633 of NRS.

4. If a person who holds an authorized facility license issued pursuant to this section ceases to practice medicine in this State as a physician in an institution of the Department of Corrections:

- (a) The Department shall notify the Board; and
- (b) Upon receipt of the notification, the authorized facility license expires automatically.

5. The Board may renew or modify an authorized facility license issued pursuant to this section, unless the license has expired automatically or has been revoked.

**6. The provisions of this section do not limit the authority of the Board to issue a license to an applicant in accordance with any other provision of this chapter.**

Sec. 14. *If the holder of a license that is issued or renewed pursuant to this chapter is convicted of a felony for a violation of any federal or state law or regulation relating to the holder's practice, the conviction operates as an immediate suspension of the license.*

Sec. 15. NRS 630.003 is hereby amended to read as follows:

630.003 1. The Legislature finds and declares that:

(a) It is among the responsibilities of State Government to ensure, as far as possible, that only competent persons practice medicine , *perfusion* and respiratory care within this State;

(b) For the protection and benefit of the public, the Legislature delegates to the Board of Medical Examiners the power and duty to determine the initial and continuing competence of physicians, *perfusionists*, physician assistants and practitioners of respiratory care who are subject to the provisions of this chapter;

(c) The Board must exercise its regulatory power to ensure that the interests of the medical profession do not outweigh the interests of the public;

(d) The Board must ensure that unfit physicians, *perfusionists*, physician assistants and practitioners of respiratory care are removed from the medical profession so that they will not cause harm to the public; and

(e) The Board must encourage and allow for public input into its regulatory activities to further improve the quality of medical practice within this State.

2. The powers conferred upon the Board by this chapter must be liberally construed to carry out these purposes for the protection and benefit of the public.

Sec. 16. NRS 630.005 is hereby amended to read as follows:

630.005 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 630.007 to 630.025, inclusive, *and sections 4, 5 and 6 of this act* have the meanings ascribed to them in those sections.

Sec. 17. NRS 630.020 is hereby amended to read as follows:

630.020 "Practice of medicine" means:

1. To diagnose, treat, correct, prevent or prescribe for any human disease, ailment, injury, infirmity, deformity or other condition, physical or mental, by any means or instrumentality ~~[-]~~ , *including, but not limited to, the performance of an autopsy.*

2. To apply principles or techniques of medical science in the diagnosis or the prevention of any such conditions.

3. To perform any of the acts described in subsections 1 and 2 by using equipment that transfers information concerning the medical condition of the patient electronically, telephonically or by fiber optics.

4. To offer, undertake, attempt to do or hold oneself out as able to do any of the acts described in subsections 1 and 2.

Sec. 18. NRS 630.045 is hereby amended to read as follows:

630.045 1. The purpose of licensing physicians, physician assistants and practitioners of respiratory care is to protect the public health and safety and the general welfare of the people of this State.

2. Any license issued pursuant to this chapter is a revocable privilege. ~~but the Board may revoke such a license only in accordance with the provisions of NRS 630.348.]~~

Sec. 19. NRS 630.045 is hereby amended to read as follows:

630.045 1. The purpose of licensing physicians, *perfusionists*, physician assistants and practitioners of respiratory care is to protect the public health and safety and the general welfare of the people of this State.

2. Any license issued pursuant to this chapter is a revocable privilege.

Sec. 20. NRS 630.047 is hereby amended to read as follows:

630.047 1. This chapter does not apply to:

(a) A medical officer or *perfusionist or* practitioner of respiratory care of the Armed Services or a medical officer or *perfusionist or* practitioner of respiratory care of any division or department of the United States in the discharge of his official duties;

(b) Physicians who are called into this State, other than on a regular basis, for consultation with or assistance to a physician licensed in this State, and who are legally qualified to practice in the state where they reside;

(c) Physicians who are legally qualified to practice in the state where they reside and come into this State on an irregular basis to:

(1) Obtain medical training approved by the Board from a physician who is licensed in this State; or

(2) Provide medical instruction or training approved by the Board to physicians licensed in this State;

(d) Any person permitted to practice any other healing art under this title who does so within the scope of that authority, or healing by faith or Christian Science;

(e) The practice of respiratory care by a student as part of a program of study in respiratory care that is approved by the Board, or is recognized by a national organization which is approved by the Board to review such programs, if the student is enrolled in the program and provides respiratory care only under the supervision of a practitioner of respiratory care;

(f) The practice of respiratory care by a student who:

(1) Is enrolled in a clinical program of study in respiratory care which has been approved by the Board;

(2) Is employed by a medical facility, as defined in NRS 449.0151; and

(3) Provides respiratory care to patients who are not in a critical medical condition or, in an emergency, to patients who are in a critical medical condition and a practitioner of respiratory care is not immediately available to provide that care and the student is directed by a physician to provide

respiratory care under his supervision until a practitioner of respiratory care is available;

(g) The practice of respiratory care by a person on himself or gratuitous respiratory care provided to a friend or a member of a person's family if the provider of the care does not represent himself as a practitioner of respiratory care;

~~(h) A cardiopulmonary perfusionist who is under the supervision of a surgeon or an anesthesiologist;~~

~~(i) A~~ person who is employed by a physician and provides respiratory care **or services as a perfusionist** under the supervision of that physician;

~~[(i)]~~ (i) The maintenance of medical equipment for **perfusion or** respiratory care that is not attached to a patient; and

~~[(k)]~~ (j) A person who installs medical equipment for respiratory care that is used in the home and gives instructions regarding the use of that equipment if the person is trained to provide such services and is supervised by a provider of health care who is acting within the authorized scope of his practice.

2. This chapter does not repeal or affect any statute of Nevada regulating or affecting any other healing art.

3. This chapter does not prohibit:

(a) Gratuitous services outside of a medical school or medical facility by a person who is not a physician, **perfusionist**, physician assistant or practitioner of respiratory care in cases of emergency.

(b) The domestic administration of family remedies.

Sec. 21. NRS 630.120 is hereby amended to read as follows:

630.120 1. The Board shall procure a seal.

2. All licenses issued to physicians, **perfusionists**, physician assistants and practitioners of respiratory care must bear the seal of the Board and the signatures of its President and Secretary-Treasurer.

Sec. 22. NRS 630.123 is hereby amended to read as follows:

630.123 The Board shall operate on the basis of a fiscal year commencing on ~~July~~ **January** 1 and terminating on ~~June 30~~ **December 31**.

Sec. 23. NRS 630.130 is hereby amended to read as follows:

630.130 1. In addition to the other powers and duties provided in this chapter, the Board shall, in the interest of the public, judiciously:

(a) Enforce the provisions of this chapter;

(b) Establish by regulation standards for licensure under this chapter;

(c) Conduct examinations for licensure and establish a system of scoring for those examinations;

(d) Investigate the character of each applicant for a license and issue licenses to those applicants who meet the qualifications set by this chapter and the Board; and

(e) Institute a proceeding in any court to enforce its orders or the provisions of this chapter.

2. On or before February 15 of each odd-numbered year, the Board shall 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:

(a) Disciplinary action taken by the Board during the previous biennium against physicians for malpractice or negligence;

(b) *The number and types of remediation agreements approved by the Board pursuant to NRS 630.299;*

(c) Information reported to the Board during the previous biennium pursuant to NRS 630.3067, 630.3068, subsections ~~{2}~~ 3 and ~~{3}~~ 4 of NRS 630.307 and NRS 690B.250 and 690B.260; and

~~{(c)}~~ (d) Information reported to the Board during the previous biennium pursuant to NRS 630.30665, including, without limitation, the number and types of surgeries performed by each holder of a license to practice medicine and the occurrence of sentinel events arising from such surgeries, if any.

➤ The report must include only aggregate information for statistical purposes and exclude any identifying information related to a particular person.

3. *On or before February 15 of each odd-numbered year, the Board shall submit to the Legislative Commission a written report compiling the information described in paragraphs (a) and (b) of subsection 2.*

4. The Board may adopt such regulations as are necessary or desirable to enable it to carry out the provisions of this chapter.

**Sec. 23.5. NRS 630.130 is hereby amended to read as follows:**

630.130 1. In addition to the other powers and duties provided in this chapter, the Board shall, in the interest of the public, judiciously:

(a) Enforce the provisions of this chapter;

(b) Establish by regulation standards for licensure under this chapter;

(c) Conduct examinations for licensure and establish a system of scoring for those examinations;

(d) Investigate the character of each applicant for a license and issue licenses to those applicants who meet the qualifications set by this chapter and the Board; and

(e) Institute a proceeding in any court to enforce its orders or the provisions of this chapter.

2. On or before February 15 of each odd-numbered year, the Board shall 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:

(a) Disciplinary action taken by the Board during the previous biennium against physicians for malpractice or negligence;

(b) ~~{The number and types of remediation agreements approved by the Board pursuant to NRS 630.299;~~

~~{(c)}~~ Information reported to the Board during the previous biennium pursuant to NRS 630.3067, 630.3068, subsections 3 and 4 of NRS 630.307 and NRS 690B.250 and 690B.260; and

~~[(d)]~~ (c) Information reported to the Board during the previous biennium pursuant to NRS 630.30665, including, without limitation, the number and types of surgeries performed by each holder of a license to practice medicine and the occurrence of sentinel events arising from such surgeries, if any.

➤ The report must include only aggregate information for statistical purposes and exclude any identifying information related to a particular person.

3. ~~[On or before February 15 of each odd-numbered year, the Board shall submit to the Legislative Commission a written report compiling the information described in paragraphs (a) and (b) of subsection 2.]~~

4.] The Board may adopt such regulations as are necessary or desirable to enable it to carry out the provisions of this chapter.

Sec. 24. NRS 630.137 is hereby amended to read as follows:

630.137 1. Notwithstanding any other provision of law and except as otherwise provided in this section, the Board shall not adopt any regulations that prohibit or have the effect of prohibiting a physician, *perfusionist*, physician assistant or practitioner of respiratory care from collaborating or consulting with another provider of health care.

2. The provisions of this section do not prevent the Board from adopting regulations that prohibit a physician, *perfusionist*, physician assistant or practitioner of respiratory care from aiding or abetting another person in the unlicensed practice of medicine or the unlicensed practice of *perfusion or* respiratory care.

3. As used in this section, “provider of health care” has the meaning ascribed to it in NRS 629.031.

Sec. 25. NRS 630.140 is hereby amended to read as follows:

630.140 1. The Board may hold hearings and conduct investigations pertaining to its duties imposed under this chapter and take evidence on any such matter under inquiry before the Board. For the purposes of this chapter:

(a) Any member of the Board or other person authorized by law may administer oaths; and

(b) The Secretary-Treasurer or President of the Board or a hearing officer or the presiding member of a committee investigating a complaint, *but not the Executive Director acting on his own behalf*, may issue subpoenas to compel the attendance of witnesses and the production of books, X rays, ~~[and]~~ medical records and ~~[other papers]~~ ~~[and tangible items.]~~ *any other item within the scope of Rule 45 of the Nevada Rules of Civil Procedure.* The Secretary-Treasurer, President or other officer of the Board acting on its behalf *or the Executive Director* must sign the subpoena.

2. If any person fails to comply with the subpoena, ~~[within 10 days after its issuance,]~~ the Secretary-Treasurer, *Executive Director* or President of the Board may petition the district court for an order of the court compelling compliance with the subpoena.

3. Upon such a petition, the court shall enter an order directing the person subpoenaed 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 complied with the subpoena. A certified copy of the order must be served upon the person subpoenaed.

4. If it appears to the court that the subpoena was regularly issued by the Board, the court shall enter an order compelling compliance with the subpoena, and upon failure to obey the order the person shall be dealt with as for contempt of court.

Sec. 26. NRS 630.160 is hereby amended to read as follows:

630.160 1. Every person desiring to practice medicine must, before beginning to practice, procure from the Board a license authorizing him to practice.

2. Except as otherwise provided in NRS 630.1605, 630.161 and 630.258 to 630.265, inclusive, a license may be issued to any person who:

(a) Is a citizen of the United States or is lawfully entitled to remain and work in the United States;

(b) Has received the degree of doctor of medicine from a medical school:

(1) Approved by the Liaison Committee on Medical Education of the American Medical Association and Association of American Medical Colleges; or

(2) Which provides a course of professional instruction equivalent to that provided in medical schools in the United States approved by the Liaison Committee on Medical Education;

(c) Is currently certified by a specialty board of the American Board of Medical Specialties and who agrees to maintain the certification for the duration of his licensure, or has passed:

(1) All parts of the examination given by the National Board of Medical Examiners;

(2) All parts of the Federation Licensing Examination;

(3) All parts of the United States Medical Licensing Examination;

(4) All parts of a licensing examination given by any state or territory of the United States, if the applicant is certified by a specialty board of the American Board of Medical Specialties;

(5) All parts of the examination to become a licentiate of the Medical Council of Canada; or

(6) Any combination of the examinations specified in subparagraphs (1), (2) and (3) that the Board determines to be sufficient;

(d) Is currently certified by a specialty board of the American Board of Medical Specialties in the specialty of emergency medicine, preventive medicine or family practice and who agrees to maintain certification in at least one of these specialties for the duration of his licensure, or:

(1) Has completed 36 months of progressive postgraduate:

(I) Education as a resident in the United States or Canada in a program approved by the Board, the Accreditation Council for Graduate Medical Education or the Coordinating Council of Medical Education of the Canadian Medical Association; or

(II) Fellowship training in the United States or Canada approved by the Board or the Accreditation Council for Graduate Medical Education; or

(2) Has completed at least 36 months of postgraduate education, not less than 24 months of which must have been completed as a resident after receiving a medical degree from a combined dental and medical degree program approved by the Board; and

(e) Passes a written or oral examination, or both, as to his qualifications to practice medicine and provides the Board with a description of the clinical program completed demonstrating that the applicant's clinical training met the requirements of paragraph (b).

**3. *The Board may issue a license to practice medicine after the Board verifies, through any readily available source, that the applicant has complied with the provisions of subsection 2. The verification may include, but is not limited to, using the Federation Credentials Verification Service. If any information is verified by a source other than the primary source of the information, the Board may require subsequent verification of the information by the primary source of the information.***

**4. *Notwithstanding any provision of this chapter to the contrary, if after issuing a license to practice medicine the Board obtains information from a primary or other source of information and that information differs from the information provided by the applicant or otherwise received by the Board, the Board may:***

***(a) Temporarily suspend the license;***

***(b) Promptly review the differing information with the Board as a whole or in a committee appointed by the Board;***

***(c) Declare the license void if the Board or a committee appointed by the Board determines that the information submitted by the applicant was false, fraudulent or intended to deceive the Board;***

***(d) Refer the applicant to the Attorney General for possible criminal prosecution pursuant to NRS 630.400; or***

***(e) If the Board temporarily suspends the license, allow the license to return to active status subject to any terms and conditions specified by the Board, including:***

***(1) Placing the licensee on probation for a specified period with specified conditions;***

***(2) Administering a public reprimand;***

***(3) Limiting the practice of the licensee;***

***(4) Suspending the license for a specified period or until further order of the Board;***

***(5) Requiring the licensee to participate in a program to correct alcohol or drug dependence or any other impairment;***

***(6) Requiring supervision of the practice of the licensee;***

***(7) Imposing an administrative fine not to exceed \$5,000;***

***(8) Requiring the licensee to perform community service without compensation;***

*(9) Requiring the licensee to take a physical or mental examination or an examination testing his competence to practice medicine;*

*(10) Requiring the licensee to complete any training or educational requirements specified by the Board; and*

*(11) Requiring the licensee to submit a corrected application, including the payment of all appropriate fees and costs incident to submitting an application.*

*5. If the Board determines after reviewing the differing information to allow the license to remain in active status, the action of the Board is not a disciplinary action and must not be reported to any national database. If the Board determines after reviewing the differing information to declare the license void, its action shall be deemed a disciplinary action and shall be reportable to national databases.*

Sec. 27. NRS 630.1605 is hereby amended to read as follows:

630.1605 *1.* Except as otherwise provided in NRS 630.161, the Board may issue a license by endorsement to practice medicine to an applicant who has been issued a license to practice medicine by the District of Columbia or any state or territory of the United States if:

~~{1-}~~ *(a)* At the time the applicant files his application with the Board, the license is in effect;

~~{2-}~~ *(b)* The applicant:

~~{a-}~~ *(1)* Submits to the Board proof of passage of an examination approved by the Board;

~~{b-}~~ *(2)* Submits to the Board any documentation and other proof of qualifications required by the Board;

~~{c-}~~ *(3)* Meets all of the statutory requirements for licensure to practice medicine in effect at the time of application except for the requirements set forth in NRS 630.160; and

~~{d-}~~ *(4)* Completes any additional requirements relating to the fitness of the applicant to practice required by the Board; and

~~{3-}~~ *(c)* Any documentation and other proof of qualifications required by the Board is authenticated in a manner approved by the Board.

*2. A license by endorsement to practice medicine may be issued at a meeting of the Board or between its meetings by the President and Executive Director of the Board. Such an action shall be deemed to be an action of the Board.*

Sec. 28. NRS 630.167 is hereby amended to read as follows:

630.167 In addition to any other requirements set forth in this chapter, each applicant for a license to practice medicine , *to practice as a physician assistant or to practice respiratory care* shall submit to the Board a complete set of his fingerprints and written permission authorizing the Board to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report. *Any fees or costs charged by the Board for this service pursuant to NRS 630.268 are not refundable.*

Sec. 29. NRS 630.167 is hereby amended to read as follows:

630.167 In addition to any other requirements set forth in this chapter, each applicant for a license to practice medicine, to practice as a *perfusionist*, *to practice as a* physician assistant or to practice respiratory care shall submit to the Board a complete set of his fingerprints and written permission authorizing the Board to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report. Any fees or costs charged by the Board for this service pursuant to NRS 630.268 are not refundable.

Sec. 30. NRS 630.170 is hereby amended to read as follows:

630.170 In addition to the other requirements for licensure, an applicant for a license to practice medicine who is a graduate of a medical school located in the United States or Canada shall submit to the Board proof that he has received the degree of doctor of medicine from a medical school which, at the time of graduation, was accredited by the Liaison Committee on Medical Education or the Committee for the Accreditation of Canadian Medical Schools. *The proof of the degree of doctor of medicine must be submitted directly to the Board by the medical school that granted the degree. If proof of the degree is unavailable from the medical school, the Board may accept proof from any other source specified by the Board.*

Sec. 31. NRS 630.173 is hereby amended to read as follows:

630.173 1. In addition to the other requirements for licensure, an applicant for a license to practice medicine shall submit to the Board information describing:

(a) Any claims made against the applicant for malpractice, whether or not a civil action was filed concerning the claim;

(b) Any complaints filed against the applicant with a licensing board of another state and any disciplinary action taken against the applicant by a licensing board of another state; and

(c) Any complaints filed against the applicant with a hospital, clinic or medical facility or any disciplinary action taken against the applicant by a hospital, clinic or medical facility.

2. The Board *may consider any information specified in subsection 1 that is more than 10 years old if the Board receives the information from the applicant or any other source from which the Board is verifying the information provided by the applicant.*

3. *The Board may refuse to consider any information specified in subsection 1 that is more than 10 years old if the Board determines that the claim or complaint is remote or isolated and that obtaining or attempting to obtain a record relating to the information will unreasonably delay the consideration of the application.*

4. *The Board* shall not issue a license to the applicant until it has received all the information required by this section.

Sec. 32. NRS 630.195 is hereby amended to read as follows:

630.195 *1.* In addition to the other requirements for licensure, an applicant for a license to practice medicine who is a graduate of a foreign medical school shall submit to the Board proof that he has received:

~~{1-}~~ (a) The degree of doctor of medicine or its equivalent, as determined by the Board; and

~~{2-}~~ (b) The standard certificate of the Educational Commission for Foreign Medical Graduates or a written statement from that Commission that he passed the examination given by ~~{it-}~~ *the Commission*.

*2. The proof of the degree of doctor of medicine or its equivalent must be submitted directly to the Board by the medical school that granted the degree. If proof of the degree is unavailable from the medical school that granted the degree, the Board may accept proof from any other source specified by the Board.*

Sec. 33. NRS 630.197 is hereby amended to read as follows:

630.197 *1.* In addition to any other requirements set forth in this chapter:

(a) An applicant for the issuance of a license to practice medicine, to practice as a *perfusionist, to practice as a* physician assistant or to practice as a practitioner of respiratory care shall include the social security number of the applicant in the application submitted to the Board.

(b) An applicant for the issuance or renewal of a license to practice medicine, to practice as a *perfusionist, to practice as a* physician assistant or to practice as a practitioner of respiratory care shall submit to the Board the statement prescribed by the Division of Welfare and Supportive Services of the Department of Health and Human Services pursuant to NRS 425.520. The statement must be completed and signed by the applicant.

*2.* The Board shall include the statement required pursuant to subsection 1 in:

(a) The application or any other forms that must be submitted for the issuance or renewal of the license; or

(b) A separate form prescribed by the Board.

*3.* A license to practice medicine, to practice as a *perfusionist, to practice as a* physician assistant or to practice as a practitioner of respiratory care may not be issued or renewed by the Board if the applicant:

(a) Fails to submit the statement required pursuant to subsection 1; or

(b) Indicates on the statement submitted pursuant to subsection 1 that he is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.

*4.* If an applicant indicates on the statement submitted pursuant to subsection 1 that he is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order, the Board shall advise the applicant to contact the

district attorney or other public agency enforcing the order to determine the actions that the applicant may take to satisfy the arrearage.

Sec. 34. NRS 630.197 is hereby amended to read as follows:

630.197 1. In addition to any other requirements set forth in this chapter, an applicant for the issuance or renewal of a license to practice medicine, to practice as a *perfusionist*, to practice as a physician assistant or to practice as a practitioner of respiratory care shall submit to the Board the statement prescribed by the Division of Welfare and Supportive Services of the Department of Health and Human Services pursuant to NRS 425.520. The statement must be completed and signed by the applicant.

2. The Board shall include the statement required pursuant to subsection 1 in:

(a) The application or any other forms that must be submitted for the issuance or renewal of the license; or

(b) A separate form prescribed by the Board.

3. A license to practice medicine, to practice as a *perfusionist*, to practice as a physician assistant or to practice as a practitioner of respiratory care may not be issued or renewed by the Board if the applicant:

(a) Fails to submit the statement required pursuant to subsection 1; or

(b) Indicates on the statement submitted pursuant to subsection 1 that he is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.

4. If an applicant indicates on the statement submitted pursuant to subsection 1 that he is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order, the Board shall advise the applicant to contact the district attorney or other public agency enforcing the order to determine the actions that the applicant may take to satisfy the arrearage.

Sec. 35. NRS 630.200 is hereby amended to read as follows:

630.200 1. The Board may deny an application for a license to practice medicine for any violation of the provisions of this chapter or regulations of the Board.

2. The Board shall notify an applicant of any deficiency which prevents any further action on the application or results in the denial of the application. The applicant may respond in writing to the Board concerning any deficiency and, if he does so, the Board shall respond in writing to the contentions of the applicant.

3. Any unsuccessful applicant may appeal to the ~~district court to review the action of the~~ Board ~~if he files his appeal within 90 days from~~ after the date of the rejection of his application by the Board. Upon appeal, the applicant has the burden to show that the action of the Board is erroneous. ~~for unlawful.~~

Sec. 36. NRS 630.258 is hereby amended to read as follows:

630.258 1. A physician who is retired from active practice and who ~~[wishes]~~:

(a) *Wishes* to donate his expertise for the medical care and treatment of persons in this State who are indigent, uninsured or unable to afford health care ; *or*

(b) *Wishes to provide services for any disaster relief operations conducted by a governmental entity or nonprofit organization,*

↪ may obtain a special volunteer medical license by submitting an application to the Board pursuant to this section.

2. An application for a special volunteer medical license must be on a form provided by the Board and must include:

(a) Documentation of the history of medical practice of the physician;

(b) Proof that the physician previously has been issued an unrestricted license to practice medicine in any state of the United States and that he has never been the subject of disciplinary action by a medical board in any jurisdiction;

(c) Proof that the physician satisfies the requirements for licensure set forth in NRS 630.160 or the requirements for licensure by endorsement set forth in NRS 630.1605;

(d) Acknowledgment that the practice of the physician under the special volunteer medical license will be exclusively devoted to providing medical care ~~to~~:

(1) *To* persons in this State who are indigent, uninsured or unable to afford health care; *or*

(2) *As part of any disaster relief operations conducted by a governmental entity or nonprofit organization;* and

(e) Acknowledgment that the physician will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation, for providing medical care under the special volunteer medical license, except for payment by a medical facility at which the physician provides volunteer medical services of the expenses of the physician for necessary travel, continuing education, malpractice insurance or fees of the State Board of Pharmacy.

3. If the Board finds that the application of a physician satisfies the requirements of subsection 2 and that the retired physician is competent to practice medicine, the Board shall issue a special volunteer medical license to the physician.

4. The initial special volunteer medical license issued pursuant to this section expires 1 year after the date of issuance. The license may be renewed pursuant to this section, and any license that is renewed expires 2 years after the date of issuance.

5. The Board shall not charge a fee for:

(a) The review of an application for a special volunteer medical license; or

(b) The issuance or renewal of a special volunteer medical license pursuant to this section.

6. A physician who is issued a special volunteer medical license pursuant to this section and who accepts the privilege of practicing medicine in this State pursuant to the provisions of the special volunteer medical license is subject to all the provisions governing disciplinary action set forth in this chapter.

7. A physician who is issued a special volunteer medical license pursuant to this section shall comply with the requirements for continuing education adopted by the Board.

Sec. 37. NRS 630.261 is hereby amended to read as follows:

630.261 1. Except as otherwise provided in NRS 630.161, the Board may issue:

(a) A locum tenens license, to be effective not more than 3 months after issuance, to any physician who is licensed and in good standing in another state, who meets the requirements for licensure in this State and who is of good moral character and reputation. The purpose of this license is to enable an eligible physician to serve as a substitute for another physician who is licensed to practice medicine in this State and who is absent from his practice for reasons deemed sufficient by the Board. A license issued pursuant to the provisions of this paragraph is not renewable.

(b) A special license to a licensed physician of another state to come into this State to care for or assist in the treatment of his own patient in association with a physician licensed in this State. A special license issued pursuant to the provisions of this paragraph is limited to the care of a specific patient. The physician licensed in this State has the primary responsibility for the care of that patient.

(c) A restricted license for a specified period if the Board determines the applicant needs supervision or restriction.

(d) A temporary license for a specified period if the physician is licensed and in good standing in another state and meets the requirements for licensure in this State, and if the Board determines that it is necessary in order to provide medical services for a community without adequate medical care. A temporary license issued pursuant to the provisions of this paragraph is not renewable.

(e) A special purpose license to a physician who is licensed in another state to permit the use of equipment that transfers information concerning the medical condition of a patient in this State across state lines electronically, telephonically or by fiber optics. ~~[If the physician:~~

~~(1) Holds a full and unrestricted license to practice medicine in that state;~~

~~(2) Has not had any disciplinary or other action taken against him by any state or other jurisdiction; and~~

~~(3) Meets the requirements set forth in paragraph (d) of subsection 2 of NRS 630.160.]~~



2. *For the purpose of paragraph (e) of subsection 1, the physician must:*

(a) *Hold a full and unrestricted license to practice medicine in another state;*

(b) *Not have had any disciplinary or other action taken against him by any state or other jurisdiction; and*

(c) *Be certified by a specialty board of the American Board of Medical Specialties or its successor.*

3. Except as otherwise provided in this section, the Board may renew or modify any license issued pursuant to subsection 1.

Sec. 38. NRS 630.262 is hereby amended to read as follows:

630.262 1. Except as otherwise provided in NRS 630.161, the Board may issue ~~an unrestricted~~ ***an authorized facility*** license to a person who intends to practice medicine in this State as a psychiatrist in a mental health center of the Division under the direct supervision of a psychiatrist who holds an unrestricted license to practice medicine pursuant to this chapter ~~or to practice osteopathic medicine pursuant to chapter 633 of NRS.~~

2. A person who applies for ~~an unrestricted~~ ***an authorized facility*** license pursuant to this section is not required to take or pass a written examination as to his qualifications to practice medicine pursuant to paragraph (e) of subsection 2 of NRS 630.160, but the person must meet all other conditions and requirements for an unrestricted license to practice medicine pursuant to this chapter.

3. If the Board issues ~~an unrestricted~~ ***an authorized facility*** license pursuant to this section, the person who holds the ~~restricted~~ license may practice medicine in this State only as a psychiatrist in a mental health center of the Division and only under the direct supervision of a psychiatrist who holds an unrestricted license to practice medicine pursuant to this chapter ~~or to practice osteopathic medicine pursuant to chapter 633 of NRS.~~

4. If a person who holds ~~an unrestricted~~ ***an authorized facility*** license issued pursuant to this section ceases to practice medicine in this State as a psychiatrist in a mental health center of the Division:

(a) The Division shall notify the Board; and

(b) Upon receipt of ~~such~~ ***the*** notification, the ~~restricted~~ ***authorized facility*** license expires automatically.

5. The Board may renew or modify ~~an unrestricted~~ ***an authorized facility*** license issued pursuant to this section, unless the ~~restricted~~ license has expired automatically or has been revoked.

6. The provisions of this section do not limit the authority of the Board to issue a ~~restricted~~ license to an applicant in accordance with any other provision of this chapter.

7. As used in this section:

(a) "Division" means the Division of Mental Health and Developmental Services of the Department of Health and Human Services.

(b) "Mental health center" has the meaning ascribed to it in NRS 433.144.

**Sec. 38.5. NRS 630.268 is hereby amended to read as follows:**

630.268 1. The Board shall charge and collect not more than the following fees:

|  |       |
|--|-------|
| For application for and issuance of a license to practice as a physician, including a license by endorsement .....                                       | \$600 |
| For application for and issuance of a temporary, locum tenens, limited, restricted, <u>authorized facility</u> , special or special purpose license..... | 400   |
| For renewal of a limited, restricted, <u>authorized facility</u> or special license .....  | 400   |
| For application for and issuance of a license as a physician assistant .....   | 400   |
| For biennial registration of a physician assistant .....   | 800   |
| For biennial registration of a physician .....   | 800   |
| For application for and issuance of a license as a practitioner of respiratory care .....  | 400   |
| For biennial registration of a practitioner of respiratory care .....  | 600   |
| For biennial registration for a physician who is on inactive status .....  | 400   |
| For written verification of licensure .....  | 50    |
| For a duplicate identification card .....  | 25    |
| For a duplicate license .....  | 50    |
| For computer printouts or labels .....   | 500   |
| For verification of a listing of physicians, per hour .....  | 20    |
| For furnishing a list of new physicians .....  | 100   |

2. In addition to the fees prescribed in subsection 1, the Board shall charge and collect necessary and reasonable fees for the expedited processing of a request or for any other incidental service the Board provides.

3. The cost of any special meeting called at the request of a licensee, an institution, an organization, a state agency or an applicant for licensure must be paid for by the person or entity requesting the special meeting. Such a special meeting must not be called until the person or entity requesting it has paid a cash deposit with the Board sufficient to defray all expenses of the meeting.

**Sec. 39. NRS 630.268 is hereby amended to read as follows:**

630.268 1. The Board shall charge and collect not more than the following fees:

|  |       |
|--|-------|
| For application for and issuance of a license to practice as a physician, including a license by endorsement .....                               | \$600 |
| For application for and issuance of a temporary, locum tenens, limited, restricted, authorized facility, special or special purpose license..... | 400   |
| For renewal of a limited, restricted, authorized facility or special license..   | 400   |
| For application for and issuance of a license as a physician assistant .....   | 400   |
| For biennial registration of a physician assistant .....   | 800   |
| For biennial registration of a physician .....   | 800   |
| For application for and issuance of a license as a <i>perfusionist or</i> practitioner of respiratory care .....                                 | 400   |

|   |                   |
|---|-------------------|
| <b><i>For biennial renewal of a license as a perfusionist .....</i></b>   | <b><i>600</i></b> |
| For biennial registration of a practitioner of respiratory care .....     | 600               |
| For biennial registration for a physician who is on inactive status ..... | 400               |
| For written verification of licensure .....                               | 50                |
| For a duplicate identification card .....                                 | 25                |
| For a duplicate license .....   | 50                |
| For computer printouts or labels .....                                    | 500               |
| For verification of a listing of physicians, per hour .....               | 20                |
| For furnishing a list of new physicians .....                             | 100               |

2. In addition to the fees prescribed in subsection 1, the Board shall charge and collect necessary and reasonable fees for the expedited processing of a request or for any other incidental service the Board provides.

3. The cost of any special meeting called at the request of a licensee, an institution, an organization, a state agency or an applicant for licensure must be paid for by the person or entity requesting the special meeting. Such a special meeting must not be called until the person or entity requesting it has paid a cash deposit with the Board sufficient to defray all expenses of the meeting.

Sec. 40. NRS 630.277 is hereby amended to read as follows:

630.277 1. Every person who wishes to practice respiratory care in this State must:

- (a) Have a high school diploma or general equivalency diploma;
- (b) Complete an educational program for respiratory care which has been approved by the ~~[National Board]~~ ***Commission on Accreditation of Allied Health Education Programs or its successor organization or the Committee on Accreditation*** for Respiratory Care or its successor organization;
- (c) Pass the examination as an entry-level or advanced practitioner of respiratory care administered by the ~~[National Board]~~ ***Commission on Accreditation of Allied Health Education Programs or its successor organization or the Committee on Accreditation*** for Respiratory Care or its successor organization;
- (d) Be certified by the ~~[National Board]~~ ***Commission on Accreditation of Allied Health Education Programs or its successor organization or the Committee on Accreditation*** for Respiratory Care or its successor organization; and
- (e) Be licensed to practice respiratory care by the Board and have paid the required fee for licensure.

2. Except as otherwise provided in subsection 3, a person shall not:

- (a) Practice respiratory care; or
  - (b) Hold himself out as qualified to practice respiratory care,
- ↪ in this State without complying with the provisions of subsection 1.

3. Any person who has completed the educational requirements set forth in paragraphs (a) and (b) of subsection 1 may practice respiratory care pursuant to a program of practical training as an intern in respiratory care for not more than 12 months after completing those educational requirements.

Sec. 41. NRS 630.299 is hereby amended to read as follows:

630.299 1. If the Board has reason to believe that a person has violated ~~[.] or is violating [or is about to violate]~~ any provision of this chapter, the Board or any investigative committee of the Board may issue to the person a letter of warning, a letter of concern or a nonpunitive admonishment at any time before the Board has initiated any disciplinary proceedings against the person.

2. The issuance of such a letter or admonishment:

(a) Does not preclude the Board from initiating any disciplinary proceedings against the person or taking any disciplinary action against the person based on any conduct alleged or described in the letter or admonishment or any other conduct; and

(b) Does not constitute a final decision of the Board and is not subject to judicial review.

3. *In addition to any action taken pursuant to subsection 1, if the Board has reason to believe that a person has violated or is violating any provision of this chapter, the Board or any investigative committee of the Board may negotiate a remediation agreement with the person. The remediation agreement must include, for each violation, a statement specifying each provision of this chapter or regulation adopted pursuant to this chapter that the Board has reason to believe that the person has violated or is violating. The remediation agreement must also set forth the terms and conditions specified by the Board or an investigative committee, including, without limitation, provisions that:*

*(a) Address each violation of this chapter that is at issue; and*

*(b) Remediate or improve the practice of the person relating to those violations.*

4. *A remediation agreement, if approved by an investigative committee of the Board, must be presented to the Board for approval. Any remediation agreement presented to the Board pursuant to this subsection is a public record. The Board shall ensure that all identifying information regarding each person who is subject to the remediation agreement is removed. The remediation agreement becomes effective immediately upon approval of the remediation agreement by the Board. If the Board does not approve the remediation agreement, the Board shall refer the matter to the investigative committee that presented the remediation agreement to the Board. The investigative committee may further proceed with the matter as it deems appropriate.*

5. *A remediation agreement entered into pursuant to this section does not constitute disciplinary action against any person who is subject to the remediation agreement and is not reportable to any national database. If the person violates a provision of the remediation agreement, the Board or the investigative committee of the Board with whom the remediation agreement was negotiated may take any action it deems appropriate,*

*including, without limitation, initiating disciplinary proceedings against the person.*

*6. The Board shall adopt regulations to carry out the provisions of this section.*

**Sec. 41.5. NRS 630.299 is hereby amended to read as follows:**

630.299 1. If the Board has reason to believe that a person has violated or is violating any provision of this chapter, the Board or any investigative committee of the Board may issue to the person a letter of warning, a letter of concern or a nonpunitive admonishment at any time before the Board has initiated any disciplinary proceedings against the person.

2. The issuance of such a letter or admonishment:

(a) Does not preclude the Board from initiating any disciplinary proceedings against the person or taking any disciplinary action against the person based on any conduct alleged or described in the letter or admonishment or any other conduct; and

(b) Does not constitute a final decision of the Board and is not subject to judicial review.

~~3. In addition to any action taken pursuant to subsection 1, if the Board has reason to believe that a person has violated or is violating any provision of this chapter, the Board or any investigative committee of the Board may negotiate a remediation agreement with the person. The remediation agreement must include, for each violation, a statement specifying each provision of this chapter or regulation adopted pursuant to this chapter that the Board has reason to believe that the person has violated or is violating. The remediation agreement must also set forth the terms and conditions specified by the Board or an investigative committee, including, without limitation, provisions that:~~

~~(a) Address each violation of this chapter that is at issue; and~~

~~(b) Remediate or improve the practice of the person relating to those violations;~~

~~4. A remediation agreement, if approved by an investigative committee of the Board, must be presented to the Board for approval. Any remediation agreement presented to the Board pursuant to this subsection is a public record. The Board shall ensure that all identifying information regarding each person who is subject to the remediation agreement is removed. The remediation agreement becomes effective immediately upon approval of the remediation agreement by the Board. If the Board does not approve the remediation agreement, the Board shall refer the matter to the investigative committee that presented the remediation agreement to the Board. The investigative committee may further proceed with the matter as it deems appropriate.~~

~~5. A remediation agreement entered into pursuant to this section does not constitute disciplinary action against any person who is subject to the remediation agreement and is not reportable to any national database. If the person violates a provision of the remediation agreement, the Board or the~~

~~investigative committee of the Board with whom the remediation agreement was negotiated may take any action it deems appropriate, including, without limitation, initiating disciplinary proceedings against the person.~~

~~6. The Board shall adopt regulations to carry out the provisions of this section.]~~

Sec. 42. NRS 630.306 is hereby amended to read as follows:

630.306 The following acts, among others, constitute grounds for initiating disciplinary action or denying licensure:

1. Inability to practice medicine with reasonable skill and safety because of illness, a mental or physical condition or the use of alcohol, drugs, narcotics or any other substance.

2. Engaging in any conduct:

(a) Which is intended to deceive;

(b) Which the Board has determined is a violation of the standards of practice established by regulation of the Board; or

(c) Which is in violation of a regulation adopted by the State Board of Pharmacy.

3. Administering, dispensing or prescribing any controlled substance, or any dangerous drug as defined in chapter 454 of NRS, to or for himself or to others except as authorized by law.

4. Performing, assisting or advising the injection of any substance containing liquid silicone into the human body, except for the use of silicone oil to repair a retinal detachment.

5. Practicing or offering to practice beyond the scope permitted by law or performing services which the licensee knows or has reason to know that he is not competent to perform ~~[ ]~~ ***or which are beyond the scope of his training.***

6. Performing, without first obtaining the informed consent of the patient or his family, any procedure or prescribing any therapy which by the current standards of the practice of medicine is experimental.

7. Continual failure to exercise the skill or diligence or use the methods ordinarily exercised under the same circumstances by physicians in good standing practicing in the same specialty or field.

8. Making or filing a report which the licensee or applicant knows to be false or failing to file a record or report as required by law or regulation.

9. Failing to comply with the requirements of NRS 630.254.

10. Habitual intoxication from alcohol or dependency on controlled substances.

11. Failure by a licensee or applicant to report in writing, within 30 days, any disciplinary action taken against him by another state, the Federal Government or a foreign country, including, without limitation, the revocation, suspension or surrender of his license to practice medicine in another jurisdiction.

12. Failure to be found competent to practice medicine as a result of an examination to determine medical competency pursuant to NRS 630.318.

**13. Failure by a licensee or applicant to report in writing, within 30 days, any criminal action taken or conviction obtained against him, other than a minor traffic violation, in this State or any other state or by the Federal Government, a branch of the Armed Forces of the United States or any local or federal jurisdiction of a foreign country.**

**14. Engaging in any act that is unsafe or unprofessional conduct in accordance with regulations adopted by the Board.**

**15. Violating a provision of a remediation agreement approved by the Board pursuant to NRS 630.299.**

**Sec. 42.5. NRS 630.306 is hereby amended to read as follows:**

630.306 The following acts, among others, constitute grounds for initiating disciplinary action or denying licensure:

1. Inability to practice medicine with reasonable skill and safety because of illness, a mental or physical condition or the use of alcohol, drugs, narcotics or any other substance.

2. Engaging in any conduct:

(a) Which is intended to deceive;

(b) Which the Board has determined is a violation of the standards of practice established by regulation of the Board; or

(c) Which is in violation of a regulation adopted by the State Board of Pharmacy.

3. Administering, dispensing or prescribing any controlled substance, or any dangerous drug as defined in chapter 454 of NRS, to or for himself or to others except as authorized by law.

4. Performing, assisting or advising the injection of any substance containing liquid silicone into the human body, except for the use of silicone oil to repair a retinal detachment.

5. Practicing or offering to practice beyond the scope permitted by law or performing services which the licensee knows or has reason to know that he is not competent to perform or which are beyond the scope of his training.

6. Performing, without first obtaining the informed consent of the patient or his family, any procedure or prescribing any therapy which by the current standards of the practice of medicine is experimental.

7. Continual failure to exercise the skill or diligence or use the methods ordinarily exercised under the same circumstances by physicians in good standing practicing in the same specialty or field.

8. Making or filing a report which the licensee or applicant knows to be false or failing to file a record or report as required by law or regulation.

9. Failing to comply with the requirements of NRS 630.254.

10. Habitual intoxication from alcohol or dependency on controlled substances.

11. Failure by a licensee or applicant to report in writing, within 30 days, any disciplinary action taken against him by another state, the Federal Government or a foreign country, including, without limitation, the

revocation, suspension or surrender of his license to practice medicine in another jurisdiction.

12. Failure to be found competent to practice medicine as a result of an examination to determine medical competency pursuant to NRS 630.318.

13. Failure by a licensee or applicant to report in writing, within 30 days, any criminal action taken or conviction obtained against him, other than a minor traffic violation, in this State or any other state or by the Federal Government, a branch of the Armed Forces of the United States or any local or federal jurisdiction of a foreign country.

14. Engaging in any act that is unsafe or unprofessional conduct in accordance with regulations adopted by the Board.

~~[15. Violating a provision of a remediation agreement approved by the Board pursuant to NRS 630.299.]~~

Sec. 43. NRS 630.3062 is hereby amended to read as follows:

630.3062 The following acts, among others, constitute grounds for initiating disciplinary action or denying licensure:

1. Failure to maintain timely, legible, accurate and complete medical records relating to the diagnosis, treatment and care of a patient.

2. Altering medical records of a patient.

3. Making or filing a report which the licensee knows to be false, failing to file a record or report as required by law or willfully obstructing or inducing another to obstruct such filing.

4. Failure to make the medical records of a patient available for inspection and copying as provided in NRS 629.061.

5. Failure to comply with the requirements of NRS 630.3068.

6. Failure to report any person the licensee knows, or has reason to know, is in violation of the provisions of this chapter or the regulations of the Board ~~[ ]~~ ***within 30 days after the date the licensee knows or has reason to know of the violation.***

Sec. 44. NRS 630.307 is hereby amended to read as follows:

630.307 1. ***Except as otherwise provided in subsection 2, any person may file with the Board a complaint against a physician, physician assistant or practitioner of respiratory care on a form provided by the Board. The form may be submitted in writing or electronically. If a complaint is submitted anonymously, the Board may accept the complaint but may refuse to consider the complaint if the lack of the identity of the complainant makes processing the complaint impossible or unfair to the person who is the subject of the complaint.***

2. Any ~~[person,]~~ ***licensee***, medical school or medical facility that becomes aware that a person practicing medicine or respiratory care in this State has, is or is about to become engaged in conduct which constitutes grounds for initiating disciplinary action shall file a written complaint with the Board within 30 days after becoming aware of the conduct.

~~[2.]~~ 3. Any hospital, clinic or other medical facility licensed in this State, or medical society, shall report to the Board any change in ~~[a physician's]~~ ***the***



privileges *of a physician, physician assistant or practitioner of respiratory care* to practice ~~medicine~~ while the physician, *physician assistant or practitioner of respiratory care* is under investigation and the outcome of any disciplinary action taken by that facility or society against the physician, *physician assistant or practitioner of respiratory care* concerning the care of a patient or the competency of the physician, *physician assistant or practitioner of respiratory care* within 30 days after the change in privileges is made or disciplinary action is taken. The Board shall report any failure to comply with this subsection by a hospital, clinic or other medical facility licensed in this State to the Health Division of the Department of Health and Human Services. If, after a hearing, the Health Division determines that any such facility or society failed to comply with the requirements of this subsection, the Division may impose an administrative fine of not more than \$10,000 against the facility or society for each such failure to report. If the administrative fine is not paid when due, the fine must be recovered in a civil action brought by the Attorney General on behalf of the Division.

~~{3-}~~ 4. The clerk of every court shall report to the Board any finding, judgment or other determination of the court that a physician, physician assistant or practitioner of respiratory care:

- (a) Is mentally ill;
- (b) Is mentally incompetent;
- (c) Has been convicted of a felony or any law governing controlled substances or dangerous drugs;
- (d) Is guilty of abuse or fraud under any state or federal program providing medical assistance; or
- (e) Is liable for damages for malpractice or negligence,

↪ within 45 days after such a finding, judgment or determination is made.

~~{4-}~~ 5. On or before January 15 of each year, the clerk of each court shall submit to the Office of Court Administrator created pursuant to NRS 1.320 a written report compiling the information that the clerk reported during the previous year to the Board regarding physicians pursuant to paragraph (e) of subsection ~~{3-}~~ 4.

Sec. 45. NRS 630.307 is hereby amended to read as follows:

630.307 1. Except as otherwise provided in subsection 2, any person may file with the Board a complaint against a physician, *perfusionist*, physician assistant or practitioner of respiratory care on a form provided by the Board. The form may be submitted in writing or electronically. If a complaint is submitted anonymously, the Board may accept the complaint but may refuse to consider the complaint if the lack of the identity of the complainant makes processing the complaint impossible or unfair to the person who is the subject of the complaint.

2. Any licensee, medical school or medical facility that becomes aware that a person practicing medicine, *perfusion* or respiratory care in this State has, is or is about to become engaged in conduct which constitutes grounds

for initiating disciplinary action shall file a written complaint with the Board within 30 days after becoming aware of the conduct.

3. Any hospital, clinic or other medical facility licensed in this State, or medical society, shall report to the Board any change in the privileges of a physician, *perfusionist*, physician assistant or practitioner of respiratory care to practice while the physician, *perfusionist*, physician assistant or practitioner of respiratory care is under investigation and the outcome of any disciplinary action taken by that facility or society against the physician, *perfusionist*, physician assistant or practitioner of respiratory care concerning the care of a patient or the competency of the physician, *perfusionist*, physician assistant or practitioner of respiratory care within 30 days after the change in privileges is made or disciplinary action is taken. The Board shall report any failure to comply with this subsection by a hospital, clinic or other medical facility licensed in this State to the Health Division of the Department of Health and Human Services. If, after a hearing, the Health Division determines that any such facility or society failed to comply with the requirements of this subsection, the Division may impose an administrative fine of not more than \$10,000 against the facility or society for each such failure to report. If the administrative fine is not paid when due, the fine must be recovered in a civil action brought by the Attorney General on behalf of the Division.

4. The clerk of every court shall report to the Board any finding, judgment or other determination of the court that a physician, *perfusionist*, physician assistant or practitioner of respiratory care:

- (a) Is mentally ill;
  - (b) Is mentally incompetent;
  - (c) Has been convicted of a felony or any law governing controlled substances or dangerous drugs;
  - (d) Is guilty of abuse or fraud under any state or federal program providing medical assistance; or
  - (e) Is liable for damages for malpractice or negligence,
- ↪ within 45 days after such a finding, judgment or determination is made.

5. On or before January 15 of each year, the clerk of each court shall submit to the Office of Court Administrator created pursuant to NRS 1.320 a written report compiling the information that the clerk reported during the previous year to the Board regarding physicians pursuant to paragraph (e) of subsection 4.

Sec. 46. NRS 630.309 is hereby amended to read as follows:

630.309 To institute a disciplinary action against a *perfusionist*, physician assistant or practitioner of respiratory care, a written complaint, specifying the charges, must be filed with the Board by:

1. The Board or a committee designated by the Board to investigate a complaint;
2. Any member of the Board; or

3. Any other person who is aware of any act or circumstance constituting a ground for disciplinary action set forth in the regulations adopted by the Board.

Sec. 47. NRS 630.311 is hereby amended to read as follows:

630.311 1. A committee designated by the Board and consisting of members of the Board shall review each complaint and conduct an investigation to determine if there is a reasonable basis for the complaint. The committee must be composed of at least three members of the Board, at least one of whom is ~~qualified pursuant to subsection 2 of NRS 630.060.~~ **not a physician.** The committee may issue orders to aid its investigation including, but not limited to, compelling a physician to appear before the committee.

2. If, after conducting an investigation, the committee determines that there is a reasonable basis for the complaint and that a violation of any provision of this chapter has occurred, the committee may file a formal complaint with the Board.

3. *The proceedings of the committee are confidential and are not subject to the requirements of NRS 241.020. Within 20 days after the conclusion of each meeting of the committee, the Board shall publish a summary setting forth the proceedings and determinations of the committee. The summary must not identify any person involved in the complaint that is the subject of the proceedings.*

Sec. 48. NRS 630.318 is hereby amended to read as follows:

630.318 1. If the Board or any investigative committee of the Board has reason to believe that the conduct of any physician has raised a reasonable question as to his competence to practice medicine with reasonable skill and safety to patients, or if the Board has received a report pursuant to the provisions of NRS 630.3067, 630.3068, 690B.250 or 690B.260 indicating that a judgment has been rendered or an award has been made against a physician regarding an action or claim for malpractice or that such an action or claim against the physician has been resolved by settlement, it may order that the physician undergo a mental or physical examination or an examination testing his competence to practice medicine by physicians or other examinations designated by the Board to assist the Board or committee in determining the fitness of the physician to practice medicine.

2. For the purposes of this section:

(a) Every physician who applies for a license or who is licensed under this chapter shall be deemed to have given his consent to submit to a mental or physical examination or an examination testing his competence to practice medicine when ordered to do so in writing by the Board ~~[-] or an~~ **investigative committee of the Board.**

(b) The testimony or reports of the examining physicians are not privileged communications.

3. Except in extraordinary circumstances, as determined by the Board, the failure of a physician licensed under this chapter to submit to an examination when directed as provided in this section constitutes an admission of the charges against him.

Sec. 49. NRS 630.326 is hereby amended to read as follows:

630.326 1. *If an investigation by the Board regarding a physician, physician assistant or practitioner of respiratory care reasonably determines that the health, safety or welfare of the public or any patient served by the physician, physician assistant or practitioner of respiratory care is at risk of imminent or continued harm, the Board may summarily suspend the license of the physician, physician assistant or practitioner of respiratory care. The order of summary suspension may be issued by the Board, an investigative committee of the Board or the Executive Director of the Board after consultation with the President, Vice President or Secretary-Treasurer of the Board.*

2. *If the Board issues an order summarily suspending the license of a physician, physician assistant or practitioner of respiratory care pursuant to subsection 1, the Board shall hold a hearing regarding the matter not later than 45 days after the ~~completion of the investigation by the Board.~~ date on which the Board issues the order summarily suspending the license unless the Board and the licensee mutually agree to a longer period.*

3. If the Board issues an order suspending the license of a physician , *physician assistant or practitioner of respiratory care* pending proceedings for disciplinary action and requires the physician , *physician assistant or practitioner of respiratory care* to submit to a mental or physical examination or an examination testing his competence to practice , ~~[medicine,]~~ the examination must be conducted and the results obtained not later than 60 days after the Board issues its order.

Sec. 50. NRS 630.326 is hereby amended to read as follows:

630.326 1. If an investigation by the Board regarding a physician, *perfusionist*, physician assistant or practitioner of respiratory care reasonably determines that the health, safety or welfare of the public or any patient served by the physician, *perfusionist*, physician assistant or practitioner of respiratory care is at risk of imminent or continued harm, the Board may summarily suspend the license of the physician, *perfusionist*, physician assistant or practitioner of respiratory care. The order of summary suspension may be issued by the Board, an investigative committee of the Board or the Executive Director of the Board after consultation with the President, Vice President or Secretary-Treasurer of the Board.

2. If the Board issues an order summarily suspending the license of a physician, *perfusionist*, physician assistant or practitioner of respiratory care pursuant to subsection 1, the Board shall hold a hearing regarding the matter not later than 45 days after the date on which the Board issues the order summarily suspending the license unless the Board and the licensee mutually agree to a longer period.

3. If the Board issues an order suspending the license of a physician, **perfusionist**, physician assistant or practitioner of respiratory care pending proceedings for disciplinary action and requires the physician, **perfusionist**, physician assistant or practitioner of respiratory care to submit to a mental or physical examination or an examination testing his competence to practice, the examination must be conducted and the results obtained not later than 60 days after the Board issues its order.

Sec. 51. NRS 630.329 is hereby amended to read as follows:

630.329 If the Board issues an order suspending the license of a physician, **perfusionist**, physician assistant or practitioner of respiratory care pending proceedings for disciplinary action, the court shall not stay that order.

Sec. 52. NRS 630.336 is hereby amended to read as follows:

630.336 1. Any deliberations conducted or vote taken by the Board or any investigative committee of the Board regarding its ordering of a physician, **perfusionist**, physician assistant or practitioner of respiratory care to undergo a physical or mental examination or any other examination designated to assist the Board or committee in determining the fitness of a physician, **perfusionist**, physician assistant or practitioner of respiratory care are not subject to the requirements of NRS 241.020.

2. Except as otherwise provided in subsection 3 or 4, all applications for a license to practice medicine , **perfusion** or respiratory care, any charges filed by the Board, financial records of the Board, formal hearings on any charges heard by the Board or a panel selected by the Board, records of such hearings and any order or decision of the Board or panel must be open to the public.

3. Except as otherwise provided in NRS 239.0115, the following may be kept confidential:

(a) Any statement, evidence, credential or other proof submitted in support of or to verify the contents of an application;

(b) Any report concerning the fitness of any person to receive or hold a license to practice medicine , **perfusion** or respiratory care; and

(c) Any communication between:

(1) The Board and any of its committees or panels; and

(2) The Board or its staff, investigators, experts, committees, panels, hearing officers, advisory members or consultants and counsel for the Board.

4. Except as otherwise provided in subsection 5 and NRS 239.0115, a complaint filed with the Board pursuant to NRS 630.307, all documents and other information filed with the complaint and all documents and other information compiled as a result of an investigation conducted to determine whether to initiate disciplinary action are confidential.

5. The complaint or other document filed by the Board to initiate disciplinary action and all documents and information considered by the Board when determining whether to impose discipline are public records.

6. This section does not prevent or prohibit the Board from communicating or cooperating with any other licensing board or agency or any agency which is investigating a licensee, including a law enforcement agency. Such cooperation may include, without limitation, providing the board or agency with minutes of a closed meeting, transcripts of oral examinations and the results of oral examinations.

Sec. 53. NRS 630.339 is hereby amended to read as follows:

630.339 1. If a committee designated by the Board to conduct an investigation of a complaint decides to proceed with disciplinary action, it shall bring charges against the licensee ~~[- If charges are brought, the Board shall fix a time and place for a formal hearing.]~~ ***by filing a formal complaint. The formal complaint must include a written statement setting forth the charges alleged and setting forth in concise and plain language each act or omission of the respondent upon which the charges are based. The formal complaint must be prepared with sufficient clarity to ensure that the respondent is able to prepare his defense. The formal complaint must specify any applicable law or regulation that the respondent is alleged to have violated. The formal complaint may be signed by the chairman of the investigative committee or the Executive Director of the Board acting in his official capacity.***

2. ***The respondent shall file an answer to the formal complaint within 20 days after service of the complaint upon the respondent. The answer must state in concise and plain language the respondent's defenses to each charge set forth in the complaint and must admit or deny the averments stated in the complaint. If a party fails to file an answer within the time prescribed, he shall be deemed to have denied generally the allegations of the formal complaint.***

3. ***Within 20 days after the filing of the answer, the parties shall hold an early case conference at which the parties and the hearing officer appointed by the Board or a member of the Board must preside. At the early case conference, the parties shall in good faith:***

***(a) Set the earliest possible hearing date agreeable to the parties and the hearing officer, panel of the Board or the Board, including the estimated duration of the hearing;***

***(b) Set dates:***

***(1) By which all documents must be exchanged;***

***(2) By which all prehearing motions and responses thereto must be filed;***

***(3) On which to hold the prehearing conference; and***

***(4) For any other foreseeable actions that may be required for the matter;***

***(c) Discuss or attempt to resolve all or any portion of the evidentiary or legal issues in the matter;***

***(d) Discuss the potential for settlement of the matter on terms agreeable to the parties; and***

*(e) Discuss and deliberate any other issues that may facilitate the timely and fair conduct of the matter.*

4. If the Board receives a report pursuant to subsection 5 of NRS 228.420, such a hearing must be held within 30 days after receiving the report. The Board shall notify the licensee of the charges brought against him, the time and place set for the hearing, and the possible sanctions authorized in NRS 630.352.

~~{2-}~~ 5. *A formal hearing must be held at the time and date set at the early case conference by:*

- (a) The Board ~~[, a]~~;*
- (b) A hearing officer ~~for a~~;*
- (c) A member of the Board designated by the Board or an investigative committee of the Board;*

*(d) A panel of ~~[its]~~ members of the Board designated by ~~[the Board shall hold the formal hearing on the charges at the time and place designated in the notification.]~~ an investigative committee of the Board or the Board;*

*(e) A hearing officer together with not more than one member of the Board designated by an investigative committee of the Board or the Board;*  
*or*

*(f) A hearing officer together with a panel of members of the Board designated by an investigative committee of the Board or the Board. If the hearing is before a panel, at least one member of the ~~[Board who is]~~ panel must not be a physician. ~~[must participate in this hearing.]~~*

6. *At any hearing at which at least one member of the Board presides, whether in combination with a hearing officer or other members of the Board, the final determinations regarding credibility, weight of evidence and whether the charges have been proven must be made by the members of the Board. If a hearing officer presides together with one or more members of the Board, the hearing officer shall:*

- (a) Conduct the hearing;*
- (b) In consultation with each member of the Board, make rulings upon any objections raised at the hearing;*
- (c) In consultation with each member of the Board, make rulings concerning any motions made during or after the hearing; and*
- (d) Within 30 days after the conclusion of the hearing, prepare and file with the Board written findings of fact and conclusions of law in accordance with the determinations made by each member of the Board.*

Sec. 54. NRS 630.342 is hereby amended to read as follows:

630.342 1. Any ~~[physician]~~ licensee against whom the Board initiates disciplinary action pursuant to this chapter shall, within 30 days after the ~~[physician's]~~ licensee's receipt of notification of the initiation of the disciplinary action, submit to the Board a complete set of his fingerprints and written permission authorizing the Board to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report.

2. The willful failure of a ~~physician~~ **licensee** to comply with the requirements of subsection 1 constitutes additional grounds for disciplinary action and the revocation of the license of the ~~physician~~ **licensee**.

3. The Board has additional grounds for initiating disciplinary action against a ~~physician~~ **licensee** if the report from the Federal Bureau of Investigation indicates that the ~~physician~~ **licensee** has been convicted of:

(a) An act that is a ground for disciplinary action pursuant to NRS 630.301 to 630.3066, inclusive; or

(b) A violation of NRS 630.400.

Sec. 54.5. NRS 630.346 is hereby amended to read as follows:

630.346 In any disciplinary hearing:

1. The Board, a panel of the members of the Board and a hearing officer are not bound by formal rules of evidence and a witness must not be barred from testifying solely because he was or is incompetent. ***Any fact that is the basis of a finding, conclusion or ruling must be based upon the reliable, probative and substantial evidence on the whole record of the matter.***

2. Proof of actual injury need not be established.

3. A certified copy of the record of a court or a licensing agency showing a conviction or plea of nolo contendere or the suspension, revocation, limitation, modification, denial or surrender of a license to practice medicine or respiratory care is conclusive evidence of its occurrence.

Sec. 55. NRS 630.346 is hereby amended to read as follows:

630.346 In any disciplinary hearing:

1. The Board, a panel of the members of the Board and a hearing officer are not bound by formal rules of evidence and a witness must not be barred from testifying solely because he was or is incompetent. Any fact that is the basis of a finding, conclusion or ruling must be based upon the reliable, probative and substantial evidence on the whole record of the matter.

2. Proof of actual injury need not be established.

3. A certified copy of the record of a court or a licensing agency showing a conviction or plea of nolo contendere or the suspension, revocation, limitation, modification, denial or surrender of a license to practice medicine, ***perfusion*** or respiratory care is conclusive evidence of its occurrence.

Sec. 56. (Deleted by amendment.)

Sec. 57. NRS 630.352 is hereby amended to read as follows:

630.352 1. Any member of the Board, ~~except for an advisory~~ ***other than a member of an investigative committee of the Board who participated in any determination regarding a formal complaint in the matter or any member serving on a panel of the Board at the hearing [charges] of the matter,*** may participate in ***an adjudication to obtain*** the final order of the Board. ~~[[If the Board, after a formal hearing, determines from a preponderance of the evidence that a violation of the provisions of this chapter or of the regulations of the Board has occurred, it shall issue and serve on the physician charged an order, in writing, containing its findings and any sanctions.~~



~~2.]~~ *At the adjudication, the Board shall consider any findings of fact and conclusions of law submitted after the hearing and shall allow:*

*(a) Counsel for the Board to present a disciplinary recommendation and argument in support of the disciplinary recommendation;*

*(b) The respondent or his counsel to present a disciplinary recommendation and argument in support of the disciplinary recommendation; and*

*(c) The complainant in the matter to make a statement to the Board regarding the disciplinary recommendations by the parties and to address the effect of the respondent's conduct upon the complainant or the patient involved, if other than the complainant.*

*↪ The Board may limit the time within which the parties and the complainant may make their arguments and statements.*

*2. At the conclusion of the presentations of the parties and the complainant, the Board shall deliberate and may by a majority vote impose discipline based upon the findings of fact and conclusions of law and the presentations of the parties and the complainant.*

*3. If, in the findings of fact and conclusions of law, the Board, hearing officer or panel of the Board determines that no violation has occurred, ~~it]~~ the Board shall dismiss the charges, in writing, and notify the ~~[physician]~~ **respondent** that the charges have been dismissed. ~~If the disciplinary proceedings were instituted against the physician as a result of a complaint filed against him, the Board may provide the physician with a copy of the complaint.~~*

~~3.]~~ *4. Except as otherwise provided in subsection ~~[4.]~~ 5, if the Board finds that a violation has occurred, it shall by order take one or more of the following actions:*

*(a) Place the person on probation for a specified period on any of the conditions specified in the order;*

*(b) Administer to him a **written** public reprimand;*

*(c) Limit his practice or exclude one or more specified branches of medicine from his practice;*

*(d) Suspend his license for a specified period or until further order of the Board;*

*(e) Revoke his license ; ~~to practice medicine, but only in accordance with the provisions of NRS 630.348.]~~*

*(f) Require him to participate in a program to correct alcohol or drug dependence or any other impairment;*

*(g) Require supervision of his practice;*

*(h) Impose a fine not to exceed \$5,000 ~~[.]~~ **for each violation;***

*(i) Require him to perform community service without compensation;*

*(j) Require him to take a physical or mental examination or an examination testing his competence; and*

*(k) Require him to fulfill certain training or educational requirements.*

~~{4-}~~ 5. If the Board finds that the ~~{physician}~~ **respondent** has violated the provisions of NRS 439B.425, the Board shall suspend his license for a specified period or until further order of the Board.

~~{5-}~~ 6. The Board shall not administer a private reprimand if the Board finds that a violation has occurred.

~~{6-}~~ 7. *Within 30 days after the hearing before the Board, the Board shall issue a final order, certified by the Secretary-Treasurer of the Board, that imposes discipline and incorporates the findings of fact and conclusions of law obtained from the hearing.* An order that imposes discipline and the findings of fact and conclusions of law supporting that order are public records.

Sec. 58. NRS 630.356 is hereby amended to read as follows:

630.356 1. Any person aggrieved by a final order of the Board is entitled to judicial review of the Board's order.

2. Every order that imposes a sanction against a licensee pursuant to subsection ~~{3}~~ 4 or ~~{4}~~ 5 of NRS 630.352 or any regulation of the Board is effective from the date the Secretary-Treasurer certifies the order until the date the order is modified or reversed by a final judgment of the court. The court shall not stay the order of the Board pending a final determination by the court.

3. The district court shall give a petition for judicial review of the Board's order priority over other civil matters which are not expressly given priority by law.

Sec. 59. NRS 630.358 is hereby amended to read as follows:

630.358 1. Any person:

(a) Whose practice of medicine , **perfusion** or respiratory care has been limited; or

(b) Whose license to practice medicine , **perfusion** or respiratory care has been:

(1) Suspended until further order; or

(2) Revoked,

➡ by an order of the Board, may apply to the Board for removal of the limitation or restoration of his license.

2. In hearing the application, the Board:

(a) May require the person to submit to a mental or physical examination or an examination testing his competence to practice medicine , **perfusion** or respiratory care by physicians , **perfusionists** or practitioners of respiratory care, as appropriate, or other examinations it designates and submit such other evidence of changed conditions and of fitness as it deems proper;

(b) Shall determine whether under all the circumstances the time of the application is reasonable; and

(c) May deny the application or modify or rescind its order as it deems the evidence and the public safety warrants.

3. The licensee has the burden of proving by clear and convincing evidence that the requirements for restoration of the license or removal of the limitation have been met.

4. The Board shall not restore a license unless it is satisfied that the person has complied with all of the terms and conditions set forth in the final order of the Board and that the person is capable of practicing medicine, ***perfusion*** or respiratory care in a safe manner.

5. To restore a license that has been revoked by the Board, the applicant must apply for a license and take an examination as though he had never been licensed under this chapter.

Sec. 60. NRS 630.366 is hereby amended to read as follows:

630.366 1. If the Board receives a copy of a court order issued pursuant to NRS 425.540 that provides for the suspension of all professional, occupational and recreational licenses, certificates and permits issued to a person who is the holder of a license to practice medicine, to practice as a ***perfusionist, to practice as a*** physician assistant or to practice as a practitioner of respiratory care, the Board shall deem the license issued to that person to be suspended at the end of the 30th day after the date on which the court order was issued unless the Board receives a letter issued to the holder of the license by the district attorney or other public agency pursuant to NRS 425.550 stating that the holder of the license has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

2. The Board shall reinstate a license to practice medicine, to practice as a ***perfusionist, to practice as a*** physician assistant or to practice as a practitioner of respiratory care that has been suspended by a district court pursuant to NRS 425.540 if the Board receives a letter issued by the district attorney or other public agency pursuant to NRS 425.550 to the person whose license was suspended stating that the person whose license was suspended has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

Sec. 61. NRS 630.388 is hereby amended to read as follows:

630.388 1. In addition to any other remedy provided by law, the Board, through its President or Secretary-Treasurer or the Attorney General, may apply to any court of competent jurisdiction:

(a) To enjoin any prohibited act or other conduct of a licensee which is harmful to the public;

(b) To enjoin any person who is not licensed under this chapter from practicing medicine, ***perfusion*** or respiratory care;

(c) To limit the practice of a physician, ***perfusionist***, physician assistant or practitioner of respiratory care, or suspend his license to practice; ~~{or}~~

(d) To enjoin the use of the title "P.A.," "P.A.-C.," "R.C.P." or any other word, combination of letters or other designation intended to imply or designate a person as a physician assistant or practitioner of respiratory care, when not licensed by the Board pursuant to this chapter, unless the use is otherwise authorized by a specific statute ~~{-}~~; ***or***

(e) *To enjoin the use of the title “L.P.,” “T.L.P.,” “licensed perfusionist,” “temporarily licensed perfusionist” or any other word, combination of letters or other designation intended to imply or designate a person as a perfusionist, when not licensed by the Board pursuant to this chapter, unless the use is otherwise authorized by a specific statute.*

2. The court in a proper case may issue a temporary restraining order or a preliminary injunction for the purposes set forth in subsection 1:

- (a) Without proof of actual damage sustained by any person;
- (b) Without relieving any person from criminal prosecution for engaging in the practice of medicine, *perfusion or respiratory care* without a license; and
- (c) Pending proceedings for disciplinary action by the Board.

Sec. 62. NRS 630.390 is hereby amended to read as follows:

630.390 In seeking injunctive relief against any person for an alleged violation of this chapter by practicing medicine, *perfusion* or respiratory care without a license, it is sufficient to allege that he did, upon a certain day, and in a certain county of this State, engage in the practice of medicine, *perfusion* or respiratory care without having a license to do so, without alleging any further or more particular facts concerning the same.

Sec. 63. NRS 630.400 is hereby amended to read as follows:

630.400 A person who:

- 1. Presents to the Board as his own the diploma, license or credentials of another;
- 2. Gives either false or forged evidence of any kind to the Board;
- 3. Practices medicine, *perfusion* or respiratory care under a false or assumed name or falsely personates another licensee;
- 4. Except as otherwise provided by a specific statute, practices medicine, *perfusion* or respiratory care without being licensed under this chapter;
- 5. *Holds himself out as a perfusionist or uses any other term indicating or implying that he is a perfusionist without being licensed by the Board;*
- 6. Holds himself out as a physician assistant or uses any other term indicating or implying that he is a physician assistant without being licensed by the Board; or

~~6.7.~~ 7. Holds himself out as a practitioner of respiratory care or uses any other term indicating or implying that he is a practitioner of respiratory care without being licensed by the Board,

↪ is guilty of a category D felony and shall be punished as provided in NRS 193.130.

Sec. 64. NRS 630A.090 is hereby amended to read as follows:

630A.090 1. This chapter does not apply to:

- (a) The practice of dentistry, chiropractic, Oriental medicine, podiatry, optometry, *perfusion*, respiratory care, faith or Christian Science healing, nursing, veterinary medicine or fitting hearing aids.

(b) A medical officer of the Armed Services or a medical officer of any division or department of the United States in the discharge of his official duties.

(c) Licensed or certified nurses in the discharge of their duties as nurses.

(d) Homeopathic physicians who are called into this State, other than on a regular basis, for consultation or assistance to any physician licensed in this State, and who are legally qualified to practice in the state or country where they reside.

2. This chapter does not repeal or affect any statute of Nevada regulating or affecting any other healing art.

3. This chapter does not prohibit:

(a) Gratuitous services of a person in case of emergency.

(b) The domestic administration of family remedies.

4. This chapter does not authorize a homeopathic physician to practice medicine, including allopathic medicine, except as otherwise provided in NRS 630A.040.

Sec. 65. NRS 632.472 is hereby amended to read as follows:

632.472 1. The following persons shall report in writing to the Executive Director of the Board any conduct of a licensee or holder of a certificate which constitutes a violation of the provisions of this chapter:

(a) Any physician, dentist, dental hygienist, chiropractor, optometrist, podiatric physician, medical examiner, resident, intern, professional or practical nurse, nursing assistant, *perfusionist*, physician assistant licensed pursuant to chapter 630 or 633 of NRS, psychiatrist, psychologist, marriage and family therapist, clinical professional counselor, alcohol or drug abuse counselor, driver of an ambulance, advanced emergency medical technician or other person providing medical services licensed or certified to practice in this State.

(b) Any personnel of a medical facility or facility for the dependent engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of a medical facility or facility for the dependent upon notification by a member of the staff of the facility.

(c) A coroner.

(d) Any person who maintains or is employed by an agency to provide personal care services in the home.

(e) Any person who operates, who is employed by or who contracts to provide services for an intermediary service organization as defined in NRS 426.218.

(f) Any person who maintains or is employed by an agency to provide nursing in the home.

(g) Any employee of the Department of Health and Human Services.

(h) Any employee of a law enforcement agency or a county's office for protective services or an adult or juvenile probation officer.

(i) Any person who maintains or is employed by a facility or establishment that provides care for older persons.

(j) Any person who maintains, is employed by or serves as a volunteer for an agency or service which advises persons regarding the abuse, neglect or exploitation of an older person and refers them to persons and agencies where their requests and needs can be met.

(k) Any social worker.

2. Every physician who, as a member of the staff of a medical facility or facility for the dependent, has reason to believe that a nursing assistant has engaged in conduct which constitutes grounds for the denial, suspension or revocation of a certificate shall notify the superintendent, manager or other person in charge of the facility. The superintendent, manager or other person in charge shall make a report as required in subsection 1.

3. A report may be filed by any other person.

4. Any person who in good faith reports any violation of the provisions of this chapter to the Executive Director of the Board pursuant to this section is immune from civil liability for reporting the violation.

5. As used in this section, "agency to provide personal care services in the home" has the meaning ascribed to it in NRS 449.0021.

Sec. 66. Chapter 633 of NRS is hereby amended by adding thereto the provisions set forth as sections ~~67 and 68~~ **66.1 to 68, inclusive**, of this act.

**Sec. 66.1. "Practice of osteopathic medicine" includes, without limitation, the performance of an autopsy.**

**Sec. 66.3. 1. An osteopathic physician who is retired from active practice and who:**

**(a) Wishes to donate his expertise for the medical care and treatment of persons in this State who are indigent, uninsured or unable to afford health care; or**

**(b) Wishes to provide services for any disaster relief operations conducted by a governmental entity or nonprofit organization,**

**↪ may obtain a special volunteer license to practice osteopathic medicine by submitting an application to the Board pursuant to this section.**

**2. An application for a special volunteer license to practice osteopathic medicine must be on a form provided by the Board and must include:**

**(a) Documentation of the history of medical practice of the osteopathic physician;**

**(b) Proof that the osteopathic physician previously has been issued an unrestricted license to practice osteopathic medicine in any state of the United States and that he has never been the subject of disciplinary action by a medical board in any jurisdiction;**

**(c) Proof that the osteopathic physician satisfies the requirements for licensure set forth in NRS 633.311 or the requirements for licensure by endorsement set forth in NRS 633.400;**

(d) Acknowledgment that the practice of the osteopathic physician under the special volunteer license to practice osteopathic medicine will be exclusively devoted to providing medical care;

(1) To persons in this State who are indigent, uninsured or unable to afford health care; or

(2) As part of any disaster relief operations conducted by a governmental entity or nonprofit organization; and

(e) Acknowledgment that the osteopathic physician will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation, for providing medical care under the special volunteer license to practice osteopathic medicine, except for payment by a medical facility at which the osteopathic physician provides volunteer medical services of the expenses of the osteopathic physician for necessary travel, continuing education, malpractice insurance or fees of the State Board of Pharmacy.

3. If the Board finds that the application of an osteopathic physician satisfies the requirements of subsection 2 and that the retired osteopathic physician is competent to practice osteopathic medicine, the Board shall issue a special volunteer license to practice osteopathic medicine to the osteopathic physician.

4. The initial special volunteer license to practice osteopathic medicine issued pursuant to this section expires 1 year after the date of issuance. The license may be renewed pursuant to this section, and any license that is renewed expires 2 years after the date of issuance.

5. The Board shall not charge a fee for:

(a) The review of an application for a special volunteer license to practice osteopathic medicine; or

(b) The issuance or renewal of a special volunteer license to practice osteopathic medicine pursuant to this section.

6. An osteopathic physician who is issued a special volunteer license to practice osteopathic medicine pursuant to this section and who accepts the privilege of practicing osteopathic medicine in this State pursuant to the provisions of the special volunteer license to practice osteopathic medicine is subject to all the provisions governing disciplinary action set forth in this chapter.

7. An osteopathic physician who is issued a special volunteer license to practice osteopathic medicine pursuant to this section shall comply with the requirements for continuing education adopted by the Board.

Sec. 66.5. 1. Except as otherwise provided in NRS 633.315, the Board may issue an authorized facility license to a person who intends to practice osteopathic medicine in this State as a psychiatrist in a mental health center of the Division under the direct supervision of a psychiatrist who holds an unrestricted license to practice osteopathic medicine pursuant to this chapter or to practice medicine pursuant to chapter 630 of NRS.

2. A person who applies for an authorized facility license pursuant to this section is not required to take or pass a written examination as to his qualifications to practice osteopathic medicine, but the person must meet all conditions and requirements for an unrestricted license to practice osteopathic medicine pursuant to this chapter.

3. If the Board issues an authorized facility license pursuant to this section, the person who holds the license may practice osteopathic medicine in this State only as a psychiatrist in a mental health center of the Division and only under the direct supervision of a psychiatrist who holds an unrestricted license to practice osteopathic medicine pursuant to this chapter or to practice medicine pursuant to chapter 630 of NRS.

4. If a person who holds an authorized facility license issued pursuant to this section ceases to practice osteopathic medicine in this State as a psychiatrist in a mental health center of the Division:

(a) The Division shall notify the Board; and

(b) Upon receipt of the notification, the authorized facility license expires automatically.

5. The Board may renew or modify an authorized facility license issued pursuant to this section, unless the license has expired automatically or has been revoked.

6. The provisions of this section do not limit the authority of the Board to issue a license to an applicant in accordance with any other provision of this chapter.

7. As used in this section:

(a) "Division" means the Division of Mental Health and Developmental Services of the Department of Health and Human Services.

(b) "Mental health center" has the meaning ascribed to it in NRS 433.144.

Sec. 66.7. 1. Except as otherwise provided in NRS 633.315, the Board may issue an authorized facility license to a person who intends to practice osteopathic medicine in this State as an osteopathic physician in an institution of the Department of Corrections under the direct supervision of an osteopathic physician who holds an unrestricted license to practice osteopathic medicine pursuant to this chapter or to practice medicine pursuant to chapter 630 of NRS.

2. A person who applies for an authorized facility license pursuant to this section is not required to take or pass a written examination as to his qualifications to practice osteopathic medicine, but the person must meet all conditions and requirements for an unrestricted license to practice osteopathic medicine pursuant to this chapter.

3. If the Board issues an authorized facility license pursuant to this section, the person who holds the license may practice osteopathic medicine in this State only as an osteopathic physician in an institution of the Department of Corrections and only under the direct supervision of an osteopathic physician who holds an unrestricted license to practice



osteopathic medicine pursuant to this chapter or to practice medicine pursuant to chapter 630 of NRS.

4. If a person who holds an authorized facility license issued pursuant to this section ceases to practice osteopathic medicine in this State as an osteopathic physician in an institution of the Department of Corrections:

(a) The Department shall notify the Board; and

(b) Upon receipt of the notification, the authorized facility license expires automatically.

5. The Board may renew or modify an authorized facility license issued pursuant to this section, unless the license has expired automatically or has been revoked.

6. The provisions of this section do not limit the authority of the Board to issue a license to an applicant in accordance with any other provision of this chapter.

Sec. 67. 1. If the Board has reason to believe that a person has violated or is violating any provision of this chapter, the Board or any investigative committee of the Board may issue to the person a letter of warning, a letter of concern or a nonpunitive admonishment at any time before the Board initiates any disciplinary proceedings against the person.

2. The issuance of such a letter or admonishment:

(a) Does not preclude the Board from initiating any disciplinary proceedings against the person or taking any disciplinary action against the person based on any conduct alleged or described in the letter or admonishment or any other conduct; and

(b) Does not constitute a final decision of the Board and is not subject to judicial review.

3. In addition to any action taken pursuant to subsection 1, if the Board has reason to believe that a person has violated or is violating any provision of this chapter, the Board or any investigative committee of the Board may negotiate a remediation agreement with the person. The remediation agreement must include, for each violation, a statement specifying each provision of this chapter or regulation adopted pursuant to this chapter that the Board has reason to believe that the person has violated or is violating. The remediation agreement must also set forth the terms and conditions specified by the Board or an investigative committee, including, without limitation, provisions that:

(a) Address each violation of this chapter that is at issue; and

(b) Remediate or improve the practice of the person relating to those violations.

4. A remediation agreement that is negotiated by an investigative committee of the Board must be presented to the Board for approval. Any remediation agreement presented to the Board pursuant to this subsection is a public record. The Board shall ensure that all identifying information regarding each person who is subject to the remediation agreement is removed. The remediation agreement becomes effective immediately upon

*approval of the remediation agreement by the Board. If the Board does not approve the remediation agreement, the Board shall refer the matter to the investigative committee that presented the remediation agreement to the Board. The investigative committee may further proceed with the matter as it deems appropriate.*

*5. A remediation agreement entered into pursuant to this section does not constitute disciplinary action against any person who is subject to the remediation agreement and is not reportable to any national database. If the person violates a provision of the remediation agreement, the Board or the investigative committee of the Board with whom the remediation agreement was negotiated may take any action it deems appropriate, including, without limitation, initiating disciplinary proceedings against the person.*

*6. The Board shall adopt regulations to carry out the provisions of this section.*

*Sec. 68. In any disciplinary proceedings conducted pursuant to this chapter, the standard of proof is a preponderance of the evidence.*

***Sec. 68.9. NRS 633.011 is hereby amended to read as follows:***

633.011 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 633.021 to 633.131, inclusive, and section 66.1 of this act have the meanings ascribed to them in those sections.

*Sec. 69. NRS 633.131 is hereby amended to read as follows:*

633.131 1. "Unprofessional conduct" includes:

(a) Willfully making a false or fraudulent statement or submitting a forged or false document in applying for a license to practice osteopathic medicine or in applying for renewal of a license to practice osteopathic medicine.

(b) Failure of a licensee of the practice of osteopathic medicine to designate his school of practice in the professional use of his name by the term D.O., osteopathic physician, doctor of osteopathy or a similar term.

(c) Directly or indirectly giving to or receiving from any person, corporation or other business organization any fee, commission, rebate or other form of compensation for sending, referring or otherwise inducing a person to communicate with an osteopathic physician in his professional capacity or for any professional services not actually and personally rendered, except as otherwise provided in subsection 2.

(d) Employing, directly or indirectly, any suspended or unlicensed person in the practice of osteopathic medicine, or the aiding or abetting of any unlicensed person to practice osteopathic medicine.

(e) Advertising the practice of osteopathic medicine in a manner which does not conform to the guidelines established by regulations of the Board.

(f) Engaging in any:

(1) Professional conduct which is intended to deceive or which the Board by regulation has determined is unethical; or

(2) Medical practice harmful to the public or any conduct detrimental to the public health, safety or morals which does not constitute gross or repeated malpractice or professional incompetence.

(g) Administering, dispensing or prescribing any controlled substance or any dangerous drug as defined in chapter 454 of NRS, otherwise than in the course of legitimate professional practice or as authorized by law.

(h) Habitual drunkenness or habitual addiction to the use of a controlled substance.

(i) Performing, assisting in or advising an unlawful abortion or the injection of any liquid silicone substance into the human body [—], ***other than the use of silicone oil to repair a retinal detachment.***

(j) Willful disclosure of a communication privileged pursuant to a statute or court order.

(k) Willful disobedience of the regulations of the State Board of Health, the State Board of Pharmacy or the State Board of Osteopathic Medicine.

(l) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any prohibition made in this chapter.

(m) Failure of a licensee to maintain timely, legible, accurate and complete medical records relating to the diagnosis, treatment and care of a patient.

(n) Making alterations to the medical records of a patient that the licensee knows to be false.

(o) Making or filing a report which the licensee knows to be false.

(p) Failure of a licensee to file a record or report as required by law, or willfully obstructing or inducing any person to obstruct such filing.

(q) Failure of a licensee to make medical records of a patient available for inspection and copying as provided by NRS 629.061.

2. It is not unprofessional conduct:

(a) For persons holding valid licenses to practice osteopathic medicine issued pursuant to this chapter to practice osteopathic medicine in partnership under a partnership agreement or in a corporation or an association authorized by law, or to pool, share, divide or apportion the fees and money received by them or by the partnership, corporation or association in accordance with the partnership agreement or the policies of the board of directors of the corporation or association;

(b) For two or more persons holding valid licenses to practice osteopathic medicine issued pursuant to this chapter to receive adequate compensation for concurrently rendering professional care to a patient and dividing a fee if the patient has full knowledge of this division and if the division is made in proportion to the services performed and the responsibility assumed by each; or

(c) For a person licensed to practice osteopathic medicine pursuant to the provisions of this chapter to form an association or other business relationship with an optometrist pursuant to the provisions of NRS 636.373.

Sec. 70. NRS 633.171 is hereby amended to read as follows:

633.171 1. This chapter does not apply to:

(a) The practice of medicine *or perfusion* pursuant to chapter 630 of NRS, dentistry, chiropractic, podiatry, optometry, respiratory care, faith or Christian Science healing, nursing, veterinary medicine or fitting hearing aids.

(b) A medical officer of the Armed Services or a medical officer of any division or department of the United States in the discharge of his official duties.

(c) Osteopathic physicians who are called into this State, other than on a regular basis, for consultation or assistance to a physician licensed in this State, and who are legally qualified to practice in the state where they reside.

2. This chapter does not repeal or affect any law of this State regulating or affecting any other healing art.

3. This chapter does not prohibit:

(a) Gratuitous services of a person in cases of emergency.

(b) The domestic administration of family remedies.

**Sec. 70.5. NRS 633.286 is hereby amended to read as follows:**

633.286 1. On or before February 15 of each odd-numbered year, the Board shall 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:

(a) Disciplinary action taken by the Board during the previous biennium against osteopathic physicians for malpractice or negligence;

(b) **The number and types of remediation agreements approved by the Board pursuant to section 67 of this act;**

**(c)** Information reported to the Board during the previous biennium pursuant to NRS 633.526, 633.527, subsections ~~2 and~~ 3 **and 4** of NRS 633.533 and NRS 690B.250 and 690B.260; and

~~[(c)]~~ **(d)** Information reported to the Board during the previous biennium pursuant to NRS 633.524, including, without limitation, the number and types of surgeries performed by each holder of a license to practice osteopathic medicine and the occurrence of sentinel events arising from such surgeries, if any.

2. The report must include only aggregate information for statistical purposes and exclude any identifying information related to a particular person.

**3. On or before February 15 of each odd-numbered year, the Board shall submit to the Legislative Commission a written report compiling the information described in paragraphs (a) and (b) of subsection 1.**

**Sec. 70.7. NRS 633.286 is hereby amended to read as follows:**

633.286 1. On or before February 15 of each odd-numbered year, the Board shall 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:

(a) Disciplinary action taken by the Board during the previous biennium against osteopathic physicians for malpractice or negligence;

(b) ~~The number and types of remediation agreements approved by the Board pursuant to section 67 of this act;~~

~~(c)~~ Information reported to the Board during the previous biennium pursuant to NRS 633.526, 633.527, subsections 3 and 4 of NRS 633.533 and NRS 690B.250 and 690B.260; and

~~(d)~~ (c) Information reported to the Board during the previous biennium pursuant to NRS 633.524, including, without limitation, the number and types of surgeries performed by each holder of a license to practice osteopathic medicine and the occurrence of sentinel events arising from such surgeries, if any.

2. The report must include only aggregate information for statistical purposes and exclude any identifying information related to a particular person.

~~3. On or before February 15 of each odd numbered year, the Board shall submit to the Legislative Commission a written report compiling the information described in paragraphs (a) and (b) of subsection 1.~~

Sec. 71. NRS 633.322 is hereby amended to read as follows:

633.322 In addition to the other requirements for licensure to practice osteopathic medicine, an applicant shall cause to be submitted to the Board ~~[a]~~:

1. A certificate of completion of progressive postgraduate training from the residency program where the applicant received training ~~[i]~~; and

2. *If applicable, proof of satisfactory completion of a postgraduate training program specified in paragraph (c) of subsection 4 of NRS 633.311 within 120 days after the scheduled completion of the program.*

Sec. 72. NRS 633.331 is hereby amended to read as follows:

633.331 1. Examinations ~~[must]~~ *may* be held ~~[at least]~~ once a year at the time and place fixed by the Board. The Board shall notify each applicant in writing of the examinations.

2. The examination must be fair and impartial, practical in character, and the questions must be designed to discover the applicant's fitness.

3. The Board may employ specialists and other professional consultants or examining services in conducting the examination.

4. Each member who is not licensed in any state to practice any healing art shall not participate in preparing, conducting or grading any examination required by the Board.

**Sec. 72.5. NRS 633.401 is hereby amended to read as follows:**

633.401 1. Except as otherwise provided in NRS 633.315, the Board may issue a special license to practice osteopathic medicine:

(a) To authorize a person who is licensed to practice osteopathic medicine in an adjoining state to come into Nevada to care for or assist in the treatment

of his patients in association with an osteopathic physician in this State who has primary care of the patients.

(b) To a resident while he is enrolled in a postgraduate training program required pursuant to the provisions of paragraph (c) of subsection 4 of NRS 633.311.

(c) For a specified period and for specified purposes to a person who is licensed to practice osteopathic medicine in another jurisdiction.

2. **For the purpose of paragraph (c) of subsection 1, the osteopathic physician must:**

**(a) Hold a full and unrestricted license to practice osteopathic medicine in another state;**

**(b) Not have had any disciplinary or other action taken against him by any state or other jurisdiction; and**

**(c) Be certified by a specialty board of the American Board of Medical Specialties, the American Osteopathic Association or their successors.**

3. A special license issued under this section may be renewed by the Board upon application of the licensee.

~~3.4~~ 4. Every person who applies for or renews a special license under this section shall pay respectively the special license fee or special license renewal fee specified in this chapter.

Sec. 73. NRS 633.411 is hereby amended to read as follows:

633.411 1. Except as otherwise provided in NRS 633.315, the Board may issue a special license to practice osteopathic medicine to a person qualified under this section to authorize him to serve:

(a) As a resident medical officer in any hospital in Nevada. A person issued such a license shall practice osteopathic medicine only within the confines of the hospital specified in the license and under the supervision of the regular medical staff of that hospital.

(b) As a professional employee of the State of Nevada or of the United States. A person issued such a license shall practice osteopathic medicine only within the scope of his employment and under the supervision of the appropriate state or federal medical agency.

2. An applicant for a special license under this section must:

(a) Be a graduate of a school of osteopathic medicine . ~~and have completed a hospital internship.~~

(b) Pay the special license fee specified in this chapter.

3. The Board shall not issue a license under subsection 1 unless it has received a letter from a hospital in Nevada or from the appropriate state or federal medical agency requesting issuance of the special license to the applicant.

4. A special license issued under this section:

(a) Must be issued at a meeting of the Board or between its meetings by its President and Secretary subject to approval at the next meeting of the Board.

(b) Is valid for a period not exceeding 1 year, as determined by the Board.

(c) May be renewed by the Board upon application and payment by the licensee of the special license renewal fee specified in this chapter.

(d) Does not entitle the licensee to engage in the private practice of osteopathic medicine.

5. The issuance of a special license under this section does not obligate the Board to grant any regular license to practice osteopathic medicine.

**Sec. 73.5. NRS 633.501 is hereby amended to read as follows:**

633.501 The Board shall charge and collect fees not to exceed the following amounts:

1. Application and initial license fee for an osteopathic physician.... \$800
2. Annual license renewal fee for an osteopathic physician ..... 500
3. Temporary license fee..... 500
4. Special or authorized facility license fee ..... 200
5. Special or authorized facility license renewal fee ..... 200
6. Reexamination fee ..... 200
7. Late payment fee..... 300
8. Application and initial license fee for a physician assistant..... 400
9. Annual license renewal fee for a physician assistant..... 400
10. Inactive license fee..... 200

**Sec. 74. NRS 633.511 is hereby amended to read as follows:**

633.511 The grounds for initiating disciplinary action pursuant to this chapter are:

1. Unprofessional conduct.
2. Conviction of:
  - (a) A violation of any federal or state law regulating the possession, distribution or use of any controlled substance or any dangerous drug as defined in chapter 454 of NRS;
  - (b) A felony relating to the practice of osteopathic medicine;
  - (c) A violation of any of the provisions of NRS 616D.200, 616D.220, 616D.240 or 616D.300 to 616D.440, inclusive;
  - (d) Murder, voluntary manslaughter or mayhem;
  - (e) Any felony involving the use of a firearm or other deadly weapon;
  - (f) Assault with intent to kill or to commit sexual assault or mayhem;
  - (g) Sexual assault, statutory sexual seduction, incest, lewdness, indecent exposure or any other sexually related crime;
  - (h) Abuse or neglect of a child or contributory delinquency; or
  - (i) Any offense involving moral turpitude.
3. The suspension of the license to practice osteopathic medicine by any other jurisdiction.
4. ~~[Gross or repeated]~~ **Malpractice or gross** malpractice, which may be evidenced by ~~[claims]~~ **a claim** of malpractice settled against a practitioner.
5. Professional incompetence.
6. Failure to comply with the requirements of NRS 633.527.
7. Failure to comply with the requirements of subsection 3 of NRS 633.471.

8. *Failure to comply with the provisions of subsection 2 of NRS 633.322.*

9. *Signing a blank prescription form.*

10. *Attempting, directly or indirectly, by intimidation, coercion or deception, to obtain or retain a patient or to discourage the use of a second opinion.*

11. *Terminating the medical care of a patient without adequate notice or without making other arrangements for the continued care of the patient.*

12. *In addition to the provisions of subsection 3 of NRS 633.524, making or filing a report which the licensee knows to be false, failing to file a record or report that is required by law or willfully obstructing or inducing another to obstruct the making or filing of such a record or report.*

13. *Failure to report any person the licensee knows, or has reason to know, is in violation of the provisions of this chapter or the regulations of the Board within 30 days after the date the licensee knows or has reason to know of the violation.*

14. *Failure by a licensee or applicant to report in writing, within 30 days, any criminal action taken or conviction obtained against him, other than a minor traffic violation, in this State or any other state or by the Federal Government, a branch of the Armed Forces of the United States or any local or federal jurisdiction of a foreign country.*

15. *Engaging in any act that is unsafe in accordance with regulations adopted by the Board.*

16. *Violating a provision of a remediation agreement approved by the Board pursuant to section 67 of this act.*

**Sec. 74.5. NRS 633.511 is hereby amended to read as follows:**

633.511 The grounds for initiating disciplinary action pursuant to this chapter are:

1. Unprofessional conduct.
2. Conviction of:
  - (a) A violation of any federal or state law regulating the possession, distribution or use of any controlled substance or any dangerous drug as defined in chapter 454 of NRS;
  - (b) A felony relating to the practice of osteopathic medicine;
  - (c) A violation of any of the provisions of NRS 616D.200, 616D.220, 616D.240 or 616D.300 to 616D.440, inclusive;
  - (d) Murder, voluntary manslaughter or mayhem;
  - (e) Any felony involving the use of a firearm or other deadly weapon;
  - (f) Assault with intent to kill or to commit sexual assault or mayhem;
  - (g) Sexual assault, statutory sexual seduction, incest, lewdness, indecent exposure or any other sexually related crime;
  - (h) Abuse or neglect of a child or contributory delinquency; or
  - (i) Any offense involving moral turpitude.



3. The suspension of the license to practice osteopathic medicine by any other jurisdiction.

4. Malpractice or gross malpractice, which may be evidenced by a claim of malpractice settled against a practitioner.

5. Professional incompetence.

6. Failure to comply with the requirements of NRS 633.527.

7. Failure to comply with the requirements of subsection 3 of NRS 633.471.

8. Failure to comply with the provisions of subsection 2 of NRS 633.322.

9. Signing a blank prescription form.

10. Attempting, directly or indirectly, by intimidation, coercion or deception, to obtain or retain a patient or to discourage the use of a second opinion.

11. Terminating the medical care of a patient without adequate notice or without making other arrangements for the continued care of the patient.

12. In addition to the provisions of subsection 3 of NRS 633.524, making or filing a report which the licensee knows to be false, failing to file a record or report that is required by law or willfully obstructing or inducing another to obstruct the making or filing of such a record or report.

13. Failure to report any person the licensee knows, or has reason to know, is in violation of the provisions of this chapter or the regulations of the Board within 30 days after the date the licensee knows or has reason to know of the violation.

14. Failure by a licensee or applicant to report in writing, within 30 days, any criminal action taken or conviction obtained against him, other than a minor traffic violation, in this State or any other state or by the Federal Government, a branch of the Armed Forces of the United States or any local or federal jurisdiction of a foreign country.

15. Engaging in any act that is unsafe in accordance with regulations adopted by the Board.

~~[16. Violating a provision of a remediation agreement approved by the Board pursuant to section 67 of this act.]~~

**Sec. 74.7. NRS 633.533 is hereby amended to read as follows:**

**633.533 1. Except as otherwise provided in subsection 2, any person may file with the Board a complaint against an osteopathic physician on a form provided by the Board. The form may be submitted in writing or electronically. If a complaint is submitted anonymously, the Board may accept the complaint but may refuse to consider the complaint if the lack of the identity of the complainant makes processing the complaint impossible or unfair to the person who is the subject of the complaint.**

**2. Any [person.] licensee, medical school or medical facility that becomes aware that a person practicing osteopathic medicine in this State has, is or is about to become engaged in conduct which constitutes grounds for initiating disciplinary action shall file a written complaint with the Board within 30 days after becoming aware of the conduct.**

~~2-3~~ 3. Any hospital, clinic or other medical facility licensed in this State, or medical society, shall report to the Board any change in an osteopathic physician's privileges to practice osteopathic medicine while the osteopathic physician is under investigation and the outcome of any disciplinary action taken by that facility or society against the osteopathic physician concerning the care of a patient or the competency of the osteopathic physician within 30 days after the change in privileges is made or disciplinary action is taken. The Board shall report any failure to comply with this subsection by a hospital, clinic or other medical facility licensed in this State to the Health Division of the Department of Health and Human Services. If, after a hearing, the Health Division determines that any such facility or society failed to comply with the requirements of this subsection, the Division may impose an administrative fine of not more than \$10,000 against the facility or society for each such failure to report. If the administrative fine is not paid when due, the fine must be recovered in a civil action brought by the Attorney General on behalf of the Division.

~~2-3~~ 4. The clerk of every court shall report to the Board any finding, judgment or other determination of the court that an osteopathic physician or physician assistant:

- (a) Is a person with mental illness;
- (b) Is a person with mental incompetence;
- (c) Has been convicted of a felony or any law governing controlled substances or dangerous drugs;
- (d) Is guilty of abuse or fraud under any state or federal program providing medical assistance; or
- (e) Is liable for damages for malpractice or negligence,

↪ within 45 days after such a finding, judgment or determination is made.

~~4-3~~ 5. On or before January 15 of each year, the clerk of every court shall submit to the Office of Court Administrator created pursuant to NRS 1.320 a written report compiling the information that the clerk reported during the previous year to the Board regarding osteopathic physicians pursuant to paragraph (e) of subsection ~~2-3~~ 4.

Sec. 75. NRS 633.561 is hereby amended to read as follows:

633.561 1. Notwithstanding the provisions of chapter 622A of NRS, if the Board or a member of the Board designated to review a complaint pursuant to NRS 633.541 has reason to believe that the conduct of an osteopathic physician has raised a reasonable question as to his competence to practice osteopathic medicine with reasonable skill and safety to patients, the Board or the member designated by the Board may require the osteopathic physician to submit to a mental or physical examination by physicians designated by the Board. *If the osteopathic physician participates in a diversion program, the diversion program may exchange with any authorized member of the staff of the Board any information concerning the recovery and participation of the osteopathic physician in the diversion program. As used in this subsection, "diversion program" means a*

*program approved by the Board to correct an osteopathic physician's alcohol or drug dependence or any other impairment.*

2. For the purposes of this section:

(a) Every physician who is licensed under this chapter who accepts the privilege of practicing osteopathic medicine in this State shall be deemed to have given his consent to submit to a mental or physical examination if directed to do so in writing by the Board.

(b) The testimony or examination reports of the examining physicians are not privileged communications.

3. Except in extraordinary circumstances, as determined by the Board, the failure of a physician who is licensed under this chapter to submit to an examination if directed as provided in this section constitutes an admission of the charges against him.

**Sec. 75.5. NRS 633.581 is hereby amended to read as follows:**

633.581 **1. If an investigation by the Board regarding an osteopathic physician reasonably determines that the health, safety or welfare of the public or any patient served by the osteopathic physician is at risk of imminent or continued harm, the Board may summarily suspend the license of the osteopathic physician. The order of summary suspension may be issued by the Board, an investigative committee of the Board or the Executive Director of the Board after consultation with the President, Vice President or Secretary-Treasurer of the Board.**

**2. If the Board issues an order summarily suspending the license of an osteopathic physician pursuant to subsection 1, the Board shall hold a hearing regarding the matter not later than 45 days after the date on which the Board issues the order summarily suspending the license unless the Board and the licensee mutually agree to a longer period.**

**3. Notwithstanding the provisions of chapter 622A of NRS, if the Board issues an order summarily suspending the license of an osteopathic physician pending proceedings for disciplinary action and requires the physician to submit to a mental or physical examination or a medical competency examination, the examination shall be conducted and the results obtained not later than 60 days after the Board issues its order.**

**Sec. 76. NRS 633.625 is hereby amended to read as follows:**

633.625 **1. Any ~~osteopathic physician~~ licensee against whom the Board initiates disciplinary action pursuant to this chapter shall, within 30 days after the ~~osteopathic physician's~~ licensee's receipt of notification of the initiation of the disciplinary action, submit to the Board a complete set of his fingerprints and written permission authorizing the Board to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report.**

**2. The willful failure of ~~an osteopathic physician~~ a licensee to comply with the requirements of subsection 1 constitutes additional grounds for disciplinary action and the revocation of the license of the ~~osteopathic physician~~ licensee.**

3. The Board has additional grounds for initiating disciplinary action against ~~an osteopathic physician~~ **a licensee** if the report from the Federal Bureau of Investigation indicates that the ~~osteopathic physician~~ **licensee** has been convicted of:

(a) An act that is a ground for disciplinary action pursuant to NRS 633.511; or

(b) A felony set forth in NRS 633.741.

Sec. 77. NRS 633.651 is hereby amended to read as follows:

633.651 1. If the Board finds a person guilty in a disciplinary proceeding, it shall by order take one or more of the following actions:

(a) Place the person on probation for a specified period or until further order of the Board.

(b) Administer to the person a public reprimand.

(c) Limit the practice of the person to, or by the exclusion of, one or more specified branches of osteopathic medicine.

(d) Suspend the license of the person to practice osteopathic medicine for a specified period or until further order of the Board.

(e) Revoke the license of the person to practice osteopathic medicine.

**(f) Impose a fine not to exceed \$5,000 for each violation.**

**(g) Require supervision of the practice of the person.**

**(h) Require the person to perform community service without compensation.**

**(i) Require the person to complete any training or educational requirements specified by the Board.**

**(j) Require the person to participate in a program to correct alcohol or drug dependence or any other impairment.**

↪ The order of the Board may contain ~~such~~ **any** other terms, provisions or conditions as the Board deems proper and which are not inconsistent with law.

2. The Board shall not administer a private reprimand.

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

Sec. 78. NRS 633.691 is hereby amended to read as follows:

633.691 In addition to any other immunity provided by the provisions of chapter 622A of NRS, the Board, a medical review panel of a hospital, a hearing officer, a panel of the Board, **an employee or volunteer of a diversion program specified in NRS 633.561**, or any person who or other organization which initiates or assists in any lawful investigation or proceeding concerning the discipline of an osteopathic physician for gross malpractice, ~~repeated~~ malpractice, professional incompetence or unprofessional conduct is immune from any civil action for such initiation or assistance or any consequential damages, if the person or organization acted without malicious intent.

Sec. 78.1. Chapter 641 of NRS is hereby amended by adding thereto a new section to read as follows:

***“National examination” means the Examination for Professional Practice in Psychology in the form administered by the Association of State and Provincial Psychology Boards and approved for use in this State by the Board.***

Sec. 78.2. NRS 641.020 is hereby amended to read as follows:

641.020 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 641.021 to 641.027, inclusive, ***and section 78.1 of this act*** have the meanings ascribed to them in those sections.

Sec. 78.3. NRS 641.160 is hereby amended to read as follows:

641.160 **1.** Each person desiring a license must ~~make~~ :

(a) ***Make*** application to the Board upon a form, and in a manner, prescribed by the Board. The application must be accompanied by the application fee prescribed by the Board and include all information required to complete the application.

(b) ***As part of his application and at his own expense:***

(1) ***Arrange to have a complete set of his fingerprints taken by a law enforcement agency or other authorized entity acceptable to the Board; and***

(2) ***Submit to the Board:***

(I) ***A complete set of fingerprints and written permission authorizing the Board to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for a report on the applicant’s background, and to such other law enforcement agencies as the Board deems necessary for a report on the applicant’s background; or***

(II) ***Written verification, on a form prescribed by the Board, stating that the set of fingerprints of the applicant was taken and directly forwarded electronically or by other means to the Central Repository for Nevada Records of Criminal History and that the applicant provided written permission authorizing the law enforcement agency or other authorized entity taking the fingerprints to submit the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for a report on the applicant’s background, and to such other law enforcement agencies as the Board deems necessary for a report on the applicant’s background.***

**2. The Board may:**

(a) ***Unless the applicant’s fingerprints are directly forwarded pursuant to sub-subparagraph (II) of subparagraph (2) of paragraph (b) of subsection 1, submit those fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation and to such other law enforcement agencies as the Board deems necessary; and***

(b) ***Request from each agency to which the Board submits the fingerprints any information regarding the applicant’s background as the Board deems necessary.***

3. *An application is not considered complete and received for purposes of evaluation pursuant to subsection 2 of NRS 641.170 until the Board receives a complete set of fingerprints or verification that the fingerprints have been forwarded electronically or by other means to the Central Repository for Nevada Records of Criminal History, and written authorization from the applicant pursuant to this section.*

Sec. 78.4. NRS 641.180 is hereby amended to read as follows:

641.180 1. Except as otherwise provided in this section and NRS 641.190, each applicant for a license must pass the ~~[Examination for the Professional Practice of Psychology in the form administered by the Association of State and Provincial Psychology Boards and approved for use in this State by the Board.]~~ ***national examination.*** In addition to ~~[this written]~~ ***the national*** examination, the Board may require an ~~[oral]~~ examination in whatever applied or theoretical fields it deems appropriate.

2. ~~[The examination must be given at least once a year, and may be given more often if deemed necessary by the Board. The examination must be given at a time and place, and under such supervision, as the Board may determine.]~~

3. ~~[The Board shall notify each applicant of the results of his [written] national examination and [supply him with a copy of all material information about those results provided to the Board by the Association of State and Provincial Psychology Boards.]~~

4. ~~[If an applicant fails the examination, he may request in writing that the Board review his examination.]~~

5. ~~[any other examination required pursuant to subsection 1.]~~

3. The Board may waive the requirement of ~~[a written]~~ ***the national*** examination for a person who:

- (a) Is licensed in another state;
- (b) Has ***at least 10 years'*** experience; and
- (c) Is a diplomate in the American Board of Professional Psychology or a fellow in the American Psychological Association, or who has other equivalent status as determined by the Board.

Sec. 78.5. NRS 641.370 is hereby amended to read as follows:

641.370 1. The Board shall charge and collect not more than the following fees respectively:

|   |       |
|---|-------|
| For the <del>[written]</del> <b><i>national</i></b> examination, in addition to the actual cost to the Board of the examination.....  | \$100 |
| For <del>[the special oral]</del> <b><i>any other</i></b> examination <del>[.]</del> <b><i>required pursuant to the provisions of subsection 1 of NRS 641.180,</i></b> in addition to the actual costs to the Board of the examination..... | 100   |
| For the issuance of an initial license.....   | 25    |
| For the biennial renewal of a license .....   | 500   |
| For the restoration of a license suspended for the nonpayment of the biennial fee for the renewal of a license .....  | 100   |

For the registration of a firm, partnership or corporation which engages in or offers to engage in the practice of psychology ..... 300  
 For the registration of a nonresident to practice as a consultant ..... 100

2. An applicant who passes the *national* examination and *any other examination required pursuant to the provisions of subsection 1 of NRS 641.180 and who* is eligible for a license shall pay the biennial fee for the renewal of a license, which must be prorated for the period from the date the license is issued to the end of the biennium.

3. In addition to the fees set forth in subsection 1, the Board may charge and collect a fee for the expedited processing of a request or for any other incidental service it provides. The fee must not exceed the cost to provide the service.

Sec. 79. NRS 652.210 is hereby amended to read as follows:

652.210 1. Except as otherwise provided in subsection 2 and NRS 126.121, no person other than a licensed physician, a licensed optometrist, a licensed practical nurse, a registered nurse, a *perfusionist*, a physician assistant licensed pursuant to chapter 630 or 633 of NRS, a certified intermediate emergency medical technician, a certified advanced emergency medical technician, a practitioner of respiratory care licensed pursuant to chapter 630 of NRS or a licensed dentist may manipulate a person for the collection of specimens.

2. The technical personnel of a laboratory may collect blood, remove stomach contents, perform certain diagnostic skin tests or field blood tests or collect material for smears and cultures.

Sec. 80. NRS 200.471 is hereby amended to read as follows:

200.471 1. As used in this section:

(a) "Assault" means intentionally placing another person in reasonable apprehension of immediate bodily harm.

(b) "Officer" means:

(1) A person who possesses some or all of the powers of a peace officer;

(2) A person employed in a full-time salaried occupation of fire fighting for the benefit or safety of the public;

(3) A member of a volunteer fire department;

(4) A jailer, guard, matron or other correctional officer of a city or county jail;

(5) A justice of the Supreme Court, district judge, justice of the peace, municipal judge, magistrate, court commissioner, master or referee, including a person acting pro tempore in a capacity listed in this subparagraph; or

(6) An employee of the State or a political subdivision of the State whose official duties require him to make home visits.

(c) "Provider of health care" means a physician, a *perfusionist or a* physician assistant licensed pursuant to chapter 630 of NRS, a practitioner of respiratory care, a homeopathic physician, an advanced practitioner of homeopathy, a homeopathic assistant, an osteopathic physician, a physician

assistant licensed pursuant to chapter 633 of NRS, a podiatric physician, a podiatry hygienist, a physical therapist, a medical laboratory technician, an optometrist, a chiropractor, a chiropractor's assistant, a doctor of Oriental medicine, a nurse, a student nurse, a certified nursing assistant, a nursing assistant trainee, a dentist, a dental hygienist, a pharmacist, an intern pharmacist, an attendant on an ambulance or air ambulance, a psychologist, a social worker, a marriage and family therapist, a marriage and family therapist intern, a clinical professional counselor, a clinical professional counselor intern and an emergency medical technician.

(d) "School employee" means a licensed or unlicensed person employed by a board of trustees of a school district pursuant to NRS 391.100.

(e) "Sporting event" has the meaning ascribed to it in NRS 41.630.

(f) "Sports official" has the meaning ascribed to it in NRS 41.630.

(g) "Taxicab" has the meaning ascribed to it in NRS 706.8816.

(h) "Taxicab driver" means a person who operates a taxicab.

(i) "Transit operator" means a person who operates a bus or other vehicle as part of a public mass transportation system.

2. A person convicted of an assault shall be punished:

(a) If paragraph (c) or (d) does not apply to the circumstances of the crime and the assault is not made with the use of a deadly weapon, or the present ability to use a deadly weapon, for a misdemeanor.

(b) If the assault is made with the use of a deadly weapon, or the present ability to use a deadly weapon, for a category B felony by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, or by a fine of not more than \$5,000, or by both fine and imprisonment.

(c) If paragraph (d) does not apply to the circumstances of the crime and if the assault is committed upon an officer, a provider of health care, a school employee, a taxicab driver or a transit operator who is performing his duty or upon a sports official based on the performance of his duties at a sporting event, and the person charged knew or should have known that the victim was an officer, a provider of health care, a school employee, a taxicab driver, a transit operator or a sports official, for a gross misdemeanor, unless the assault is made with the use of a deadly weapon, or the present ability to use a deadly weapon, then for a category B felony by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, or by a fine of not more than \$5,000, or by both fine and imprisonment.

(d) If the assault is committed upon an officer, a provider of health care, a school employee, a taxicab driver or a transit operator who is performing his duty or upon a sports official based on the performance of his duties at a sporting event by a probationer, a prisoner who is in lawful custody or confinement or a parolee, and the probationer, prisoner or parolee charged knew or should have known that the victim was an officer, a provider of health care, a school employee, a taxicab driver, a transit operator or a sports



official, for a category D felony as provided in NRS 193.130, unless the assault is made with the use of a deadly weapon, or the present ability to use a deadly weapon, then for a category B felony by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, or by a fine of not more than \$5,000, or by both fine and imprisonment.

Sec. 81. NRS 200.5093 is hereby amended to read as follows:

200.5093 1. Any person who is described in subsection 4 and who, in his professional or occupational capacity, knows or has reasonable cause to believe that an older person has been abused, neglected, exploited or isolated shall:

(a) Except as otherwise provided in subsection 2, report the abuse, neglect, exploitation or isolation of the older person to:

(1) The local office of the Aging Services Division of the Department of Health and Human Services;

(2) A police department or sheriff's office;

(3) The county's office for protective services, if one exists in the county where the suspected action occurred; or

(4) A toll-free telephone service designated by the Aging Services Division of the Department of Health and Human Services; and

(b) Make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the older person has been abused, neglected, exploited or isolated.

2. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that the abuse, neglect, exploitation or isolation of the older person involves an act or omission of the Aging Services Division, another division of the Department of Health and Human Services or a law enforcement agency, the person shall make the report to an agency other than the one alleged to have committed the act or omission.

3. Each agency, after reducing a report to writing, shall forward a copy of the report to the Aging Services Division of the Department of Health and Human Services and the Unit for the Investigation and Prosecution of Crimes.

4. A report must be made pursuant to subsection 1 by the following persons:

(a) Every physician, dentist, dental hygienist, chiropractor, optometrist, podiatric physician, medical examiner, resident, intern, professional or practical nurse, physician assistant licensed pursuant to chapter 630 or 633 of NRS, *perfusionist*, psychiatrist, psychologist, marriage and family therapist, clinical professional counselor, clinical alcohol and drug abuse counselor, alcohol and drug abuse counselor, athletic trainer, driver of an ambulance, advanced emergency medical technician or other person providing medical services licensed or certified to practice in this State, who examines, attends or treats an older person who appears to have been abused, neglected, exploited or isolated.

(b) Any personnel of a hospital or similar institution engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of a hospital or similar institution upon notification of the suspected abuse, neglect, exploitation or isolation of an older person by a member of the staff of the hospital.

(c) A coroner.

(d) Every person who maintains or is employed by an agency to provide personal care services in the home.

(e) Every person who maintains or is employed by an agency to provide nursing in the home.

(f) Every person who operates, who is employed by or who contracts to provide services for an intermediary service organization as defined in NRS 426.218.

(g) Any employee of the Department of Health and Human Services.

(h) Any employee of a law enforcement agency or a county's office for protective services or an adult or juvenile probation officer.

(i) Any person who maintains or is employed by a facility or establishment that provides care for older persons.

(j) Any person who maintains, is employed by or serves as a volunteer for an agency or service which advises persons regarding the abuse, neglect, exploitation or isolation of an older person and refers them to persons and agencies where their requests and needs can be met.

(k) Every social worker.

(l) Any person who owns or is employed by a funeral home or mortuary.

5. A report may be made by any other person.

6. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that an older person has died as a result of abuse, neglect or isolation, the person shall, as soon as reasonably practicable, report this belief to the appropriate medical examiner or coroner, who shall investigate the cause of death of the older person and submit to the appropriate local law enforcement agencies, the appropriate prosecuting attorney, the Aging Services Division of the Department of Health and Human Services and the Unit for the Investigation and Prosecution of Crimes his written findings. The written findings must include the information required pursuant to the provisions of NRS 200.5094, when possible.

7. A division, office or department which receives a report pursuant to this section shall cause the investigation of the report to commence within 3 working days. A copy of the final report of the investigation conducted by a division, office or department, other than the Aging Services Division of the Department of Health and Human Services, must be forwarded to the Aging Services Division within 90 days after the completion of the report, and a copy of any final report of an investigation must be forwarded to the Unit for the Investigation and Prosecution of Crimes within 90 days after completion of the report.

8. If the investigation of a report results in the belief that an older person is abused, neglected, exploited or isolated, the Aging Services Division of the Department of Health and Human Services or the county's office for protective services may provide protective services to the older person if he is able and willing to accept them.

9. A person who knowingly and willfully violates any of the provisions of this section is guilty of a misdemeanor.

10. As used in this section, "Unit for the Investigation and Prosecution of Crimes" means the Unit for the Investigation and Prosecution of Crimes Against Older Persons in the Office of the Attorney General created pursuant to NRS 228.265.

Sec. 82. NRS 200.50935 is hereby amended to read as follows:

200.50935 1. Any person who is described in subsection 3 and who, in his professional or occupational capacity, knows or has reasonable cause to believe that a vulnerable person has been abused, neglected, exploited or isolated shall:

(a) Report the abuse, neglect, exploitation or isolation of the vulnerable person to a law enforcement agency; and

(b) Make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the vulnerable person has been abused, neglected, exploited or isolated.

2. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that the abuse, neglect, exploitation or isolation of the vulnerable person involves an act or omission of a law enforcement agency, the person shall make the report to a law enforcement agency other than the one alleged to have committed the act or omission.

3. A report must be made pursuant to subsection 1 by the following persons:

(a) Every physician, dentist, dental hygienist, chiropractor, optometrist, podiatric physician, medical examiner, resident, intern, professional or practical nurse, *perfusionist*, physician assistant licensed pursuant to chapter 630 or 633 of NRS, psychiatrist, psychologist, marriage and family therapist, clinical professional counselor, clinical alcohol and drug abuse counselor, alcohol and drug abuse counselor, athletic trainer, driver of an ambulance, advanced emergency medical technician or other person providing medical services licensed or certified to practice in this State, who examines, attends or treats a vulnerable person who appears to have been abused, neglected, exploited or isolated.

(b) Any personnel of a hospital or similar institution engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of a hospital or similar institution upon notification of the suspected abuse, neglect, exploitation or isolation of a vulnerable person by a member of the staff of the hospital.

(c) A coroner.

(d) Every person who maintains or is employed by an agency to provide nursing in the home.

(e) Any employee of the Department of Health and Human Services.

(f) Any employee of a law enforcement agency or an adult or juvenile probation officer.

(g) Any person who maintains or is employed by a facility or establishment that provides care for vulnerable persons.

(h) Any person who maintains, is employed by or serves as a volunteer for an agency or service which advises persons regarding the abuse, neglect, exploitation or isolation of a vulnerable person and refers them to persons and agencies where their requests and needs can be met.

(i) Every social worker.

(j) Any person who owns or is employed by a funeral home or mortuary.

4. A report may be made by any other person.

5. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that a vulnerable person has died as a result of abuse, neglect or isolation, the person shall, as soon as reasonably practicable, report this belief to the appropriate medical examiner or coroner, who shall investigate the cause of death of the vulnerable person and submit to the appropriate local law enforcement agencies and the appropriate prosecuting attorney his written findings. The written findings must include the information required pursuant to the provisions of NRS 200.5094, when possible.

6. A law enforcement agency which receives a report pursuant to this section shall immediately initiate an investigation of the report.

7. A person who knowingly and willfully violates any of the provisions of this section is guilty of a misdemeanor.

Sec. 83. NRS 372.7285 is hereby amended to read as follows:

372.7285 1. In administering the provisions of NRS 372.325, the Department shall apply the exemption to the sale of a medical device to a governmental entity that is exempt pursuant to that section without regard to whether the person using the medical device or the governmental entity that purchased the device is deemed to be the holder of title to the device if:

(a) The medical device was ordered or prescribed by a provider of health care, within his scope of practice, for use by the person to whom it is provided;

(b) The medical device is covered by Medicaid or Medicare; and

(c) The purchase of the medical device is made pursuant to a contract between the governmental entity that purchases the medical device and the person who sells the medical device to the governmental entity.

2. As used in this section:

(a) "Medicaid" means the program established pursuant to Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 et seq., to provide assistance for part or all of the cost of medical care rendered on behalf of indigent persons.

(b) "Medicare" means the program of health insurance for aged persons and persons with disabilities established pursuant to Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395 et seq.

(c) "Provider of health care" means a physician licensed pursuant to chapter 630, 630A or 633 of NRS, *perfusionist*, dentist, licensed nurse, dispensing optician, optometrist, practitioner of respiratory care, registered physical therapist, podiatric physician, licensed psychologist, licensed audiologist, licensed speech pathologist, licensed hearing aid specialist, licensed marriage and family therapist, licensed clinical professional counselor, chiropractor or doctor of Oriental medicine in any form.

Sec. 84. NRS 374.731 is hereby amended to read as follows:

374.731 1. In administering the provisions of NRS 374.330, the Department shall apply the exemption to the sale of a medical device to a governmental entity that is exempt pursuant to that section without regard to whether the person using the medical device or the governmental entity that purchased the device is deemed to be the holder of title to the device if:

(a) The medical device was ordered or prescribed by a provider of health care, within his scope of practice, for use by the person to whom it is provided;

(b) The medical device is covered by Medicaid or Medicare; and

(c) The purchase of the medical device is made pursuant to a contract between the governmental entity that purchases the medical device and the person who sells the medical device to the governmental entity.

2. As used in this section:

(a) "Medicaid" means the program established pursuant to Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 et seq., to provide assistance for part or all of the cost of medical care rendered on behalf of indigent persons.

(b) "Medicare" means the program of health insurance for aged persons and persons with disabilities established pursuant to Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395 et seq.

(c) "Provider of health care" means a physician licensed pursuant to chapter 630, 630A or 633 of NRS, *perfusionist*, dentist, licensed nurse, dispensing optician, optometrist, practitioner of respiratory care, registered physical therapist, podiatric physician, licensed psychologist, licensed audiologist, licensed speech pathologist, licensed hearing aid specialist, licensed marriage and family therapist, licensed clinical professional counselor, chiropractor or doctor of Oriental medicine in any form.

Sec. 85. NRS 432B.220 is hereby amended to read as follows:

432B.220 1. Any person who is described in subsection 4 and who, in his professional or occupational capacity, knows or has reasonable cause to believe that a child has been abused or neglected shall:

(a) Except as otherwise provided in subsection 2, report the abuse or neglect of the child to an agency which provides child welfare services or to a law enforcement agency; and

(b) Make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the child has been abused or neglected.

2. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that the abuse or neglect of the child involves an act or omission of:

(a) A person directly responsible or serving as a volunteer for or an employee of a public or private home, institution or facility where the child is receiving child care outside of his home for a portion of the day, the person shall make the report to a law enforcement agency.

(b) An agency which provides child welfare services or a law enforcement agency, the person shall make the report to an agency other than the one alleged to have committed the act or omission, and the investigation of the abuse or neglect of the child must be made by an agency other than the one alleged to have committed the act or omission.

3. Any person who is described in paragraph (a) of subsection 4 who delivers or provides medical services to a newborn infant and who, in his professional or occupational capacity, knows or has reasonable cause to believe that the newborn infant has been affected by prenatal illegal substance abuse or has withdrawal symptoms resulting from prenatal drug exposure shall, as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the newborn infant is so affected or has such symptoms, notify an agency which provides child welfare services of the condition of the infant and refer each person who is responsible for the welfare of the infant to an agency which provides child welfare services for appropriate counseling, training or other services. A notification and referral to an agency which provides child welfare services pursuant to this subsection shall not be construed to require prosecution for any illegal action.

4. A report must be made pursuant to subsection 1 by the following persons:

(a) A physician, dentist, dental hygienist, chiropractor, optometrist, podiatric physician, medical examiner, resident, intern, professional or practical nurse, physician assistant licensed pursuant to chapter 630 or 633 of NRS, **perfusionist**, psychiatrist, psychologist, marriage and family therapist, clinical professional counselor, clinical alcohol and drug abuse counselor, alcohol and drug abuse counselor, clinical social worker, athletic trainer, advanced emergency medical technician or other person providing medical services licensed or certified in this State.

(b) Any personnel of a hospital or similar institution engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of a hospital or similar institution upon notification of suspected abuse or neglect of a child by a member of the staff of the hospital.

(c) A coroner.

(d) A clergyman, practitioner of Christian Science or religious healer, unless he has acquired the knowledge of the abuse or neglect from the offender during a confession.

(e) A social worker and an administrator, teacher, librarian or counselor of a school.

(f) Any person who maintains or is employed by a facility or establishment that provides care for children, children's camp or other public or private facility, institution or agency furnishing care to a child.

(g) Any person licensed to conduct a foster home.

(h) Any officer or employee of a law enforcement agency or an adult or juvenile probation officer.

(i) An attorney, unless he has acquired the knowledge of the abuse or neglect from a client who is or may be accused of the abuse or neglect.

(j) Any person who maintains, is employed by or serves as a volunteer for an agency or service which advises persons regarding abuse or neglect of a child and refers them to persons and agencies where their requests and needs can be met.

(k) Any person who is employed by or serves as a volunteer for an approved youth shelter. As used in this paragraph, "approved youth shelter" has the meaning ascribed to it in NRS 244.422.

(l) Any adult person who is employed by an entity that provides organized activities for children.

5. A report may be made by any other person.

6. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that a child has died as a result of abuse or neglect, the person shall, as soon as reasonably practicable, report this belief to an agency which provides child welfare services or a law enforcement agency. If such a report is made to a law enforcement agency, the law enforcement agency shall notify an agency which provides child welfare services and the appropriate medical examiner or coroner of the report. If such a report is made to an agency which provides child welfare services, the agency which provides child welfare services shall notify the appropriate medical examiner or coroner of the report. The medical examiner or coroner who is notified of a report pursuant to this subsection shall investigate the report and submit his written findings to the appropriate agency which provides child welfare services, the appropriate district attorney and a law enforcement agency. The written findings must include, if obtainable, the information required pursuant to the provisions of subsection 2 of NRS 432B.230.

**Sec. 85.5. Section 67 of this act is hereby amended to read as follows:**

Sec. 67. 1. If the Board has reason to believe that a person has violated or is violating any provision of this chapter, the Board or any investigative committee of the Board may issue to the person a letter of warning, a letter of

concern or a nonpunitive admonishment at any time before the Board initiates any disciplinary proceedings against the person.

2. The issuance of such a letter or admonishment:

(a) Does not preclude the Board from initiating any disciplinary proceedings against the person or taking any disciplinary action against the person based on any conduct alleged or described in the letter or admonishment or any other conduct; and

(b) Does not constitute a final decision of the Board and is not subject to judicial review.

~~{3.—In addition to any action taken pursuant to subsection 1, if the Board has reason to believe that a person has violated or is violating any provision of this chapter, the Board or any investigative committee of the Board may negotiate a remediation agreement with the person. The remediation agreement must include, for each violation, a statement specifying each provision of this chapter or regulation adopted pursuant to this chapter that the Board has reason to believe that the person has violated or is violating. The remediation agreement must also set forth the terms and conditions specified by the Board or an investigative committee, including, without limitation, provisions that:~~

~~(a) Address each violation of this chapter that is at issue; and~~

~~(b) Remediate or improve the practice of the person relating to those violations.~~

~~4.—A remediation agreement that is negotiated by an investigative committee of the Board must be presented to the Board for approval. Any remediation agreement presented to the Board pursuant to this subsection is a public record. The Board shall ensure that all identifying information regarding each person who is subject to the remediation agreement is removed. The remediation agreement becomes effective immediately upon approval of the remediation agreement by the Board. If the Board does not approve the remediation agreement, the Board shall refer the matter to the investigative committee that presented the remediation agreement to the Board. The investigative committee may further proceed with the matter as it deems appropriate.~~

~~5.—A remediation agreement entered into pursuant to this section does not constitute disciplinary action against any person who is subject to the remediation agreement and is not reportable to any national database. If the person violates a provision of the remediation agreement, the Board or the investigative committee of the Board with whom the remediation agreement was negotiated may take any action it deems appropriate, including, without limitation, initiating disciplinary proceedings against the person.~~

~~6.—The Board shall adopt regulations to carry out the provisions of this section.]~~

Sec. 86. Section 121 of chapter 413, Statutes of Nevada 2007, at page 1869, is hereby amended to read as follows:

Sec. 121. 1. This act becomes effective:



(a) Upon passage and approval for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On January 1, 2008, for all other purposes.

2. ~~The amendatory provisions of section 7 of this act expire by limitation on January 1, 2012.~~

~~3. Sections 11 and 25 of this act expire by limitation on January 1, 2012.~~

Sec. 87. NRS 630.175 and 630.348 are hereby repealed.

Sec. 88. Section 7 of chapter 413, Statutes of Nevada 2007, at page 1825, is hereby repealed.

Sec. 89. Notwithstanding the amendatory provisions of this act:

1. A person may be licensed as a perfusionist without complying with the provisions of section 8 of this act if the person:

(a) Is employed or otherwise working as a perfusionist on July 1, 2009;

(b) Has been operating cardiopulmonary bypass systems during cardiac surgical cases in a licensed health care facility as his primary function for at least 6 of the 8 years immediately preceding the date of application; and

(c) Before July 1, 2010, submits to the Board of Medical Examiners:

(1) An application for a license to practice perfusion on a form provided by the Board;

(2) The required fee established by the Board for the license; and

(3) The information required pursuant to NRS 630.197, unless that section has expired by limitation and is no longer in effect.

2. If a person is employed or otherwise working as a perfusionist on July 1, 2009, but the person does not meet the qualifications to be licensed as a perfusionist pursuant to subsection 1 or, if so qualified, fails to obtain a license as a perfusionist pursuant to subsection 1, the person:

(a) May continue to practice perfusion in this State until June 30, 2010, without holding a license to practice perfusion issued by the Board of Medical Examiners; and

(b) Must, if the person wishes to continue to practice perfusion in this State on or after July 1, 2010, hold a license to practice perfusion issued by the Board.

Sec. 90. A person who, on October 1, 2009:

1. Is the holder of a valid restricted license issued pursuant to NRS 630.262 and who is otherwise qualified to hold such a license on that date shall be deemed to hold an authorized facility license issued pursuant to that section, as amended by section 38 of this act.

2. Is the holder of a valid license as a practitioner of respiratory care pursuant to NRS 630.277 and who is otherwise qualified to practice respiratory care on that date shall be deemed to hold such a license issued pursuant to that section, as amended by section 40 of this act.

Sec. 91. 1. This section and sections 27, 78.1 to 78.5, inclusive, 86, 88 and 89 of this act become effective upon passage and approval.

2. Sections 1, 2, 13.5, 14, 17, 18, 22, 23, 25, 26, 28, 30, 31, 32, 35 to 38.5, inclusive, 40, 41, 42, 43, 44, 47, 48, 49, 53, 54, 54.5, 57, 58, 66 to 69, inclusive, 70.5, 71 to 74, inclusive, 74.7 to 78, inclusive, 87 and 90 of this act become effective:

(a) Upon passage and approval for the purpose of adopting regulations and performing any preliminary administrative tasks that are necessary to carry out the provisions of this act; and

(b) On October 1, 2009, for all other purposes.

3. Sections ~~1.1, 1.7,~~ 3 to 13, inclusive, 15, 16, 19, 20, 21, 24, 29, 33, 39, 45, 46, 50, 51, 52, 55, 59 to 65, inclusive, 70 and 79 to 85, inclusive, of this act become effective:

(a) Upon passage and approval for the purpose of adopting regulations and performing any preliminary administrative tasks that are necessary to carry out the provisions of this act; and

(b) On July 1, 2010, for all other purposes.

~~[ 3. Sections 2, 14, 17, 18, 22, 23, 25, 26, 28, 30, 31, 32, 35 to 38, inclusive, 40 to 44, inclusive, 47, 48, 49, 53, 54, 54.5, 57, 58, 66 to 69, inclusive, 71 to 78, inclusive, 87 and 90 of this act become effective on October 1, 2009.]~~

4. Sections 1.3, 23.5, 41.5, 42.5, 70.7, 74.5 and 85.5 of this act become effective on July 1, 2011.

5. Section 33 of this act expires by limitation on the date which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:

(a) Have failed to comply with a subpoena or warrant relating to a procedure to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

(b) Are in arrears in the payment of the support of one or more children,  
 ➤ are repealed by the Congress of the United States.

~~[5.] 6. Section 34 of this act becomes effective on the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:~~

(a) Have failed to comply with a subpoena or warrant relating to a proceeding to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

(b) Are in arrears in the payment of the support of one or more children,  
 ➤ are repealed by the Congress of the United States.

~~[6.] 7. Sections 34 and 60 of this act expire by limitation on the date 2 years after the date on which the provision of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:~~

(a) Have failed to comply with a subpoena or warrant relating to a proceeding to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

(b) Are in arrears in the payment for the support of one or more children,  
 ➔ are repealed by the Congress of the United States.

**LEADLINES OF REPEALED SECTIONS OF NRS AND  
 TEXT OF REPEALED SECTION OF STATUTES OF NEVADA**

**630.175 Reporting of certain additional information concerning application.**

**630.348 Standards for revocation of license.**

**Section 7 of chapter 413, Statutes of Nevada 2007:**

Sec. 7. NRS 630.1605 is hereby amended to read as follows:

630.1605 *1.* Except as otherwise provided in NRS 630.161, the Board ~~[may]~~ *shall, except for good cause,* issue a license by endorsement to practice medicine to an applicant who has been issued a license to practice medicine by the District of Columbia or any state or territory of the United States if:

~~[1.]~~ *(a)* At the time the applicant files his application with the Board, the license is in effect ~~;~~

~~2.—The applicant:~~

~~(a) Submits to the Board proof of passage of an examination approved by the Board;~~

~~(b) Submits to the Board any documentation and other proof of qualifications required by the Board;~~

~~(c) Meets all of the statutory requirements for licensure to practice medicine in effect at the time of application except for the requirements set forth in NRS 630.160; and~~

~~(d) Completes any additional requirements relating to the fitness of the applicant to practice required by the Board; and~~

~~3.—Any documentation and other proof of qualifications required by the Board is authenticated in a manner approved by the Board.] and unrestricted; and~~

*(b) The applicant:*

*(1) Is currently certified by a specialty board of the American Board of Medical Specialties and was certified or recertified within the past 10 years;*

*(2) Has had no adverse actions reported to the National Practitioner Data Bank within the past 10 years;*

*(3) Has been continuously and actively engaged in the practice of medicine within his specialty for the past 5 years;*

*(4) Is not involved in and does not have pending any disciplinary action concerning his license to practice medicine in the District of Columbia or any state or territory of the United States;*

*(5) Provides information on all the medical malpractice claims brought against him, without regard to when the claims were filed or how the claims were resolved; and*

*(6) Meets all statutory requirements to obtain a license to practice medicine in this State except that the applicant is not required to meet the requirements set forth in NRS 630.160.*

*2. A license by endorsement may be issued at a meeting of the Board or between its meetings by its President and Executive Director. Such an action shall be deemed to be an action of the Board.*

Assemblywoman Smith moved that the Assembly adopt the report of the Conference Committee concerning Senate Bill No. 269.

Remarks by Assemblywoman Smith.

Motion carried by a constitutional majority.

*Madam Speaker:*

The Conference Committee concerning Assembly Bill No. 24, consisting of the undersigned members, has met and reports that:

It has agreed to recommend that Amendment No. 599 of the Senate be concurred in.

It has agreed to recommend that the bill be further amended as set forth in Conference Amendment No. 31, which is attached to and hereby made a part of this report.

MARCUS CONKLIN  
ELLEN SPIEGEL

MICHAEL SCHNEIDER  
MAGGIE CARLTON

*Assembly Conference Committee*

*Senate Conference Committee*

Conference Amendment No. CA31.

SUMMARY—~~[Revises]~~ **Enacts** provisions governing certain claims for compensation under industrial insurance. (BDR 53-423)

AN ACT relating to industrial insurance; ~~revising provisions relating to the duty of an insurer to accept or deny a claim for compensation; revising provisions relating to the selection of a physician or chiropractor by an injured employee; revising provisions relating to the denial of compensation due to discharge from employment for misconduct; revising provisions relating to the closure of a claim; repealing provisions requiring the reduction of compensation by the amount of federal disability insurance benefits received by an injured employee;~~ **establishing provisions concerning a claim for a catastrophic injury; establishing provisions for the administering of such claims;** and providing other matters properly relating thereto.

Legislative Counsel's Digest:

~~Under existing law, an insurer is required to accept or deny a claim for compensation within 30 days after the insurer has been notified of an industrial accident. (NRS 616C.065) Section 2 of this bill provides that if an insurer is ordered by the Administrator of the Division of Industrial Relations of the Department of Business and Industry, a hearing or appeals officer, a district court or the Supreme Court of Nevada to make a new determination~~

~~relating to a claim for compensation, such a determination must be made within 30 days after the order.~~

~~Existing law provides that an injured employee may choose an alternative treating physician or chiropractor after making his initial choice if the alternative choice is made within 90 days after the injury. (NRS 616C.090) Section 3 of this bill clarifies existing law by providing that an injured employee may make the alternative choice without the insurer's approval if the alternative choice is made within 90 days after the injury. Section 3 also provides that an injured employee may make a change in the treating physician or chiropractor at any time, subject to the insurer's approval. Section 3 further requires an insurer to provide to an injured employee whose request for a change in the treating physician or chiropractor has been denied the specific reason for the denial.~~

~~Section 4 of this bill provides that the affidavit or declaration of a qualified laboratory director, chemist or any other person meeting certain qualifications may be used to prove the existence of alcohol or controlled substances in an employee's system in denying, reducing or suspending the payment of compensation for an injury. (NRS 616C.230)~~

~~Section 5 of this bill revises existing provisions governing the denial of compensation to injured employees who have been discharged for misconduct by providing that only compensation for temporary total disability may be denied. (NRS 616C.232)~~

~~Section 5.5 of this bill revises existing law by requiring an insurer to notify an injured employee whose claim will be closed whether an evaluation for a permanent partial disability has been scheduled or, if such an evaluation has not been scheduled, that the reason is because the insurer determined there is no possibility of a permanent impairment of any kind. (NRS 616C.235)~~

~~Section 9 of this bill repeals the provisions requiring a reduction in the compensation received by an employee for temporary disability, permanent partial disability or permanent total disability by the amount of federal disability insurance benefits received by the employee. (NRS 616C.430)}~~

Section 12 of this bill requires the Administrator of the Division of Industrial Relations of the Department of Business and Industry to adopt regulations for the determination of injuries as catastrophic injuries. Section 15 of this bill requires an adjuster who administers a claim for a catastrophic injury to be competent and qualified. Section 15 also requires the Administrator to adopt regulations prescribing the qualifications for such an adjuster. Section 16 of this bill requires an insurer that accepts a claim for a catastrophic injury to develop a life care plan for the injured employee within 90 days after the date of the acceptance of the claim. Section 16 also requires the Administrator to adopt certain regulations concerning life care plans. Section 17 of this bill allows an insurer that has accepted a claim for a catastrophic injury to rescind or revise its determination that the injury is a catastrophic injury under certain circumstances.

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

Section 1. ~~NRS 616C.050 is hereby amended to read as follows:~~

~~616C.050 1. An insurer shall provide to each claimant:~~

~~(a) Upon written request, one copy of any medical information concerning his injury or illness;~~

~~(b) A statement which contains information concerning the claimant's right to:~~

~~(1) Receive the information and forms necessary to file a claim;~~

~~(2) Select a treating physician or chiropractor and an alternative treating physician or chiropractor in accordance with the provisions of NRS 616C.090;~~

~~(3) Request the appointment of the Nevada Attorney for Injured Workers to represent him before the appeals officer;~~

~~(4) File a complaint with the Administrator;~~

~~(5) When applicable, receive compensation for:~~

~~(I) Permanent total disability;~~

~~(II) Temporary total disability;~~

~~(III) Permanent partial disability;~~

~~(IV) Temporary partial disability;~~

~~(V) All medical costs related to his injury or disease; or~~

~~(VI) The hours he is absent from the place of employment to receive medical treatment pursuant to NRS 616C.477;~~

~~(6) Receive services for rehabilitation if his injury prevents him from returning to gainful employment;~~

~~(7) Review by a hearing officer of any determination or rejection of a claim by the insurer within the time specified by statute; and~~

~~(8) Judicial review of any final decision within the time specified by statute.~~

~~2. The insurer's statement must include a copy of the form designed by the Administrator pursuant to subsection [7] 8 of NRS 616C.090 that notifies injured employees of their right to select an alternative treating physician or chiropractor. The Administrator shall adopt regulations for the manner of compliance by an insurer with the other provisions of subsection 1. [Deleted by amendment.]~~

Sec. 2. ~~NRS 616C.065 is hereby amended to read as follows:~~

~~616C.065 1. Except as otherwise provided in NRS 616C.136, within 30 days after the insurer has been notified of an industrial accident, every insurer shall:~~

~~(a) Accept a claim for compensation, notify the claimant or the person acting on behalf of the claimant that the claim has been accepted and commence payment of the claim; or~~

~~(b) Deny the claim and notify the claimant or the person acting on behalf of the claimant and the Administrator that the claim has been denied.~~

~~2. If an insurer is ordered by the Administrator, a hearing officer, an appeals officer, a district court or the Supreme Court of Nevada to make a new determination, including, without limitation, a new determination regarding the acceptance or denial of a claim for compensation, the insurer shall make the new determination within 30 days after the date on which the insurer has been ordered to do so.~~

~~3. Payments made by an insurer pursuant to this section are not an admission of liability for the claim or any portion of the claim.~~

~~[3.] 4. Except as otherwise provided in this subsection, if an insurer unreasonably delays or refuses to pay the claim within 30 days after the insurer has been notified of an industrial accident, the insurer shall pay upon order of the Administrator an additional amount equal to three times the amount specified in the order as refused or unreasonably delayed. This payment is for the benefit of the claimant and must be paid to him with the compensation assessed pursuant to chapters 616A to 617, inclusive, of NRS. The provisions of this section do not apply to the payment of a bill for accident benefits that is governed by the provisions of NRS 616C.136.~~

~~[4.] 5. The insurer shall notify the claimant or the person acting on behalf of the claimant that a claim has been accepted or denied pursuant to subsection 1 or 2 by:~~

~~(a) Mailing its written determination to the claimant or the person acting on behalf of the claimant; and~~

~~(b) If the claim has been denied, in whole or in part, obtaining a certificate of mailing.~~

~~[5.] 6. The failure of the insurer to obtain a certificate of mailing as required by paragraph (b) of subsection [4.] 5 shall be deemed to be a failure of the insurer to mail the written determination of the denial of a claim as required by this section.~~

~~[6.] 7. Upon request, the insurer shall provide a copy of the certificate of mailing, if any, to the claimant or the person acting on behalf of the claimant.~~

~~[7.] 8. For the purposes of this section, the insurer shall mail the written determination to:~~

~~(a) The mailing address of the claimant or the person acting on behalf of the claimant that is provided on the form prescribed by the Administrator for filing the claim; or~~

~~(b) Another mailing address if the claimant or the person acting on behalf of the claimant provides to the insurer written notice of another mailing address.~~

~~[8.] 9. As used in this section, "certificate of mailing" means a receipt that provides evidence of the date on which the insurer presented its written determination to the United States Postal Service for mailing. (Deleted by amendment.)~~

Sec. 3. ~~[NRS 616C.090 is hereby amended to read as follows:~~

~~616C.090 1. The Administrator shall establish a panel of physicians and chiropractors who have demonstrated special competence and interest in~~

~~industrial health to treat injured employees under chapters 616A to 616D, inclusive, or chapter 617 of NRS. Every employer whose insurer has not entered into a contract with an organization for managed care or with providers of health care services pursuant to NRS 616B.527 shall maintain a list of those physicians and chiropractors on the panel who are reasonably accessible to his employees.~~

~~2.—An injured employee whose employer's insurer has not entered into a contract with an organization for managed care or with providers of health care services pursuant to NRS 616B.527 may choose his treating physician or chiropractor from the panel of physicians and chiropractors. If the injured employee is not satisfied with the first physician or chiropractor he so chooses, he may make an alternative choice of physician or chiropractor from the panel if the choice is made within 90 days after his injury. The insurer shall notify the first physician or chiropractor in writing. The notice must be postmarked within 3 working days after the insurer receives knowledge of the change. The first physician or chiropractor must be reimbursed only for the services he rendered to the injured employee up to and including the date of notification. Except as otherwise provided in this subsection, any further change is subject to the approval of the insurer, which must be granted or denied within 10 days after a written request for such a change is received from the injured employee. If no action is taken on the request within 10 days, the request shall be deemed granted. Any request for a change of physician or chiropractor must include the name of the new physician or chiropractor chosen by the injured employee. If the treating physician or chiropractor refers the injured employee to a specialist for treatment, the treating physician or chiropractor shall provide to the injured employee a list that includes the name of each physician or chiropractor with that specialization who is on the panel. After receiving the list, the injured employee shall, at the time the referral is made, select a physician or chiropractor from the list.~~

~~3.—An injured employee whose employer's insurer has entered into a contract with an organization for managed care or with providers of health care services pursuant to NRS 616B.527 must choose his treating physician or chiropractor pursuant to the terms of that contract. If the injured employee is not satisfied with the first physician or chiropractor he so chooses, he may make an alternative choice of physician or chiropractor pursuant to the terms of the contract *without the approval of the insurer* if the choice is made within 90 days after his injury. If the injured employee, after choosing his treating physician or chiropractor, moves to a county which is not served by the organization for managed care or providers of health care services named in the contract and the insurer determines that it is impractical for the injured employee to continue treatment with the physician or chiropractor, the injured employee must choose a treating physician or chiropractor who has agreed to the terms of that contract unless the insurer authorizes the injured employee to choose another physician or chiropractor. If the treating~~



~~physician or chiropractor refers the injured employee to a specialist for treatment, the treating physician or chiropractor shall provide to the injured employee a list that includes the name of each physician or chiropractor with that specialization who is available pursuant to the terms of the contract with the organization for managed care or with providers of health care services pursuant to NRS 616B.527, as appropriate. After receiving the list, the injured employee shall, at the time the referral is made, select a physician or chiropractor from the list. If the employee fails to select a physician or chiropractor, the insurer may select a physician or chiropractor with that specialization. If a physician or chiropractor with that specialization is not available pursuant to the terms of the contract, the organization for managed care or the provider of health care services may select a physician or chiropractor with that specialization.~~

~~4. If the injured employee is not satisfied with the physician or chiropractor selected by himself or by the insurer, the organization for managed care or the provider of health care services pursuant to subsection 3, the injured employee may make an alternative choice of physician or chiropractor pursuant to the terms of the contract. A change in the treating physician or chiropractor may be made at any time but is subject to the approval of the insurer, which must be granted or denied within 10 days after a written request for such a change is received from the injured employee. If no action is taken on the request within 10 days, the request shall be deemed granted. Any request for a change of physician or chiropractor must include the name of the new physician or chiropractor chosen by the injured employee. If the insurer denies a request for a change in the treating physician or chiropractor under this subsection, the insurer must include in a written notice of denial to the injured employee the specific reason for the denial of the request.~~

~~5. Except when emergency medical care is required and except as otherwise provided in NRS 616C.055, the insurer is not responsible for any charges for medical treatment or other accident benefits furnished or ordered by any physician, chiropractor or other person selected by the injured employee in disregard of the provisions of this section or for any compensation for any aggravation of the injured employee's injury attributable to improper treatments by such physician, chiropractor or other person.~~

~~[5.] 6. The Administrator may order necessary changes in a panel of physicians and chiropractors and shall suspend or remove any physician or chiropractor from a panel for good cause shown.~~

~~[6.] 7. An injured employee may receive treatment by more than one physician or chiropractor if the insurer provides written authorization for such treatment.~~

~~[7.] 8. The Administrator shall design a form that notifies injured employees of their right pursuant to subsections 2, [and] 3 and 4 to select an alternative treating physician or chiropractor and make the form available to~~

~~insurers for distribution pursuant to subsection 2 of NRS 616C.050.]~~  
~~(Deleted by amendment.)~~

Sec. 4. ~~NRS 616C.230 is hereby amended to read as follows:~~

~~616C.230 1. Compensation is not payable pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS for an injury:~~

~~(a) Caused by the employee's willful intention to injure himself;~~

~~(b) Caused by the employee's willful intention to injure another;~~

~~(c) Proximately caused by the employee's intoxication. If the employee was intoxicated at the time of his injury, intoxication must be presumed to be a proximate cause unless rebutted by evidence to the contrary;~~

~~(d) Proximately caused by the employee's use of a controlled substance. If the employee had any amount of a controlled substance in his system at the time of his injury for which the employee did not have a current and lawful prescription issued in his name or that he was not using in accordance with the provisions of chapter 453A of NRS, the controlled substance must be presumed to be a proximate cause unless rebutted by evidence to the contrary;~~

~~2. For the purposes of paragraphs (c) and (d) of subsection 1:~~

~~(a) The affidavit or declaration of an expert or other person described in NRS 50.310, 50.315 or 50.320 is admissible to prove the existence of any alcohol or the existence, quantity or identity of a controlled substance in an employee's system. If the affidavit or declaration is to be so used, it must be submitted in the manner prescribed in NRS 616C.355;~~

~~(b) When an examination requested or ordered includes testing for the use of alcohol or a controlled substance, the laboratory that conducts the testing must be licensed pursuant to the provisions of chapter 652 of NRS;~~

~~3. No compensation is payable for the death, disability or treatment of an employee if his death is caused by, or insofar as his disability is aggravated, caused or continued by, an unreasonable refusal or neglect to submit to or to follow any competent and reasonable surgical treatment or medical aid;~~

~~4. If any employee persists in an unsanitary or injurious practice that imperils or retards his recovery, or refuses to submit to such medical or surgical treatment as is necessary to promote his recovery, his compensation may be reduced or suspended;~~

~~5. An injured employee's compensation, other than accident benefits, must be suspended if:~~

~~(a) A physician or chiropractor determines that the employee is unable to undergo treatment, testing or examination for the industrial injury solely because of a condition or injury that did not arise out of and in the course of his employment; and~~

~~(b) It is within the ability of the employee to correct the nonindustrial condition or injury;~~

~~➤ The compensation must be suspended until the injured employee is able to resume treatment, testing or examination for the industrial injury. The insurer~~

~~may elect to pay for the treatment of the nonindustrial condition or injury.]~~  
~~(Deleted by amendment.)~~

Sec. 5. ~~[NRS 616C.232 is hereby amended to read as follows:~~

~~616C.232 1. If an injured employee is discharged from his employment as a result of misconduct, an insurer may deny compensation for temporary total disability to the injured employee because of that discharge for misconduct only if the insurer proves by a preponderance of the evidence that:~~

~~(a) The injured employee was discharged from his employment solely for his misconduct and not for any reason relating to his claim for compensation; and~~

~~(b) It is the injured employee's discharge from his employment for misconduct, and not his injury, that is the sole cause for the injured employee's inability to return to work with the preinjury employer.~~

~~2. An insurer waives its rights under subsection 1 if the insurer does not make a determination to deny or suspend compensation to the injured employee within 70 days after the date on which the insurer learns that the injured employee has been discharged for misconduct.~~

~~3. An insurer may not deny any compensation pursuant to this section except for compensation for temporary total disability pursuant to subsection 1.] (Deleted by amendment.)~~

Sec. 5.5. ~~[NRS 616C.235 is hereby amended to read as follows:~~

~~616C.235 1. Except as otherwise provided in subsections 2, 3 and 4:~~

~~(a) When the insurer determines that a claim should be closed before all benefits to which the claimant may be entitled have been paid, the insurer shall send a written notice of its intention to close the claim to the claimant by first-class mail addressed to the last known address of the claimant and, if the insurer has been notified that the claimant is represented by an attorney, to the attorney for the claimant by first-class mail addressed to the last known address of the attorney. The notice must include, on a separate page, a statement describing the effects of closing a claim pursuant to this section and a statement that if the claimant does not agree with the determination, he has a right to request a resolution of the dispute pursuant to NRS 616C.305 and 616C.315 to 616C.385, inclusive, including, without limitation, a statement which prominently displays the limit on the time that the claimant has to request a resolution of the dispute as set forth in NRS 616C.315. A suitable form for requesting a resolution of the dispute must be enclosed with the notice. The closure of a claim pursuant to this subsection is not effective unless notice is given as required by this subsection.~~

~~(b) If the insurer does not receive a request for the resolution of the dispute, it may close the claim.~~

~~(c) Notwithstanding the provisions of NRS 233B.125, if a hearing is conducted to resolve the dispute, the decision of the hearing officer may be served by first-class mail.~~

~~2.— If, during the first 12 months after a claim is opened, the medical benefits required to be paid for a claim are less than \$300, the insurer may close the claim at any time after he sends, by first class mail addressed to the last known address of the claimant, written notice that includes a statement which prominently displays that:~~

- ~~(a) The claim is being closed pursuant to this subsection;~~
- ~~(b) The injured employee may appeal the closure of the claim pursuant to the provisions of NRS 616C.305 and 616C.315 to 616C.385, inclusive; and~~
- ~~(c) If the injured employee does not appeal the closure of the claim or appeals the closure of the claim but is not successful, the claim cannot be reopened.~~

~~3.— In addition to the notice described in subsection 2, an insurer shall send to each claimant who receives less than \$300 in medical benefits within 6 months after the claim is opened a written notice that explains the circumstances under which a claim may be closed pursuant to subsection 2. The written notice provided pursuant to this subsection does not create any right to appeal the contents of that notice. The written notice must be:~~

- ~~(a) Sent by first class mail addressed to the last known address of the claimant; and~~
- ~~(b) A document that is separate from any other document or form that is used by the insurer.~~

~~4.— The closure of a claim pursuant to subsection 2 is not effective unless notice is given as required by subsections 2 and 3.~~

~~5.— In addition to the requirements of this section, an insurer shall include in the written notice described in subsection 2:~~

- ~~(a) If an evaluation for a permanent partial disability has been scheduled pursuant to NRS 616C.490, a statement to that effect; or~~
- ~~(b) If an evaluation for a permanent partial disability will not be scheduled pursuant to NRS 616C.490, a statement explaining that the reason is because the insurer has determined there is no possibility of a permanent impairment of any kind.~~ (Deleted by amendment.)

Sec. 6. (Deleted by amendment.)

Sec. 7. (Deleted by amendment.)

Sec. 8. NRS 616C.475 is hereby amended to read as follows:

~~616C.475 1.— Except as otherwise provided in this section, NRS 616C.175 and 616C.390, every employee in the employ of an employer, within the provisions of chapters 616A to 616D, inclusive, of NRS, who is injured by accident arising out of and in the course of employment, or his dependents, is entitled to receive for the period of temporary total disability, 66 2/3 percent of the average monthly wage.~~

~~2.— Except as otherwise provided in NRS 616B.028 and 616B.029, an injured employee or his dependents are not entitled to accrue or be paid any benefits for a temporary total disability during the time the injured employee is incarcerated. The injured employee or his dependents are entitled to receive such benefits when the injured employee is released from~~

~~incarceration if he is certified as temporarily totally disabled by a physician or chiropractor.~~

~~3.—If a claim for the period of temporary total disability is allowed, the first payment pursuant to this section must be issued by the insurer within 14 working days after receipt of the initial certification of disability and regularly thereafter.~~

~~4.—Any increase in compensation and benefits effected by the amendment of subsection 1 is not retroactive.~~

~~5.—Payments for a temporary total disability must cease when:~~

~~(a)—A physician or chiropractor determines that the employee is physically capable of any gainful employment for which the employee is suited, after giving consideration to the employee's education, training and experience;~~

~~(b)—The employer offers the employee light duty employment or employment that is modified according to the limitations or restrictions imposed by a physician or chiropractor pursuant to subsection 7; or~~

~~(c)—Except as otherwise provided in NRS 616B.028 and 616B.029, the employee is incarcerated.~~

~~6.—Each insurer may, with each check that it issues to an injured employee for a temporary total disability, include a form approved by the Division for the injured employee to request continued compensation for the temporary total disability.~~

~~7.—A certification of disability issued by a physician or chiropractor must:~~

~~(a)—Include the period of disability and a description of any physical limitations or restrictions imposed upon the work of the employee;~~

~~(b)—Specify whether the limitations or restrictions are permanent or temporary; and~~

~~(c)—Be signed by the treating physician or chiropractor authorized pursuant to NRS 616B.527 or appropriately chosen pursuant to subsection 3 or 4 of NRS 616C.090.~~

~~8.—If the certification of disability specifies that the physical limitations or restrictions are temporary, the employer of the employee at the time of his accident may offer temporary, light duty employment to the employee. If the employer makes such an offer, the employer shall confirm the offer in writing within 10 days after making the offer. The making, acceptance or rejection of an offer of temporary, light duty employment pursuant to this subsection does not affect the eligibility of the employee to receive vocational rehabilitation services, including compensation, and does not exempt the employer from complying with NRS 616C.545 to 616C.575, inclusive, and 616C.590 or the regulations adopted by the Division governing vocational rehabilitation services. Any offer of temporary, light duty employment made by the employer must specify a position that:~~

~~(a)—Is substantially similar to the employee's position at the time of his injury in relation to the location of the employment and the hours he is required to work;~~

~~(b)—Provides a gross wage that is:~~

~~(1) If the position is in the same classification of employment, equal to the gross wage the employee was earning at the time of his injury; or~~

~~(2) If the position is not in the same classification of employment, substantially similar to the gross wage the employee was earning at the time of his injury; and~~

~~(c) Has the same employment benefits as the position of the employee at the time of his injury.] (Deleted by amendment.)~~

Sec. 9. ~~[NRS 616C.430 is hereby repealed.] (Deleted by amendment.)~~

Sec. 10. Chapter 616A of NRS is hereby amended by adding thereto the provisions set forth as sections 11 and 12 of this act.

Sec. 11. "Catastrophic injury" means an injury sustained from an accident and resulting in:

1. The total loss of sight in one or both eyes;
2. The total loss of hearing in one or both ears;
3. The loss by separation of any arm or leg;
4. An injury to the head or spine which results in paralysis of the legs, the arms or both the legs and arms;

5. An injury to the head which results in severe cognitive impairment, as determined by a nationally recognized method of objective psychological testing;

6. An injury consisting of second or third degree burns on 50 percent or more of:

- (a) The body;
- (b) Both hands; or
- (c) The face;

7. The total loss of or significant and permanent impairment of speech;  
or

8. Any other category of injury deemed to be catastrophic as determined by the Administrator.

Sec. 12. The Administrator shall adopt regulations for the determination of categories of injury, other than those described in section 11 of this act, to be deemed catastrophic injuries.

Sec. 13. NRS 616A.025 is hereby amended to read as follows:

616A.025 As used in chapters 616A to 616D, inclusive, of NRS, unless the context otherwise requires, the words and terms defined in NRS 616A.030 to 616A.360, inclusive, and section 11 of this act have the meanings ascribed to them in those sections.

Sec. 14. Chapter 616C of NRS is hereby amended by adding thereto the provisions set forth as sections 15, 16 and 17 of this act.

Sec. 15. 1. An adjuster who administers a claim for a catastrophic injury must be competent and qualified to administer such a claim.

2. The Administrator shall adopt regulations establishing qualifications for an adjuster to administer a claim for a catastrophic injury.

Sec. 16. 1. Notwithstanding any other provision of this chapter, if an insurer accepts a claim for a catastrophic injury, the insurer shall:

(a) As soon as reasonably practicable after the date of acceptance of the claim, assign the claim to a qualified adjuster, nurse and vocational rehabilitation counselor; and

(b) Within 90 days after the date of acceptance of the claim, develop a life care plan in consultation with the adjuster, nurse and vocational rehabilitation counselor assigned to the claim pursuant to paragraph (a).

2. A life care plan which is developed pursuant to subsection 1 must ensure the prompt, efficient and proper provision of medical services to the injured employee.

3. The Administrator shall adopt regulations to carry out the provisions of this section, including, without limitation, regulations prescribing:

(a) The form and content of a life care plan; and

(b) The frequency and method of communication by which the insurer shall contact the injured employee, his family members or representative.

Sec. 17. An insurer that has accepted a claim for a catastrophic injury may thereafter rescind or revise its original determination that the injury is a catastrophic injury if:

1. Medical evidence supports the rescission or revision;

2. The injured employee is stable and ratable; or

3. Other circumstances warrant such a rescission or revision.

~~{Sec. 10.}~~ Sec. 18. This act becomes effective [on July 1, 2009].:

1. Upon passage and approval for the purpose of adopting regulations; and

2. On October 1, 2009, for all other purposes.

{

#### **TEXT OF REPEALED SECTION**

**616C.430—Reduction of compensation by amount of federal disability insurance benefits received by employee.**

~~1. If an employee who is entitled to compensation under chapters 616A to 616D, inclusive, of NRS for temporary total disability, permanent partial disability or permanent total disability becomes entitled to federal disability insurance benefits under section 202 or 223 of the Social Security Act, as amended, 42 U.S.C. §§ 402 and 423, respectively, the employee's compensation under chapters 616A to 616D, inclusive, of NRS must be reduced by the amount of the federal benefits being received by him.~~

~~2. This section must not be applied to reduce the employee's compensation under chapters 616A to 616D, inclusive, of NRS to any greater extent than his federal benefits would have otherwise been reduced by the Social Security Administration under section 224 of the Social Security Act, as amended, 42 U.S.C. § 424a. After any reduction pursuant to this section, the combination of his state compensation and federal benefits must be at least as much as the greater of:~~

~~(a) The benefits payable pursuant to chapters 616A to 616D, inclusive, of NRS, without the reduction; or~~

~~(b) The benefits payable under the Social Security Act, without any reduction.~~

~~3. After a reduced amount of compensation for an employee has been established pursuant to this section, no further reduction in his compensation may be made because he receives an increase in his benefits under the Social Security Act as the result of an adjustment based on an increase in the cost of living.~~

~~4. No compensation may be reduced pursuant to this section until the Social Security Administration has determined the amount of benefits payable to the employee under section 202 or 223 of the Social Security Act and he has begun to receive those benefits.~~

~~5. If an employee:~~

~~(a) Fails to report the amount of benefits which he is receiving under section 202 or 223 of the Social Security Act, within 30 days after he is requested in writing by the insurer to make that report; or~~

~~(b) Fails to provide the insurer with a written authorization for the Social Security Administration to release information on the employee's average current earnings and the amount of benefits to which he is entitled, within 30 days after he is requested to provide that authorization;~~

~~the insurer may reduce by 50 percent the compensation which the employee would otherwise receive pursuant to chapters 616A to 616D, inclusive, of NRS. Any compensation which is withheld pursuant to this subsection must be paid to the employee when he has furnished the report or authorization as requested.~~

~~6. If the provisions of section 224 of the Social Security Act are amended:~~

~~(a) To allow an employee to receive more compensation under chapters 616A to 616D, inclusive, of NRS without any reduction in benefits payable under section 202 or 223 of the Social Security Act; or~~

~~(b) To lower the maximum sum of compensation payable under chapters 616A to 616D, inclusive, of NRS and benefits payable under section 202 or 223 of the Social Security Act;~~

~~the reduction imposed by this section must be increased or decreased correspondingly.~~

~~7. No reduction in compensation may be made under this section for any period of entitlement which:~~

~~(a) Occurs before January 1, 1982;~~

~~(b) Occurs before the employee has been given a written notice by mail of the intended reduction; or~~

~~(c) Includes any week after the week in which the employee becomes 62 years of age.]~~

Assemblyman Conklin moved that the Assembly adopt the report of the Conference Committee concerning Assembly Bill No. 24.



Remarks by Assemblyman Conklin.

Motion carried by a constitutional majority.

#### REPORTS OF COMMITTEES

*Madam Speaker:*

Your Committee on Education, to which was referred Senate Bill No. 303, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

BONNIE PARNELL, *Chair*

#### MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, June 1, 2009

*To the Honorable the Assembly:*

I have the honor to inform your honorable body that the Senate amended, and on this day passed, as amended, Assembly Bill No. 433, Amendments Nos. 753, 1009, and respectfully requests your honorable body to concur in said amendments.

SHERRY L. RODRIGUEZ

*Assistant Secretary of the Senate*

#### MOTIONS, RESOLUTIONS AND NOTICES

Senate Concurrent Resolution No. 39.

Assemblywoman Leslie moved the adoption of the resolution.

Remarks by Assemblymen Leslie and Hardy.

Assemblyman Hardy requested that the following remarks be entered in the Journal.

ASSEMBLYWOMAN LESLIE:

Thank you, Madam Speaker. We have had several bills this session that have touched on the cost of health care and the scarcity of health care resources. As the resources available to pay for health care decrease, the costs and the charges for that care continue to increase, and the growing discrepancy between the two has become unsustainable. Twenty years ago in Nevada, we had cost containment legislation passed, which required regulation of billed charges. That legislation reached its sunset several years ago, partly because of testimony that the escalation of billed charges does not matter because no one pays billed charges, but the reality is that many do. Between 2000 and 2007, the Consumer Price Index increased 22.2 percent while billed charges for hospital patients in Nevada escalated 120 percent, over five times the rate of inflation.

Billed charges are also a severe problem for those with insurance but who, by no fault of their own, end up in a noncontracted hospital or—something becoming increasingly common—patients go to a contracted hospital but are seen by a noncontracted doctor there. These charges are causing severe consequences for insured patients and for health care plans in Nevada and have distorted the health care market beyond what can be absorbed.

This resolution will allow us to study the problem, and we would look forward to hearing the recommendations of the interim Legislative Committee on Health Care next session. Thank you.

ASSEMBLYMAN HARDY:

I likewise rise in support of S.C.R. 39. When I look at the uninsured, or the insured even, that do not get contracted services provided to them—the emergency patient who has an issue with going to a contracted hospital or physician, the insured patient who ends up with an out-of-network situation—and the adequacy of the contracted provider network, barriers that could exist between the provider and the payer, how to get the contractual agreement to match up, the differences between the commercial insurers and the self-funded plans as it relates to in-network or out-of-network emergency care, and the method which ensures all payers with

self-funded plans would have some kind of requirement to participate in any proposed resolution, I think this is a good time to have that kind of study. Thank you, Madam Speaker.

Resolution adopted.

Madam Speaker announced if there were no objections, the Assembly would recess subject to the call of the Chair.

Assembly in recess at 9 p.m.

#### ASSEMBLY IN SESSION

At 9:07 p.m.

Madam Speaker presiding.

Quorum present.

#### REPORTS OF COMMITTEES

*Madam Speaker:*

Your Committee on Ways and Means, to which was referred Assembly Bill No. 558, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MORSE ARBERRY JR., *Chair*

#### GENERAL FILE AND THIRD READING

Senate Bill No. 113.

Bill read third time.

Roll call on Senate Bill No. 113:

YEAS—36.

NAYS—Christensen, Cobb, Goedhart, Gustavson, Hambrick, McArthur—6.

Senate Bill No. 113 having received a constitutional majority, Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 303.

Bill read third time.

Remarks by Assemblywoman Parnell.

Roll call on Senate Bill No. 303:

YEAS—42.

NAYS—None.

Senate Bill No. 303 having received a constitutional majority, Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Assembly Bill No. 558.

Bill read third time.

The following amendment was proposed by the Committee on Ways and Means:

Amendment No. 1016.

AN ACT making an appropriation to the Department of Administration for allocation to Nevada Volunteers for continuation of its programs dedicated to

promoting citizen volunteerism; and providing other matters properly relating thereto.

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

Section 1. 1. There is hereby appropriated from the State General Fund to the Department of Administration the sum of ~~(\$365,000)~~ **\$200,000** for allocation to Nevada Volunteers to match federal funding for continuation of its programs dedicated to promoting citizen volunteerism.

2. Upon acceptance of the money appropriated by subsection 1 and allocated by the Department, Nevada Volunteers shall:

(a) Prepare and transmit a report to the Interim Finance Committee on or before December 15, 2010, that describes each expenditure made from the money appropriated by subsection 1 from the date on which the money was received by Nevada Volunteers through December 1, 2010;

(b) Prepare and transmit a final report to the Interim Finance Committee on or before September 16, 2011, that describes each expenditure made from the money appropriated by subsection 1 from the date on which the money was received by Nevada Volunteers through June 30, 2011; and

(c) Upon request of the Legislative Commission, make available to the Legislative Auditor any of the books, accounts, claims, reports, vouchers or other records of information, confidential or otherwise, of Nevada Volunteers, regardless of their form or location, that the Legislative Auditor deems necessary to conduct an audit of the use of the money appropriated pursuant to subsection 1.

Sec. 2. Any remaining balance of the appropriation made by subsection 1 of section 1 of this act must not be committed for expenditure after June 30, 2011, by the entity to which the appropriation is made or any entity to which the 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 16, 2011, 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 16, 2011.

Sec. 3. The appropriation made by the provisions of this act is intended to finance ongoing expenditures of the Department of Administration, and the expenditures financed with the appropriation must be included as a base budget expenditure in the proposed budget for the Executive Branch of State Government for the 2011-2013 biennium.

Sec. 4. This act becomes effective on July 1, 2009.

Assemblyman Arberry moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 558.

Bill read third time.

Roll call on Assembly Bill No. 558:

YEAS—37.

NAYS—Cobb, Goedhart, Gustavson, McArthur, Stewart—5.

Assembly Bill No. 558 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Madam Speaker announced if there were no objections, the Assembly would recess subject to the call of the Chair.

Assembly in recess at 9:13 p.m.

#### ASSEMBLY IN SESSION

At 9:23 p.m.

Madam Speaker presiding.

Quorum present.

#### REMARKS FROM THE FLOOR

Assemblyman Ocegüera requested that the following remarks be entered in the Journal.

##### ASSEMBLYMAN OCEGUERA:

Madam Speaker, Minority Leader Gansert, esteemed colleagues; 120 days ago we assembled in these chambers to begin, potentially, the most challenging legislative session ever seen in this state. We are in the middle of the worst economic crisis since the Great Depression. In fact, we have already met in a special session twice since the close of the last regular session—both times to make painful decisions in response to this financial crisis. We can only hope that things wouldn't get worse and yet we feared the worse. But, now it is over.

We have reached that point of session where we talk about what we achieved in our time together. This is the time that we focus on the accomplishments of the session, rather than, sometimes, the convoluted methods by which we got here. Over the last few days I have thought about how to best describe this session, and to do that I had to draw upon my experience outside this building as a firefighter. In my line of work, we put out fires and we do that to save lives. For the last 120 days we have been dealing with an economic inferno. We had to put out that fire. It was not pretty and it was not easy, but we did so to save lives. Maybe that sounds a little dramatic to those of you who have watched us these last four months, with our Order of Business 15s and one-minute recesses that seemed to stretch a little bit longer than a minute—maybe it looked like we weren't moving really fast to put out that fire—but we moved faster than the Senate. Legislative protocol, though sometimes frustrating to those who watch, gets the job done. And the people who get that job done might seem like unlikely firefighters. We are a citizen's legislature, after all. So when we are not convened in Carson City, we are teachers, business owners, and employees, public servants, ranchers, attorneys, doctors, and retirees. The age difference between our youngest and our oldest member is 50 years, a half century. Our life experiences reflect the diversity of our membership. That diversity, I believe, is our strength. But no matter what our differences have been these 120 days—and yes, we have had some—we have represented the people of this state to the best of our ability. We worked together to put out the fire.

Often in the past we have known at *sine die* that one of our colleagues would not be returning to these chambers because of other career plans, perhaps, or a bid for a different political office. But this session, for the first time, we know definitely that ten members of this body will not be returning to the Assembly. Not because they have other political aspirations, although some

may, and not because they have other professional or personal plans, although some may. Rather, we know they won't be back because of voter approved term limits. These ten have been a huge part of my life for many years, both inside and outside these chambers. I would like to spend just a few moments remembering their contributions to this state.

Madam Speaker, with your permission, I would like to break from protocol for a bit to use the members' proper names.

Assemblyman Mark Manendo. Mark was first elected in 1994. At that time, he was one of the youngest legislators serving the Assembly. I am sorry to tell you, Mark, but after 15 years, you are one of the old guys now. Even as a newly elected assemblyman, Mark was a staunch advocate for senior rights. He also worked to strengthen our DUI laws and protect the rights of manufactured home owners. Wherever his future plans take him, I know Mark will continue to be involved in the district he served well, for so many years.

Jerry Claborn. Look up Jerry, I'm talking about you. Bobo was first elected in 1998. Since 2005, Mr. Claborn capably chaired our Assembly Committee on Natural Resources, Agriculture, and Mining. He's also been a strong voice for worker's rights. And even when these days get long and tempers get short, Jerry Claborn can be counted on to be good humored and a tireless colleague and to be there when you need him. It is no wonder that Jerry's campaign motto was, "Bringing Common Sense to Carson City."

As a citizen's legislature, we count among our number teachers, attorneys, business people and the like. And yes, we even have our own nuclear physicist. Harry Mortenson was first elected in 1996. During his dozen years of service, Mr. Mortenson has worked hard to improve the quality of life, not only in his own district but for the entire state. He kept a close eye on Yucca Mountain and on quality of life issues related to growth. He also chaired the committee on Constitutional Amendments which takes up some of the most important issues that affect Nevadans. Thank you, Harry.

Kathy McClain. Assemblywoman Kathy McClain was first elected in 1998 but she was no stranger to the legislative process. She was a lobbyist before she switched to our side of the table. Although Kathy was a strong advocate in either role, we are glad she came over to the People's House. During her tenure here, Kathy improved conditions for seniors, veterans, women, and the disadvantaged and the disabled. She also chaired some difficult committees, including this session with Taxation. Thank you, Kathy.

Sitting next to her is her partner, Ellen Koivisto. Assemblywoman Koivisto was first elected in 1996. From the beginning, Ellen was one of the hardest working members of this caucus. She was always willing to do what was needed to be done. She did it without fanfare and without complaint. Most recently, Ellen served as the chair of the Elections, Procedures, and Ethics Committee. She has been a quiet but effective voice on women's issues, the protection of seniors, and the improvement of health care in Nevada. Ellen's hard work and pleasant demeanor will be greatly missed and we hope we will continue to see her involvement in the community.

Sheila Leslie. Sheila was first elected in 1998, but her record of advocacy for children, youth, and families goes back much further, no doubt to her own childhood. Sheila speaks and speaks strongly for the disadvantaged and disabled. She doesn't shy away from her causes, no matter how difficult those causes may be. This Assembly, this Legislature, and indeed, this state, is losing a vital member of the People's House. But we know wherever Sheila lands after this, whether it is elected or an appointed office or some other role in community service, she will continue to fight for the most vulnerable in our state. I appreciate our relationship, Sheila.

Moose was first elected in 1984. Assemblyman Arberry, known to us as "Moose," is the longest currently serving member of this house. In 1993, Moose went through trial by fire when he was selected to chair the Assembly Committee on Ways and Means during the same session in which Nevada implemented a sweeping reorganization of state government. Ever since then, Moose Arberry has held the money reins in the Assembly. He has done so with a good temper and a casual but firm hand. I do not know if any of us could ever think of Assemblyman Denis as anyone other than "Mr. Mo" or Assemblyman Hardy as "Mr. Doc" because of the way Moose talks to you. Moose's institutional memory will be sorely missed but we are grateful he had his experienced gavel with one last difficult budget. Thank you, Moose.

Bernie Anderson. My first session was in 2001. That year my morning committee was the Assembly Committee on Judiciary, chaired then and now by Bernie Anderson. Some of you may remember that when Bernie was a freshman on Assembly Judiciary, he was known as “Bubba.” By the time I met the venerable chair of Judiciary, his Bubba days were long past. I am pretty sure if I had said “Bubba” I would have been sent to the Woodshed. Our colleague has been a valued and trusted member of the leadership team for many years, capably handling the thorny issues of crime and punishment. Early on it became his mission not just to be tough on crime, but to address its root causes. Bernie has long championed drug courts and similar measures to reduce recidivism. Nevada is better for his work. Assembly Judiciary in this house will not be the same without him. Thank you, Bernie.

Of the ten Assembly members term-limited out this session, nine are Democrats. I am not saying it’s a plot or anything but you have to wonder. The lone Republican we are losing, though, is enough. He is one of the most respected, most beloved members of this body. John Carpenter was first elected in 1986. John is a cowboy and gentleman. Whenever the debate gets a little heated, Mr. Carpenter stands there and reminds us of our manners. That was never more evident than last week when he cast a courageous vote on one of the most difficult days of this entire session. So, when the Suzy-Q sails away this session, we intend to keep her able captain in the reserves because his experience, his chivalry, and his good sense have always steered us well. Thank you, Mr. Carpenter.

Two and a half years ago, Barbara Buckley became the first woman Speaker in the Nevada Assembly. I said then and I still believe that Barbara will be remembered less for that historic distinction than what she has accomplished as Speaker and throughout her career in the Assembly. Simply put, Barbara is a remarkable woman. She is an extraordinary leader. And is always, always an outstanding advocate for those who most need a voice. In her 15 years in the Assembly, Barbara has tackled such issues as affordable housing, medical malpractice, prescription drugs for seniors, deceptive loans and predatory financial practices and all day kindergarten. There are many more issues I could highlight because each session Barbara Buckley has distinguished herself as one of the most effective lawmakers this chamber has ever seen. This session presented her with her greatest challenge but there is no one who could have led us better in these terrible economic times. There is no one who could have done a better job at helping put out the fire, to save lives and to start rebuilding. Barbara, you have been a friend and a colleague and a mentor. And I know you are not yet done protecting Nevadans and creating history when you do so. I look forward to seeing what your future brings.

Madam Speaker, my fellow colleagues, I have spent a great deal of time, today, remembering the records of those who are serving their last term in this house. But I would like to acknowledge the stellar efforts of those others who fought the fire alongside us, talented and dedicated legislators like Debbie Smith, Marcus Conklin, Marilyn Kirkpatrick, William Horne, Kelvin Atkinson, and Bonnie Parnell. Under the leadership of these hardworking legislators, we successfully tackled difficult issues involving education, energy, health care, public safety, and transportation.

Minority Leader Gansert and your leadership team, even though we have had differences, those differences have never been personal. It has always been about doing what we believe is best for Nevada. Together, I think we have done that.

There is no question that we have a tremendous task still ahead of us, rebuilding our house after the fire we have been through. I know we have the right people in place to do that, the right team to carry on the legacy of the colleagues we say goodbye to today. In the great tradition of Nevada’s first days, we are still a citizen’s Legislature. Many of you have made tremendous personal and professional sacrifices to be here and I am proud to serve with all of you. Thank you for that privilege.

ASSEMBLYWOMAN GANSERT:

Thank you, Madam Speaker, and thank you to the Majority Leader for all his words and reminders of the great work of this body. This is the end of session. This is a time to thank people. I know we have thanked many people before but it is time to do it again. I want to thank Susan and her Front Desk staff. I want to thank our legal counsel, Brenda Erdoes. Eileen O’Grady and Risa Lang, we could not do it without you. It is amazing the number of

amendments they turned out. I think we were over a thousand the last time I looked up there. I would like to thank our fiscal staff, Mark Stevens, Gary Ghiggeri, Steve Abba, Tracy Raxter, and Russell Guindon. I would like to thank the Legislative Police for being here because every time we are here, they are here. All of you are here and then you work beyond those hours. I so appreciate all of your work. I also appreciate the audio and video staff and Information Technology Services. We are glad they fixed the Assistant Majority Leader's microphone. Or maybe they didn't fix his microphone. So, thank you so much.

This is the People's House. As was mentioned earlier, we are a diverse group, with different ways of life and different ages. It is astounding that there is a 50-year difference between the youngest and the oldest. I think, together, we are able to debate topics and work together for solutions. I know when I first ran for office I did a lot of walking, as all of us did, and that is something that is special in Nevada. You actually know your constituents. The Assemblymen from Clark County and I talked about that. How we go out and walk on the weekends, even during session. I know every now and then that I used to hit a door that would be someone who wasn't from Nevada, mainly California. They could not believe that I was there. They could not believe they could meet their legislator or maybe meet some of the Constitutional officers. I know each of you know your constituents and I know that is what makes this house, the People's House, special. You all work so hard. You know your constituents and you are here to represent them.

I also appreciate all the work that we do in committee. Something else about Nevada, when people ask, "How do you work with these people? These people who are so different than you are?" It is because we get to know each other. Day in and day out, we end up having strong debates but, also, a lot of laughs. I think that is probably unique to this state, because we are a small state. So I appreciate that we have worked together, that we listen to each other. We strive for solutions and sometimes we don't always find them. But you know what? As the Majority Leader said, that is okay. Sometimes we just disagree and we make sure it is not personal. We try to keep our discussions civil and we accomplished that to a very strong end here in Nevada.

I want to thank everyone here. I appreciate leadership and everyone else. We have been talking about ten people. What about the other 31? I am just kidding. Thank you all for your service and thank you to our staff who work day in and day out, on weekends, and beyond the hours that we work. It is hard to imagine that, but they do. So, have a good break. That is why we have these sessions every other year so we can recover. Thank you.

ASSEMBLYMAN STEWART:

Thank you, Madam Speaker. While I appreciate the great service of the ten people who are leaving us and the committee chairmen who have been mentioned, but as the oldest sophomore, I would like to call your attention to the sophomore class. We started off with ten members: five Republicans and five Democrats. As freshmen, as I mentioned last year, we won some, and we lost some, and we lost some, and we lost some, and we lost some. This year we have done much better. However, we have lost two of our members: Assemblyman Beers and Assemblywoman Womack. So, now we are down to four Democrats and four Republicans.

We have achieved some great things this session. We have had three members who have vied for the title of "Mr. No." But, I am sad to report, they were unsuccessful. Our returning Assemblyman from District 32, according to my calculations, has outdone all three of them. We had some members who have achieved greater things outside the Assembly than inside the Assembly, like having twins. We have had another one who achieved a great deal in taking care of those with autism. We have had an Assemblyman who could not quite figure out which was the most important bill. I want to point out, though, that his really most important bill was the fish, toe-nibbling bill. So, please let us not forget that.

Have I left anyone out? I do not think so. I am sad to say we are going to lose two of our members, who are running for other offices. I would like to announce at this time that I am not one of those. Finally, we had one member of sophomore class who had a most distinguished accomplishment this time, which was to be called, "the Bug Man." We will not mention who that is. So, on behalf of the sophomore class, I would hope you would all join me in giving us a sitting ovation for the sophomore class. Thank you very much.

## UNFINISHED BUSINESS

## REPORTS OF CONFERENCE COMMITTEES

*Madam Speaker:*

The Conference Committee concerning Assembly Bill No. 88, consisting of the undersigned members, has met and reports that:

It has agreed to recommend that Amendment No. 690 of the Senate be concurred in.

It has agreed to recommend that the bill be further amended as set forth in Conference Amendment No. 37, which is attached to and hereby made a part of this report.

WILLIAM HORNE  
BERNIE ANDERSON

*Assembly Conference Committee*

TERRY CARE  
MARK AMODEI  
DAVID PARKS

*Senate Conference Committee*

Conference Amendment No. CA37.

AN ACT relating to sexual offenses; prohibiting a person from using the Internet to ~~access~~ control child pornography; establishing a civil remedy under certain circumstances for a person who appeared in child pornography; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

**Section 1** of this bill prohibits a person from using the Internet to ~~access~~ control child pornography.

**Section 4** of this bill establishes a civil cause of action for a person who, while under the age of 16 years, appeared in child pornography and suffered personal or psychological injury as the result. A person 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, knowingly, willfully and with the specific intent to view any film, photograph or other visual presentation depicting a person under the age of 16 years engaging in or simulating sexual conduct, uses the Internet to ~~access~~ control such a film, photograph or other visual presentation is guilty of:**

**(a) For the first offense, a category C felony and shall be punished as provided in NRS 193.130.**

**(b) For any subsequent offense, 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 6 years, and may be further punished by a fine of not more than \$5,000.**

**2. As used in this section, "sexual conduct" means sexual intercourse, fellatio, cunnilingus, bestiality, anal intercourse, excretion, sado-masochistic abuse, masturbation, or the penetration of any object**



*manipulated or inserted by a person into the genital or anal opening of the body of another.*

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 4 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.

Sec. 4. Chapter 41 of NRS is hereby amended by adding thereto a new section to read as follows:

1. **Any person who, while under the age of 16 years, appeared in any film, photograph or other visual presentation engaging in sexual conduct and who suffered personal or psychological injury as a result may bring an action against any person who, while over the age of 18 years, knowingly and willfully:**

(a) **Promoted the film, photograph or other visual presentation;**

(b) **Possessed the film, photograph or other visual presentation; or**

(c) *Used the Internet to ~~access~~ control the film, photograph or other visual presentation, with the specific intent to view the film, photograph or other visual presentation.*

2. *A plaintiff 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 plaintiff 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 plaintiff 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 plaintiff or did not engage in the sexual conduct with the plaintiff.*

5. *As used in this section:*

(a) *"Promote" has the meaning ascribed to it in NRS 200.700.*

(b) *"Sexual conduct" means sexual intercourse, fellatio, cunnilingus, bestiality, anal intercourse, excretion, sado-masochistic abuse, masturbation, or the penetration of any object manipulated or inserted by a person into the genital or anal opening of the body of another.*

Assemblyman Horne moved that the Assembly adopt the report of the Conference Committee concerning Assembly Bill No. 88.

Remarks by Assemblyman Horne.

Motion carried by a constitutional majority.

*Madam Speaker:*

The Conference Committee concerning Assembly Bill No. 385, consisting of the undersigned members, has met and reports that:

It has agreed to recommend that Amendment No. 975 of the Senate be concurred in.

It has agreed to recommend that the bill be further amended as set forth in Conference Amendment No. 39, which is attached to and hereby made a part of this report.

WILLIAM HORNE

KATHY MCCLAIN

JOHN CARPENTER

*Assembly Conference Committee*

TERRY CARE

VALERIE WIENER

MIKE MCGINNESS

*Senate Conference Committee*

Conference Amendment No. CA39.

AN ACT relating to prisons; requiring the Board of State Prison Commissioners to adopt regulations pertaining to a facility or institution operated by a private organization; requiring the monitoring of certain private facilities and institutions; ~~providing for the development of minimum staffing levels for institutions and facilities of the Department of Corrections;~~ providing that certain provisions relating to a prisoner confined in a facility or institution also apply to a prisoner confined in a private facility or institution operated by a private organization; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Board of State Prison Commissioners to adopt regulations for carrying out the business of the Board and of the Department of Corrections. (NRS 209.111) **Section 1.4** of this bill requires the Board to adopt additional regulations establishing the maximum number of prisoners that may be incarcerated in a private facility or institution. Those regulations must be based upon the standards adopted by the American Correctional Association.

**Section 1.5** of this bill requires the Department to monitor private facilities or institutions which house prisoners incarcerated pursuant to the authority of another state to ensure that the care and custody of the prisoners comply with the Nevada Constitution and the United States Constitution. ~~[Section 1.6 of this bill provides that the provisions of this bill which relate to private facilities or institutions do not apply with respect to prisoners incarcerated in a private facility or institution pursuant to a contract with the Federal Government.]~~

~~Section 1.67 of this bill revises the duties of the Director of the Department by requiring the Director to consult with representatives of the employees of the Department to develop a minimum staffing level which is necessary to ensure the safety of the public, the employees of the Department and the prisoners and which is within the limits of legislative appropriation.]~~

Existing law makes it a crime for: (1) a prisoner to escape from prison or to manufacture or possess certain items used in an escape; (2) a person to aid a prisoner in escaping from prison; (3) a person who has custody of a prisoner to allow the prisoner to escape; and (4) a person to conceal an escaped prisoner. (NRS 212.080, 212.090, 212.093, 212.100-212.130) Existing law also provides certain procedures for issuing a warrant for the arrest of an escaped prisoner and the manner in which expenses for recapturing the prisoner must be paid. (NRS 212.030-212.080) Further, existing law makes it a crime to: (1) provide certain items to a prisoner, including certain weapons, an intoxicant or a controlled substance and certain communications devices; or (2) engage in certain behavior concerning a prisoner, such as engaging in sexual conduct or certain unlawful acts relating to human excrement or bodily fluid. (NRS 212.160-212.189) **Section 1.7** of this bill provides that those provisions also apply to a prisoner incarcerated in a private prison operated by a private organization as well as to certain other persons. **Section 1.7** also provides that the private organization which operates a private facility or institution must: (1) reimburse the State for expenses incurred by the State in recapturing a prisoner who escapes from the private facility or institution; and (2) provide training to its employees that is equivalent to the training provided to a correctional officer in this State.

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

Section 1. (Deleted by amendment.)

Sec. 1.3. Chapter 209 of NRS is hereby amended by adding thereto the provisions set forth as sections 1.35 to 1.6, inclusive, of this act.

Sec. 1.35. *"Private facility or institution" means a facility or institution operated by a private organization to house prisoners.*

Sec. 1.4. *1. To ensure the safety of the residents of the State of Nevada, the Board shall adopt regulations establishing the maximum number of prisoners who may be incarcerated in a private facility or institution. The regulations must be based upon the standards adopted by the American Correctional Association or its successor organization.*

*2. As used in this section, "prisoner" has the meaning ascribed to it in section 1.7 of this act.*

Sec. 1.5. *1. The Department shall monitor each private facility or institution which houses prisoners who are incarcerated pursuant to the authority of another state to ensure that the custody and care of the prisoners comply with the requirements of the Nevada Constitution and the Constitution of the United States.*

*2. A private facility or institution which is monitored by the Department pursuant to subsection 1 shall reimburse the Department for the costs of such monitoring. The Department shall determine the cost of the monitoring required by subsection 1 on a per-prisoner basis.*

Sec. 1.6. ~~*The provisions of sections 1.4, 1.5 and 1.7 of this act do not apply with respect to prisoners incarcerated in a private facility or institution pursuant to a contract with the Federal Government or an agency of the Federal Government.*~~ (Deleted by amendment.)

Sec. 1.63. NRS 209.011 is hereby amended to read as follows:

209.011 As used in this chapter, unless the context otherwise requires, the terms defined in NRS 209.021 to 209.085, inclusive, *and section 1.35 of this act* have the meanings ascribed to them in those sections.

Sec. 1.67. ~~*NRS 209.131 is hereby amended to read as follows:*~~

~~209.131 The Director shall:~~

~~1. Administer the Department under the direction of the Board.~~

~~2. Supervise the administration of all institutions and facilities of the Department.~~

~~3. Receive, retain and release, in accordance with law, offenders sentenced to imprisonment in the state prison.~~

~~4. Be responsible for the supervision, custody, treatment, care, security and discipline of all offenders under his jurisdiction.~~

~~5. Ensure that any person employed by the Department whose primary responsibilities are:~~

~~(a) The supervision, custody, security, discipline, safety and transportation of an offender;~~

~~(b) The security and safety of the staff; and~~

~~(c) The security and safety of an institution or facility of the Department;~~

~~is a correctional officer who has the powers of a peace officer pursuant to subsection 1 of NRS 289.220~~

~~6. Establish regulations with the approval of the Board and enforce all laws governing the administration of the Department and the custody, care and training of offenders.~~

~~7. Take proper measures to protect the health and safety of the staff and offenders in the institutions and facilities of the Department.~~

~~8. Cause to be placed from time to time in conspicuous places about each institution and facility copies of laws and regulations relating to visits and correspondence between offenders and others.~~

~~9. Provide for the holding of religious services in the institutions and facilities and make available to the offenders copies of appropriate religious materials.~~

~~10. Consult with the representatives of the employees of the Department to develop the minimum level of staffing in the institutions and facilities of the Department which is necessary to ensure the safety of the public, the employees of the Department and offenders and which is within the limits of legislative appropriation. If the Director, or his designee, or a representative of the employees of the Department requests a meeting to review the minimum level of staffing developed pursuant to this subsection, the Director, or his designee, and the representatives of the employees shall meet to review the minimum level of staffing. At such a meeting, the minimum level of staffing may be revised if the revision is agreed to by the Director, or his designee, and the representative of the employees and is within the limits of legislative appropriation.~~ (Deleted by amendment.)

Sec. 1.7. Chapter 212 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The provisions of this section and NRS 212.030 to 212.130, inclusive, and 212.160 to 212.189, inclusive, apply to:

(a) A person who has custody of a prisoner assigned to a private facility or institution in this State; and

(b) A prisoner assigned to a private facility or institution in this State, to the same extent that those provisions would apply if the prisoner had been assigned to a facility or institution operated by the Department.

2. A private organization that operates a private facility or institution must provide training to any person employed by the private facility or institution to perform the duties of a correctional officer described in subsection 5 of NRS 209.131. The ~~content of the~~ training must be equivalent to the training provided to a correctional officer in this State, ~~but a person employed by a private facility or institution to perform the duties of a correctional officer is not required to be certified as a peace officer.~~

3. The private organization that operates a private facility or institution must reimburse the State for any expenses charged against the State or paid by the State pursuant to NRS 212.040, 212.050 or 212.070 concerning a prisoner who escapes from the private facility or institution.

4. As used in this section:

(a) "Prisoner" means any person who is:

(1) Convicted of a crime under the laws of this State and sentenced to imprisonment in the state prison; or

(2) Convicted of a crime under the laws of another jurisdiction and sentenced to imprisonment by that jurisdiction.

(b) "Private facility or institution" has the meaning ascribed to it in section 1.35 of this act.

Sec. 2. (Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

Sec. 4. This act becomes effective on July 1, 2009.

Assemblyman Horne moved that the Assembly adopt the report of the Conference Committee concerning Assembly Bill No. 385.

Remarks by Assemblyman Horne.

Motion carried by a constitutional majority.

*Madam Speaker:*

The Conference Committee concerning Assembly Bill No. 523, consisting of the undersigned members, has met and reports that:

It has agreed to recommend that Amendment No. 957 of the Senate be concurred in.

It has agreed to recommend that the bill be further amended as set forth in Conference Amendment No. 36, which is attached to and hereby made a part of this report.

MARCUS CONKLIN  
MARILYN KIRKPATRICK  
CHAD CHRISTENSEN

*Assembly Conference Committee*

DAVID PARKS  
WARREN HARDY

*Senate Conference Committee*

Conference Amendment No. CA36.

SUMMARY—~~Implements the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.~~ **Makes various changes to provisions relating to housing.** (BDR 54-773)

AN ACT relating to ~~mortgage lending;~~ **housing;** establishing provisions for the implementation of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008; increasing certain administrative fines; ~~revising certain provisions relating to the grounds of termination for certain rental or lease agreements affecting certain tenants in a manufactured home park; revising provisions concerning the board of directors or trustees of a mobile home park owned or leased by a nonprofit organization;~~ providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

~~This bill implements~~ **Sections 1-84 and 84.5 of this bill implement** the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008. **Sections 1.5-18, 21, 23, 24, 50.1-50.7 and 55-85** of this bill establish provisions for the licensing and registration with the nationwide mortgage licensing system and registry of residential mortgage loan originators, in compliance with federal law.

**Section 55** of this bill also increases the administrative fine the Commissioner of Mortgage Lending may impose upon an applicant for or a holder of a license as a mortgage broker or mortgage agent for certain violations from \$10,000 to \$25,000 for each violation. (NRS 645B.670)

**Section 85.5** of this bill repeals provisions for the licensing of certain persons on behalf of a corporation or limited-liability company as mortgage agents. (NRS 645B.455)

**Section 84.1 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.**

**Section 84.3 of this bill increases from 2 to 4 years the term of office for a person serving on the board of directors or trustees of a mobile home park owned or leased by a nonprofit organization. Section 85.3 of this bill provides for the staggering of such terms.**

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

Section 1. Chapter 645B of NRS is hereby amended by adding thereto the provisions set forth as sections 1.5 to 8, inclusive, of this act.

Sec. 1.5. *"Clerical or ministerial tasks" means communication with a person to obtain, and the receipt, collection and distribution of, information necessary for the processing or underwriting of a mortgage loan.*

Sec. 2. *"Nationwide Mortgage Licensing System and Registry" or "Registry" means the mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for licensing and registration of residential mortgage loan originators.*

Sec. 3. (Deleted by amendment.)

Sec. 4. (Deleted by amendment.)

Sec. 5. *"Residential mortgage loan" means any loan primarily for personal, family or household use that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling. For purposes of this section, "dwelling" has the meaning ascribed to it section 103(v) of the federal Truth in Lending Act, 15 U.S.C. § 1602(v).*

Sec. 6. *"Residential mortgage loan originator" means a natural person who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan for compensation or other pecuniary gain. The term does not include:*

*1. A person who performs clerical or ministerial tasks as an employee at the direction of and subject to the supervision and instruction of a*

*person licensed or exempt from licensing under this chapter, unless the person who performs such clerical or ministerial tasks is an independent contractor; or*

*2. A person solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. § 101(53D).*

Sec. 7. (Deleted by amendment.)

Sec. 8. *A mortgage broker or qualified employee who wishes to engage in activities as a residential mortgage loan originator or to supervise a mortgage agent who engages in activities as a residential mortgage loan originator must obtain and maintain a license as a mortgage agent pursuant to the provisions of NRS 645B.400 to 645B.460, inclusive.*

Sec. 9. (Deleted by amendment.)

Sec. 10. (Deleted by amendment.)

Sec. 11. (Deleted by amendment.)

Sec. 12. (Deleted by amendment.)

Sec. 13. (Deleted by amendment.)

Sec. 14. (Deleted by amendment.)

Sec. 15. (Deleted by amendment.)

Sec. 16. (Deleted by amendment.)

Sec. 17. (Deleted by amendment.)

Sec. 18. (Deleted by amendment.)

Sec. 19. NRS 645B.010 is hereby amended to read as follows:

645B.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 645B.0105 to 645B.0135, inclusive, *and sections 1.5 to 6, inclusive, of this act* have the meanings ascribed to them in those sections.

Sec. 20. (Deleted by amendment.)

Sec. 21. NRS 645B.0125 is hereby amended to read as follows:

645B.0125 1. "Mortgage agent" means ~~as~~:

(a) A natural person who:

~~[(a)]~~ (1) Is an employee ~~for independent contractor~~ of a mortgage broker *or mortgage banker* who is required to be licensed pursuant to this chapter ~~or chapter 645E of NRS~~; and

~~[(b)]~~ (2) Is authorized by the mortgage broker *or mortgage banker* to engage in, on behalf of the mortgage broker ~~or mortgage banker~~, any activity that would require the person, if he were not an employee ~~for independent contractor~~ of the mortgage broker ~~or mortgage banker~~, to be licensed as a mortgage broker *or mortgage banker* pursuant to this chapter ~~or chapter 645E of NRS~~; or

(b) *A mortgage broker, qualified employee or mortgage banker who is required by section 8 or 59.1 of this act to be licensed as a mortgage agent.*

2. The term *includes a residential mortgage loan originator.*

3. *The term* does not include a person who:

(a) ~~[(a)]~~ *Except as otherwise provided in paragraph (b) of subsection 1, is licensed as a mortgage broker or mortgage banker;*



(b) ~~Is a~~ *Is an owner*, general partner, officer or director of a mortgage broker ~~[-]~~ or *mortgage banker*;

(c) Performs only clerical or ministerial tasks for a mortgage broker ~~[-]~~ ;  
or

(d) *Collects payments and performs related services, including, without limitation, the modification of an existing loan, in connection with a loan secured by a lien on real property and who does not undertake any other activity that would otherwise require a license pursuant to this chapter or chapter 645E of NRS.*

Sec. 22. (Deleted by amendment.)

Sec. 23. NRS 645B.0137 is hereby amended to read as follows:

645B.0137 1. In addition to any other requirements provided by this chapter, a person who wishes to receive an initial license as a mortgage broker or mortgage agent must:

(a) Complete education on mortgage lending as required by this chapter ~~[-]~~ ~~or~~ *and any regulations adopted thereto; and*

(b) Successfully pass a written examination as ~~[determined]~~ *provided for* by the Division.

2. If the applicant for an initial license as a mortgage broker is not a natural person, the applicant must designate a natural person to be the qualified employee of the applicant and meet the requirements of subsection 1.

3. The Division ~~[-]~~

~~(a) May~~ *may* hire a testing organization to create, administer and score a written examination. ~~[-]~~ ~~and~~

~~(b) May create waivers for a written examination.]~~

4. The Commissioner ~~[may]~~ *shall* adopt regulations to carry out the provisions of this section, including, without limitation ~~[-]~~ ~~regulations~~ :

(a) *Regulations* relating to the content of a written examination ~~[-]~~ *and* the scoring of a written examination ~~for any possible waivers of a written examination.] ; and~~

(b) *Regulations for compliance with the requirements for registration with the Registry and any other applicable federal law.*

Sec. 24. NRS 645B.0138 is hereby amended to read as follows:

645B.0138 1. A course of continuing education that is required pursuant to this chapter must meet the requirements set forth by the Commissioner by regulation.

2. The Commissioner shall adopt regulations:

(a) Relating to the requirements for courses of continuing education, including, without limitation, regulations relating to the providers and instructors of such courses, records kept for such courses, approval and revocation of approval of such courses, monitoring of such courses and disciplinary action taken regarding such courses.

(b) Allowing for the participation of representatives of the mortgage lending industry pertaining to the creation of regulations regarding such courses.

***(c) Ensuring compliance with the requirements for registration with the Registry and any other applicable federal law.***

Sec. 25. (Deleted by amendment.)

Sec. 26. (Deleted by amendment.)

Sec. 27. (Deleted by amendment.)

Sec. 28. (Deleted by amendment.)

Sec. 29. (Deleted by amendment.)

Sec. 30. (Deleted by amendment.)

Sec. 31. (Deleted by amendment.)

Sec. 32. (Deleted by amendment.)

Sec. 33. (Deleted by amendment.)

Sec. 34. (Deleted by amendment.)

Sec. 35. (Deleted by amendment.)

Sec. 36. (Deleted by amendment.)

Sec. 37. (Deleted by amendment.)

Sec. 38. (Deleted by amendment.)

Sec. 39. (Deleted by amendment.)

Sec. 40. (Deleted by amendment.)

Sec. 41. (Deleted by amendment.)

Sec. 42. (Deleted by amendment.)

Sec. 43. (Deleted by amendment.)

Sec. 44. (Deleted by amendment.)

Sec. 45. (Deleted by amendment.)

Sec. 46. (Deleted by amendment.)

Sec. 47. (Deleted by amendment.)

Sec. 48. (Deleted by amendment.)

Sec. 49. (Deleted by amendment.)

Sec. 50. (Deleted by amendment.)

Sec. 50.1. NRS 645B.018 is hereby amended to read as follows:

645B.018 1. A person may apply to the Commissioner for an exemption from the provisions of this chapter governing the making of a loan of money ~~[-]~~, ***except that an exemption may not be issued for the making of a residential mortgage loan.***

2. The Commissioner may grant the exemption if he finds that:

(a) The making of the loan would not be detrimental to the financial condition of the lender, the debtor or the person who is providing the money for the loan;

(b) The lender, the debtor or the person who is providing the money for the loan has established a record of sound performance, efficient management, financial responsibility and integrity;

(c) The making of the loan is likely to increase the availability of capital for a sector of the state economy; and

(d) The making of the loan is not detrimental to the public interest.

3. The Commissioner:

(a) May revoke an exemption unless the loan for which the exemption was granted has been made; and

(b) Shall issue a written statement setting forth the reasons for his decision to grant, deny or revoke an exemption.

Sec. 50.2. NRS 645B.020 is hereby amended to read as follows:

645B.020 1. A person who wishes to be licensed as a mortgage broker must file a written application for a license with the Office of the Commissioner and pay the fee required pursuant to NRS 645B.050. An application for a license as a mortgage broker must:

(a) State the name, residence address and business address of the applicant and the location of each principal office and branch office at which the mortgage broker will conduct business within this State.

(b) State the name under which the applicant will conduct business as a mortgage broker.

(c) List the name, residence address and business address of each person who will:

(1) If the applicant is not a natural person, have an interest in the mortgage broker as a principal, partner, officer, director or trustee, specifying the capacity and title of each such person.

(2) Be associated with or employed by the mortgage broker as a mortgage agent.

(d) Include a general business plan and a description of the policies and procedures that the mortgage broker and his mortgage agents will follow to arrange and service loans and to conduct business pursuant to this chapter.

(e) State the length of time the applicant has been engaged in the business of a broker.

(f) Include a financial statement of the applicant and, if applicable, satisfactory proof that the applicant will be able to maintain continuously the net worth required pursuant to NRS 645B.115.

(g) Include all information required to complete the application.

(h) Include any other information required pursuant to the regulations adopted by the Commissioner or an order of the Commissioner.

2. If a mortgage broker will conduct business at one or more branch offices within this State, the mortgage broker must apply for a license for each such branch office.

3. Except as otherwise provided in this chapter, the Commissioner shall issue a license to an applicant as a mortgage broker if:

(a) The application is verified by the Commissioner and complies with the requirements of this chapter; and

(b) The applicant and each general partner, officer or director of the applicant, if the applicant is a partnership, corporation or unincorporated association:

(1) Has ~~[a good reputation for honesty, trustworthiness and integrity and displays competence to transact the business of a mortgage broker in a manner which safeguards the interests of the general public. The applicant must submit satisfactory proof of these qualifications to the Commissioner.]~~ ***demonstrated financial responsibility, character and general fitness so as to command the confidence of the community and warrant a determination that he will operate honestly, fairly and efficiently for the purposes of this chapter.***

(2) Has not been convicted of, or entered a plea of ***guilty or*** nolo contendere to, a felony ~~[relating to the practice of mortgage brokers or any crime involving fraud, misrepresentation or moral turpitude.]~~ ***in a domestic, foreign or military court within the 7 years immediately preceding the date of the application, or at any time if such felony involved an act of fraud, dishonesty or a breach of trust, or money laundering.***

(3) Has not made a false statement of material fact on his application.

(4) Has ~~[not had a license that was issued pursuant to the provisions of this chapter or chapter 645E of NRS suspended or revoked within the 10 years immediately preceding the date of his application.]~~ ***never had a license or registration as a mortgage agent, mortgage banker, mortgage broker or residential mortgage loan originator revoked in this State or any other jurisdiction or had a financial services license suspended or revoked within the immediately preceding 10 years.***

(5) ~~[Has not had a license that was issued in any other state, district or territory of the United States or any foreign country suspended or revoked within the 10 years immediately preceding the date of his application.]~~

~~(6)]~~ Has not violated any provision of this chapter or chapter 645E of NRS, a regulation adopted pursuant thereto or an order of the Commissioner.

Sec. 50.3. NRS 645B.0243 is hereby amended to read as follows:

645B.0243 The Commissioner may refuse to issue a license to an applicant if the Commissioner has reasonable cause to believe that the applicant or any general partner, officer or director of the applicant has, after October 1, 1999, employed or proposed to employ a person as a mortgage agent or authorized or proposed to authorize a person to be associated with a mortgage broker as a mortgage agent at a time when the applicant or the general partner, officer or director knew or, in light of all the surrounding facts and circumstances, reasonably should have known that the person ~~[-~~

~~1. Had been convicted of, or entered a plea of nolo contendere to:~~

~~(a) A felony relating to the practice of mortgage agents; or~~

~~(b) Any crime involving fraud, misrepresentation or moral turpitude; or~~

~~2. Had a financial services license or registration suspended or revoked within the immediately preceding 20 years.]~~ ***has committed any act or omission that would be cause for refusing to issue a license to a mortgage agent.***

Sec. 50.4. NRS 645B.050 is hereby amended to read as follows:

645B.050 1. A license as a mortgage broker issued pursuant to this chapter expires each year on June 30, unless it is renewed. To renew such a license, the licensee must submit to the Commissioner on or before May 31 of each year:

- (a) An application for renewal;
- (b) The fee required to renew the license pursuant to this section;
- (c) The information required pursuant to NRS 645B.051; and
- (d) All information required to complete the renewal.

2. If the licensee fails to submit any item required pursuant to subsection 1 to the Commissioner on or before May 31 of any year, the license is cancelled as of June 30 of that year. The Commissioner may reinstate a cancelled license if the licensee submits to the Commissioner:

- (a) An application for renewal;
- (b) The fee required to renew the license pursuant to this section;
- (c) The information required pursuant to NRS 645B.051;
- (d) Except as otherwise provided in this section, a reinstatement fee of not more than \$200; and
- (e) All information required to complete the reinstatement.

3. Except as otherwise provided in NRS 645B.016, a certificate of exemption issued pursuant to this chapter expires each year on December 31, unless it is renewed. To renew a certificate of exemption, a person must submit to the Commissioner on or before November 30 of each year:

- (a) An application for renewal that includes satisfactory proof that the person meets the requirements for an exemption from the provisions of this chapter; and
- (b) The fee required to renew the certificate of exemption.

4. If the person fails to submit any item required pursuant to subsection 3 to the Commissioner on or before November 30 of any year, the certificate of exemption is cancelled as of December 31 of that year. Except as otherwise provided in NRS 645B.016, the Commissioner may reinstate a cancelled certificate of exemption if the person submits to the Commissioner:

- (a) An application for renewal that includes satisfactory proof that the person meets the requirements for an exemption from the provisions of this chapter;
- (b) The fee required to renew the certificate of exemption; and
- (c) Except as otherwise provided in this section, a reinstatement fee of not more than \$100.

5. Except as otherwise provided in this section, a person must pay the following fees to apply for, to be issued or to renew a license as a mortgage broker pursuant to this chapter:

- (a) To file an original application for a license, not more than \$1,500 for the principal office and not more than \$40 for each branch office. The person must also pay such additional expenses incurred in the process of investigation as the Commissioner deems necessary.

(b) To be issued a license, not more than \$1,000 for the principal office and not more than \$60 for each branch office.

(c) To renew a license, not more than \$500 for the principal office and not more than \$100 for each branch office.

6. Except as otherwise provided in this section, a person must pay the following fees to apply for or to renew a certificate of exemption pursuant to this chapter:

(a) To file an application for a certificate of exemption, not more than \$200.

(b) To renew a certificate of exemption, not more than \$100.

7. To be issued a duplicate copy of any license or certificate of exemption, a person must make a satisfactory showing of its loss and pay a fee of not more than \$10.

8. Except as otherwise provided in this chapter, all fees received pursuant to this chapter *are in addition to any fee required to be paid to the Registry and* must be deposited in the Fund for Mortgage Lending created by NRS 645F.270.

9. The Commissioner may, by regulation, adjust any fee *or date* set forth in this section if the Commissioner determines that such an adjustment is necessary for the Commissioner to carry out his duties pursuant to this chapter. The amount of any adjustment in a fee pursuant to this subsection must not exceed the amount determined to be necessary for the Commissioner to carry out his duties pursuant to this chapter.

Sec. 50.5. NRS 645B.410 is hereby amended to read as follows:

645B.410 1. To obtain a license as a mortgage agent, a person must:

(a) Be a natural person;

(b) File a written application for a license as a mortgage agent with the Office of the Commissioner;

(c) Comply with the applicable requirements of this chapter; and

(d) Pay an application fee set by the Commissioner of not more than \$185.

2. An application for a license as a mortgage agent must:

(a) State the name and residence address of the applicant;

(b) Include a provision by which the applicant gives his written consent to an investigation of his credit history, criminal history and background;

(c) Include a complete set of fingerprints which the Division may forward to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report;

(d) ~~Include~~ *If he is not licensed as a mortgage broker or mortgage banker pursuant to chapter 645B or 645E of NRS, include* a verified statement from the mortgage broker *or mortgage banker* with whom the applicant will be associated that expresses the intent of that mortgage broker *or mortgage banker* to associate the applicant with the mortgage broker *or mortgage banker* and to be responsible for the activities of the applicant as a mortgage agent; and

(e) Include any other information or supporting materials required pursuant to the regulations adopted by the Commissioner or by an order of the Commissioner. Such information or supporting materials may include, without limitation, other forms of identification of the person.

3. Except as otherwise provided in this chapter, the Commissioner shall issue a license as a mortgage agent to an applicant if:

(a) The application is verified by the Commissioner and complies with the applicable requirements of this chapter; and

(b) The applicant:

(1) Has not been convicted of, or entered a plea of *guilty or* nolo contendere to, a felony ~~[relating to the practice of mortgage agents or any crime involving fraud, misrepresentation or moral turpitude;]~~ *in a domestic, foreign or military court within the 7 years immediately preceding the date of the application, or at any time if such felony involved an act of fraud, dishonesty or a breach of trust, or money laundering;*

(2) Has ~~[not]~~ *never had a license or registration as a mortgage agent, mortgage banker, mortgage broker or residential mortgage loan originator revoked in this State or any other jurisdiction, or* had a financial services license suspended or revoked within the immediately preceding 10 years;

(3) Has not made a false statement of material fact on his application;

(4) Has not violated any provision of this chapter or chapter 645E of NRS, a regulation adopted pursuant thereto or an order of the Commissioner; and

(5) Has ~~[a good reputation for honesty, trustworthiness and integrity and displays competence to transact the business of a mortgage agent in a manner which safeguards the interests of the general public. The applicant must submit satisfactory proof of these qualifications to the Commissioner.]~~ *demonstrated financial responsibility, character and general fitness so as to command the confidence of the community and warrant a determination that he will operate honestly, fairly and efficiently for the purposes of this chapter.*

4. Money received by the Commissioner pursuant to this section *is in addition to any fee required to be paid to the Registry and* must be deposited in the Fund for Mortgage Lending created by NRS 645F.270.

Sec. 50.6. NRS 645B.430 is hereby amended to read as follows:

645B.430 1. A license as a mortgage agent issued pursuant to NRS 645B.410 expires 1 year after the date the license is issued, unless it is renewed. To renew a license as a mortgage agent, the holder of the license must submit to the Commissioner each year, on or before the date the license expires:

(a) An application for renewal;

(b) Except as otherwise provided in this section, satisfactory proof that the holder of the license as a mortgage agent attended at least 10 hours of certified courses of continuing education during the 12 months immediately preceding the date on which the license expires; and

(c) A renewal fee set by the Commissioner of not more than \$170.

2. If the holder of the license as a mortgage agent fails to submit any item required pursuant to subsection 1 to the Commissioner each year on or before the date the license expires, the license is cancelled. The Commissioner may reinstate a cancelled license if the holder of the license submits to the Commissioner:

- (a) An application for renewal;
- (b) The fee required to renew the license pursuant to this section; and
- (c) A reinstatement fee of \$75.

3. To be issued a duplicate copy of a license as a mortgage agent, a person must make a satisfactory showing of its loss and pay a fee of \$10.

4. To change the mortgage broker with whom the mortgage agent is associated, a person must pay a fee of \$10.

5. Money received by the Commissioner pursuant to this section *is in addition to any fee that must be paid to the Registry and* must be deposited in the Fund for Mortgage Lending created by NRS 645F.270.

6. The Commissioner may provide by regulation that any hours of a certified course of continuing education attended during a 12-month period, but not needed to satisfy a requirement set forth in this section for the 12-month period in which the hours were taken, may be used to satisfy a requirement set forth in this section for a later 12-month period.

7. As used in this section, “certified course of continuing education” has the meaning ascribed to it in NRS 645B.051.

Sec. 50.7. NRS 645B.460 is hereby amended to read as follows:

645B.460 1. A mortgage broker shall exercise reasonable supervision over the activities of his mortgage agents ~~and~~ *and must also be licensed as a mortgage agent if required pursuant to section 8 of this act.* Such reasonable supervision must include, as appropriate:

(a) The establishment of written or oral policies and procedures for his mortgage agents; ~~and~~

(b) The establishment of a system to review, oversee and inspect the activities of his mortgage agents, including, without limitation:

(1) Transactions handled by his mortgage agents pursuant to this chapter;

(2) Communications between his mortgage agents and a party to such a transaction;

(3) Documents prepared by his mortgage agents that may have a material effect upon the rights or obligations of a party to such a transaction; and

(4) The handling by his mortgage agents of any fee, deposit or money paid to the mortgage broker or his mortgage agents or held in trust by the mortgage broker or his mortgage agents pursuant to this chapter ~~and~~ *;* *and*

(c) *The establishment of a system of reporting to the Division of any fraudulent activity engaged in by any of his mortgage agents.*



2. The Commissioner shall allow a mortgage broker to take into consideration the total number of mortgage agents associated with or employed by the mortgage broker when the mortgage broker determines the form and extent of the policies and procedures for those mortgage agents and the system to review, oversee and inspect the activities of those mortgage agents.

3. The Commissioner may adopt regulations prescribing standards for determining whether a mortgage broker has exercised reasonable supervision over the activities of a mortgage agent pursuant to this section.

Sec. 51. (Deleted by amendment.)

Sec. 52. (Deleted by amendment.)

Sec. 53. (Deleted by amendment.)

Sec. 54. (Deleted by amendment.)

Sec. 55. NRS 645B.670 is hereby amended to read as follows:

645B.670 Except as otherwise provided in NRS 645B.690:

1. For each violation committed by an applicant for a license issued pursuant to this chapter, whether or not he is issued a license, the Commissioner may impose upon the applicant an administrative fine of not more than ~~[\$10,000,]~~ **\$25,000**, if the applicant:

(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 applicant possesses and which, if submitted by him, would have rendered the applicant ineligible to be licensed pursuant to the provisions of this chapter; or

(c) Has violated any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the Commissioner in completing and filing his application for a license or during the course of the investigation of his application for a license.

2. For each violation committed by a mortgage broker, the Commissioner may impose upon the mortgage broker an administrative fine of not more than ~~[\$10,000,]~~ **\$25,000**, may suspend, revoke or place conditions upon his license, or may do both, if the mortgage broker, whether or not acting as such:

(a) Is insolvent;

(b) Is grossly negligent or incompetent in performing any act for which he is required to be licensed pursuant to the provisions of this chapter;

(c) Does not conduct his business in accordance with law or has violated any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the Commissioner;

(d) Is in such financial condition that he cannot continue in business with safety to his customers;

(e) Has made a material misrepresentation in connection with any transaction governed by this chapter;

(f) Has suppressed or withheld from a client any material facts, data or other information relating to any transaction governed by the provisions of this chapter which the mortgage broker knew or, by the exercise of reasonable diligence, should have known;

(g) Has knowingly made or caused to be made to the Commissioner any false representation of material fact or has suppressed or withheld from the Commissioner any information which the mortgage broker possesses and which, if submitted by him, would have rendered the mortgage broker ineligible to be licensed pursuant to the provisions of this chapter;

(h) Has failed to account to persons interested for all money received for a trust account;

(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 or a regulation adopted pursuant to this chapter;

(j) Has been convicted of, or entered a plea of ***guilty or nolo contendere*** to, a felony ~~relating to the practice of mortgage brokers or any crime involving fraud, misrepresentation or moral turpitude;~~ ***in a domestic, foreign or military court within the 7 years immediately preceding the date of the application, or at any time if such felony involved an act of fraud, dishonesty or a breach of trust, or money laundering.***

(k) Has refused or failed to pay, within a reasonable time, any fees, assessments, costs or expenses that the mortgage broker is required to pay pursuant to this chapter or a regulation adopted pursuant to this chapter;

(l) Has failed to satisfy a claim made by a client which has been reduced to judgment;

(m) Has failed to account for or to remit any money of a client within a reasonable time after a request for an accounting or remittal;

(n) Has commingled the money or other property of a client with his own or has converted the money or property of others to his own use;

(o) Has engaged in any other conduct constituting a deceitful, fraudulent or dishonest business practice;

(p) Has repeatedly violated the policies and procedures of the mortgage broker;

(q) Has failed to exercise reasonable supervision over the activities of a mortgage agent as required by NRS 645B.460;

(r) Has instructed a mortgage agent to commit an act that would be cause for the revocation of the license of the mortgage broker, whether or not the mortgage agent commits the act;

(s) Has employed a person as a mortgage agent or authorized a person to be associated with the mortgage broker as a mortgage agent at a time when the mortgage broker knew or, in light of all the surrounding facts and circumstances, reasonably should have known that the person:

(1) Had been convicted of, or entered a plea of **guilty or** nolo contendere to, a felony ~~[relating to the practice of mortgage agents or any crime involving fraud, misrepresentation or moral turpitude;]~~ **in a domestic, foreign or military court within the 7 years immediately preceding the date of application, or at any time if such felony involved an act of fraud, dishonesty or a breach of trust, or money laundering;** or

(2) Had a ~~[financial services]~~ license or registration **as a mortgage agent, mortgage banker, mortgage broker or residential mortgage loan originator revoked in this State or any other jurisdiction or had a financial services license or registration** suspended or revoked within the immediately preceding 10 years;

(t) Has failed to pay a tax as required pursuant to the provisions of chapter 363A of NRS; or

(u) Has not conducted verifiable business as a mortgage broker for 12 consecutive months, except in the case of a new applicant. The Commissioner shall determine whether a mortgage broker is conducting business by examining the monthly reports of activity submitted by the mortgage broker or by conducting an examination of the mortgage broker.

3. For each violation committed by a mortgage agent, the Commissioner may impose upon the mortgage agent an administrative fine of not more than ~~[\$10,000;]~~ **\$25,000** may suspend, revoke or place conditions upon his license, or may do both, if the mortgage agent, whether or not acting as such:

(a) Is grossly negligent or incompetent in performing any act for which he is required to be licensed pursuant to the provisions of this chapter;

(b) Has made a material misrepresentation in connection with any transaction governed by this chapter;

(c) Has suppressed or withheld from a client any material facts, data or other information relating to any transaction governed by the provisions of this chapter which the mortgage agent knew or, by the exercise of reasonable diligence, should have known;

(d) Has knowingly made or caused to be made to the Commissioner any false representation of material fact or has suppressed or withheld from the Commissioner any information which the mortgage agent possesses and which, if submitted by him, would have rendered the mortgage agent ineligible to be licensed pursuant to the provisions of this chapter;

(e) Has been convicted of, or entered a plea of **guilty or** nolo contendere to, a felony ~~[relating to the practice of mortgage agents or any crime involving fraud, misrepresentation or moral turpitude;]~~ **in a domestic, foreign or military court within the 7 years immediately preceding the date of the application, or at any time if such felony involved an act of fraud, dishonesty or a breach of trust, or money laundering.**

(f) Has failed to account for or to remit any money of a client within a reasonable time after a request for an accounting or remittal;

(g) Has commingled the money or other property of a client with his own or has converted the money or property of others to his own use;

(h) Has engaged in any other conduct constituting a deceitful, fraudulent or dishonest business practice;

(i) Has repeatedly violated the policies and procedures of the mortgage broker with whom he is associated or by whom he is employed; or

(j) Has violated any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the Commissioner or has assisted or offered to assist another person to commit such a violation.

Sec. 56. (Deleted by amendment.)

Sec. 57. (Deleted by amendment.)

Sec. 58. (Deleted by amendment.)

Sec. 59. Chapter 645E of NRS is hereby amended by adding thereto the provisions set forth as sections 59.1 to 59.7, inclusive, of this act.

Sec. 59.1. *1. Any person licensed as a mortgage banker under this chapter and who engages in activities as a residential mortgage loan originator or who supervises a mortgage agent who engages in activities as a residential mortgage loan originator, and any employee or independent contractor of a mortgage banker who engages in activities as a residential mortgage loan originator, must be licensed as a mortgage agent pursuant to the provisions of NRS 645B.400 to 645B.460, inclusive.*

*2. As used in this section, "residential mortgage loan originator" has the meaning ascribed to it in section 6 of this act.*

Sec. 59.3. *1. A mortgage banker shall exercise reasonable supervision over the activities of his mortgage agents and must also be licensed as a mortgage agent if required pursuant to section 8 of this act. Such reasonable supervision must include, as appropriate:*

*(a) The establishment of written or oral policies and procedures for his mortgage agents;*

*(b) The establishment of a system to review, oversee and inspect the activities of his mortgage agents, including, without limitation:*

*(1) Transactions handled by his mortgage agents pursuant to this chapter;*

*(2) Communications between his mortgage agents and a party to such a transaction;*

*(3) Documents prepared by his mortgage agents that may have a material effect upon the rights or obligations of a party to such a transaction; and*

*(4) The handling by his mortgage agents of any fee, deposit or money paid to the mortgage banker or his mortgage agents or held in trust by the mortgage banker or his mortgage agents pursuant to this chapter; and*

*(c) The establishment of a system of reporting to the Division of any fraudulent activity engaged in by any of his mortgage agents.*

*2. The Commissioner shall allow a mortgage banker to take into consideration the total number of mortgage agents associated with or employed by the mortgage broker when the mortgage broker determines the form and extent of the policies and procedures for those mortgage*

*agents and the system to review, oversee and inspect the activities of those mortgage agents.*

*3. The Commissioner may adopt regulations prescribing standards for determining whether a mortgage broker has exercised reasonable supervision over the activities of a mortgage agent pursuant to this section.*

*Sec. 59.5. If a mortgage agent terminates his association or employment with a mortgage banker for any reason, the mortgage banker shall, not later than 3 business days following knowledge of the date of termination:*

*1. Deliver to the mortgage agent or send by certified mail to the last known residence address of the mortgage agent a written statement which advises him that his termination is being reported to the Division; and*

*2. Deliver or send by certified mail to the Division:*

*(a) The license or license number of the mortgage agent;*

*(b) A written statement of the circumstances surrounding the termination; and*

*(c) A copy of the written statement that the mortgage banker delivers or mails to the mortgage agent pursuant to subsection 1.*

*Sec. 59.7. 1. If a person offers or provides any of the services of a mortgage banker or mortgage agent or otherwise engages in, carries on or holds himself out as engaging in or carrying on the business of a mortgage banker 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 banker violates subsection 1 of NRS 645E.350 and the mortgage banker 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 banker to provide information, make a report or permit an examination of his books or affairs pursuant to this chapter and the mortgage banker 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 banker an administrative fine of not more than \$10,000 for each violation;*

*(b) Suspend or revoke the license of the mortgage banker; and*

*(c) Conduct a hearing to determine whether the mortgage banker 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 banker pursuant to NRS 645E.630.*

Sec. 60. (Deleted by amendment.)

Sec. 61. Chapter 645F of NRS is hereby amended by adding thereto the provisions set forth as sections 62 to 77.5, inclusive, of this act.

Sec. 62. (Deleted by amendment.)

Sec. 63. (Deleted by amendment.)

Sec. 64. (Deleted by amendment.)

Sec. 65. (Deleted by amendment.)

Sec. 66. (Deleted by amendment.)

Sec. 67. (Deleted by amendment.)

Sec. 68. (Deleted by amendment.)

Sec. 69. (Deleted by amendment.)

Sec. 70. (Deleted by amendment.)

Sec. 71. (Deleted by amendment.)

Sec. 72. (Deleted by amendment.)

Sec. 73. *"Nationwide Mortgage Licensing System and Registry" or "Registry" have the meanings ascribed to them in section 2 of this act.*

Sec. 74. (Deleted by amendment.)

Sec. 75. (Deleted by amendment.)

Sec. 75.3. *The Commissioner shall adopt such regulations as necessary to comply with the requirements of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.*

Sec. 75.7. *The Commissioner shall adopt regulations:*

1. *Establishing minimum net worth or surety bonding requirements that reflect the dollar amount of loans originated by a residential mortgage loan originator, as defined in section 6 of this act; or*

2. *Requiring a percentage of the fees collected for the issuance or renewal of a license pursuant to chapter 645B or 645E of NRS to be deposited in a mortgage recovery fund, and setting forth the methods by which a person may make a claim against and be paid from the fund.*

Sec. 76. 1. *The Commissioner shall adopt regulations to carry out the provisions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.*

2. *The regulations must include, without limitation:*

(a) *A method by which to allow for reporting regularly violations of the relevant provisions of chapter 645B or 645E of NRS, enforcement actions and other relevant information to the Registry; and*

(b) *A process whereby a person may challenge information reported to the Registry by the Commissioner.*

Sec. 77. 1. *Except as otherwise provided in section 1512 of Public Law 110-289, the requirements under any federal law or NRS 645B.060 and 645B.092 regarding the confidentiality of any information or material provided to the Registry, and any privilege arising under federal laws of this State with respect to such information or material, continue to apply to*

*such information or material after it has been disclosed to the Registry. Such information and material may be shared with federal and state regulatory officials with mortgage industry oversight without the loss of privilege or the loss of confidentiality protections provided by federal law or the provisions of NRS 645B.060 and 645B.092.*

*2. Information or material that is subject to a privilege or confidentiality under subsection 1 is not subject to:*

*(a) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or agency of the Federal Government or the State of Nevada; and*

*(b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Registry with respect to such information or material, the person to whom such information or material waives, in whole or in part, that privilege.*

*3. This section does not apply to information or material relating to:*

*(a) The employment history of; and*

*(b) Publicly adjudicated disciplinary and enforcement actions against, ↪ residential mortgage loan originators included in the Registry for access by the public.*

*Sec. 77.5. For the purpose of carrying out the provisions of section 77 of this act, the Commissioner may by regulation or order enter into agreements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators or other associations representing governmental agencies.*

*Sec. 78. NRS 645F.010 is hereby amended to read as follows:*

*645F.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 645F.020 to 645F.060, inclusive, and section 73 of this act have the meanings ascribed to them in those sections.*

*Sec. 79. (Deleted by amendment.)*

*Sec. 80. (Deleted by amendment.)*

*Sec. 81. (Deleted by amendment.)*

*Sec. 82. NRS 645F.290 is hereby amended to read as follows:*

*645F.290 1. The Commissioner shall collect an assessment pursuant to this section from each:*

*(a) Escrow agency that is supervised pursuant to chapter 645A of NRS;*

*(b) Mortgage broker that is supervised pursuant to chapter 645B of NRS; [and]*

*(c) Mortgage agent that is supervised pursuant to chapter 645B or 645E of NRS; and*

*(d) Mortgage banker that is supervised pursuant to chapter 645E of NRS.*

*2. The Commissioner shall determine the total amount of all assessments to be collected from the entities identified in subsection 1, but that amount must not exceed the amount necessary to recover the cost of legal services provided by the Attorney General to the Commissioner and to the Division.*

The total amount of all assessments collected must be reduced by any amounts collected by the Commissioner from an entity for the recovery of the costs of legal services provided by the Attorney General in a specific case.

3. The Commissioner shall collect from each entity identified in subsection 1 an assessment that is based on:

- (a) An equal basis; or
- (b) Any other reasonable basis adopted by the Commissioner.

4. The assessment required by this section is in addition to any other assessment, fee or cost required by law to be paid by an entity identified in subsection 1.

5. Money collected by the Commissioner pursuant to this section must be deposited in the Fund for Mortgage Lending created by NRS 645F.270.

Sec. 83. (Deleted by amendment.)

Sec. 84. (Deleted by amendment.)

**Sec. 84.1. NRS 118B.200 is hereby amended to read as follows:**

118B.200 1. Notwithstanding the expiration of a period of a tenancy ~~for~~ **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. 84.3. NRS 461A.215 is hereby amended to read as follows:**

461A.215 1. Notwithstanding any provision of law to the contrary, if a nonprofit organization owns or leases a mobile home park:

(a) The board of directors or trustees which controls the mobile home park must be selected as set forth in this section; and

(b) The provisions of this section govern the operation of the nonprofit organization and the mobile home park.

2. If a nonprofit organization owns or leases only one mobile home park, the board of directors or trustees which controls the mobile home park must be composed of:

(a) Three directors or trustees who are residents of the mobile home park and are elected by a majority of the residents who live in the mobile home park, with each unit in the mobile home park authorized to cast one vote;

(b) Except as otherwise provided in subsection 4, three directors or trustees appointed by the governing body of the local government with jurisdiction over the location of the mobile home park; and

(c) Three directors or trustees elected by a majority of the other directors or trustees selected pursuant to this subsection.

3. If a nonprofit organization owns or leases more than one mobile home park, the board of directors or trustees which controls the mobile home parks must be composed of:

(a) For each mobile home park, one director or trustee who is a resident of that mobile home park and is elected by a majority of the residents who live in that mobile home park, with each unit in the mobile home park authorized to cast one vote;

(b) Except as otherwise provided in subsection 4, one director or trustee appointed for each mobile home park by the governing body of the local government with jurisdiction over the location of that mobile home park; and

(c) For each mobile home park, one director or trustee elected by a majority of the other directors or trustees selected pursuant to this subsection.

4. The governing body of a local government with jurisdiction over the location of a mobile home park owned or leased by a nonprofit organization shall not appoint a director or trustee pursuant to paragraph (b) of subsection 2 or paragraph (b) of subsection 3 unless the land upon which the mobile

home park is located or the improvements to that land are owned by any governmental entity, patented to any governmental entity or leased to the nonprofit organization by any governmental entity.

5. The term of office of a director or trustee selected pursuant to this section:

(a) Is ~~12~~ 4 years, except that upon the expiration of his term of office he shall continue to serve until his successor is selected; and

(b) Commences on July 1, ~~for each odd-numbered year.~~

6. Any vacancy occurring in the membership of the board of directors or trustees selected pursuant to this section must be filled in the same manner as the original election or appointment.

7. The Attorney General shall:

(a) Enforce the provisions of this section;

(b) Investigate suspected violations of the provisions of this section; and

(c) Institute proceedings on behalf of this State, an agency or political subdivision of this State, or as parens patriae of a person residing in a mobile home park:

(1) For injunctive relief to prevent and restrain a violation of any provision of this section; and

(2) To collect any costs or fees awarded pursuant to the provisions of this section.

8. The provisions of this section may be enforced with regard to a nonprofit organization or a mobile home park by:

(a) The nonprofit organization;

(b) The board of directors or trustees required to be selected pursuant to this section, or any member thereof;

(c) A person who claims membership on the board of directors or trustees required to be selected pursuant to this section;

(d) A resident of the mobile home park;

(e) The local government with jurisdiction over the location of the mobile home park; or

(f) Any combination of the persons described in paragraphs (a) to (e), inclusive.

9. In any action to enforce the provisions of this section, including, without limitation, an action to prevent or restrain a violation of the provisions of this section, if a person is found to have knowingly acted as a director or trustee on a board of directors or trustees required to be selected pursuant to this section while he was not authorized to act as such a director or trustee pursuant to this section:

(a) The court shall award the prevailing party costs and attorney's fees;

(b) If the nonprofit organization which owns or leases a mobile home park participates in the action, the court shall award the nonprofit organization costs and attorney's fees; and

(c) Costs and attorney's fees awarded pursuant to this section must be recovered from the person. If in the same action to enforce the provisions of

this section, more than one person is found to have knowingly acted as a director or trustee on a board of directors or trustees required to be selected pursuant to this section while he was not authorized to act as such a director or trustee pursuant to this section, each such person is jointly and severally liable for the costs and attorney's fees awarded pursuant to this section.

10. The provisions of this section do not apply to a corporate cooperative park.

11. As used in this section:

(a) "Board of directors or trustees which controls the mobile home park" means:

(1) If the nonprofit organization which owns or leases a mobile home park does not own or operate any substantial asset that is unrelated to the mobile home park, the board of directors or trustees of the nonprofit organization; or

(2) If the nonprofit organization which owns or leases a mobile home park owns or operates a substantial asset that is unrelated to the mobile home park, a board of directors or trustees which:

(I) Has full and independent control over the affairs of the nonprofit organization that are related to the mobile home park, including, without limitation, full and independent control over all policies, operation, property, assets, accounts and records of the nonprofit organization which are related to or derived from the park;

(II) Notwithstanding any provision of law to the contrary, exercises the powers described in sub-subparagraph (I) without being subject to any control by the board of directors or trustees of the nonprofit organization or any other person, group or entity within or related to the nonprofit organization; and

(III) If the nonprofit organization owns or leases more than one mobile home park, controls all of the mobile home parks owned or leased by the nonprofit organization.

(b) "Corporation for public benefit" has the meaning ascribed to it in NRS 82.021.

(c) "Governmental entity" includes, without limitation, the Federal Government, this State, an agency or political subdivision of this State, a municipal corporation and a housing authority.

(d) "Nonprofit organization" includes, without limitation, a corporation for public benefit.

(e) "Owns or leases a mobile home park" means being the owner or lessee of:

(1) The land upon which the mobile home park is located; or

(2) The improvements to the land upon which the mobile home park is located.

Sec. 84.5. Chapter 658 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Any person authorized to engage in activities as a residential mortgage loan originator on behalf of a privately insured institution or organization licensed under title 55 or 56 of NRS shall obtain and maintain a license as a mortgage agent.

2. As used in subsection 1:

(a) "Mortgage agent" has the meaning ascribed to in NRS 645B.0125; and

(b) "Residential mortgage loan originator" has the meaning ascribed to it in section 6 of this act.

Sec. 84.7. Section 20 of Assembly Bill No. 486 of this session is hereby amended to read as follows:

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~~, 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. 85. Notwithstanding the amendatory provisions of this act:

1. A person who holds a license as a mortgage broker under chapter 645B of NRS or as a mortgage banker under chapter 645E of NRS on or before July 31, 2009, and who, because of his lawful activities, is required to be licensed as a mortgage agent, may continue his activities without obtaining a license as a mortgage agent until July 1, 2011, or such other date as the Commissioner of Mortgage Lending may prescribe by regulation if necessary to comply with federal law.

2. A person who does not hold a license as a mortgage broker under chapter 645B of NRS or as a mortgage banker under chapter 645E of NRS on or before July 31, 2009, and who, because of his lawful activities, is required to be licensed as a mortgage agent, may continue his activities without obtaining a license as a mortgage agent until July 1, 2010.

Sec. 85.3. Notwithstanding the provisions of subsection 5 of NRS 461A.215, as amended by section 84.3 of this act, for the terms commencing on July 1, 2009:

1. Of the three directors or trustees elected pursuant to paragraph (a) of subsection 2 of NRS 461A.215:

(a) One director or trustee must be elected to a term expiring on July 1, 2011; and

(b) Two directors or trustees must be elected to terms expiring on July 1, 2012.

2. Of the three directors or trustees appointed pursuant to paragraph (b) of subsection 2 of NRS 461A.215:

(a) One director or trustee must be appointed to a term expiring on July 1, 2011; and

**(b) Two directors or trustees must be appointed to terms expiring on July 1, 2012.**

Sec. 85.5. NRS 645B.455 of NRS is hereby repealed.

Sec. 86. **1. This ~~act becomes~~ section and sections 84.1, 84.3 and 85.3 of this act become effective upon passage and approval.**

**2. Sections 1 to 84, inclusive, 84.5, 84.7, 85 and 85.5 of this act become** effective upon passage and approval for the purpose of adopting regulations and for licensure pursuant to section 85 of this act and on October 1, 2009, for all other purposes.

TEXT OF REPEALED SECTION

**645B.455 License issued on behalf of professional corporation or limited-liability company; limitations on license; automatic expiration of license.**

1. Any natural person who meets the qualifications of a mortgage agent and:

(a) Except as otherwise provided in subsection 2, is the sole shareholder of a corporation organized pursuant to the provisions of chapter 89 of NRS; or

(b) Is the manager of a limited-liability company organized pursuant to the provisions of chapter 86 of NRS,

↪ may be licensed on behalf of the corporation or limited-liability company for the purpose of associating with a licensed mortgage broker in the capacity of a mortgage agent.

2. The spouse of the owner of the corporation who has a community interest in any shares of the corporation shall not be deemed a second shareholder of the corporation for the purposes of paragraph (a) of subsection 1, if the spouse does not vote any of those shares.

3. A license issued pursuant to this section entitles only the sole shareholder of the corporation or the manager of the limited-liability company to act as a mortgage agent, and only as an officer or agent of the corporation or limited-liability company and not on his own behalf. The licensee shall not do or deal in any act, acts or transactions included within the definition of a mortgage broker in NRS 645B.0127, except as that activity is permitted pursuant to this chapter to licensed mortgage agents.

4. The corporation or limited-liability company shall, within 30 days after a license is issued on its behalf pursuant to this section and within 30 days after any change in its ownership, file an affidavit with the Division stating:

(a) For a corporation, the number of issued and outstanding shares of the corporation and the names of all persons to whom the shares have been issued.

(b) For a limited-liability company, the names of members who have an interest in the company.

5. A license issued pursuant to this section automatically expires upon:

(a) The death of the licensed shareholder in the corporation or the manager of the limited-liability company; or

(b) The issuance of shares in the corporation to more than one person other than the spouse.

6. This section does not alter any of the rights, duties or liabilities which otherwise arise in the legal relationship between a mortgage broker or mortgage agent and a person who deals with him.

Assemblyman Conklin moved that the Assembly adopt the report of the Conference Committee concerning Assembly Bill No. 523.

Remarks by Assemblyman Conklin.

Motion carried by a constitutional majority.

#### REPORTS OF COMMITTEES

*Madam Speaker:*

Your Committee on Ways and Means, to which was referred Senate Bill No. 236, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

MORSE ARBERRY JR., *Chair*

#### GENERAL FILE AND THIRD READING

Senate Bill No. 236.

Bill read third time.

Roll call on Senate Bill No. 236:

YEAS—42.

NAYS—None.

Senate Bill No. 236 having received a constitutional majority, Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

#### REMARKS FROM THE FLOOR

Assemblyman Ocegüera requested that the following remarks be entered in the Journal.

ASSEMBLYMAN ANDERSON:

I have been waiting for some time to say something to the body, and if I might have the opportunity to make it so, me being part of the angry ten that are leaving, reluctantly; some of them, possibly, not too reluctantly. For those of you who do not know, thinking I am the knowledgeable one about history, please let me assure you that it is not true. I read from the *American Patriot's Almanac* every morning, and thus remind myself of particular historic facts. Several weeks ago, over a month ago, in my readings I ran across a statement by Douglas MacArthur to a group of cadets at the United States Military Academy at West Point, New York. I thought that youth often need to be encouraged to do things and are inspired by words. I have always been inspired by words. In my heart, I have taken them and tried to make them my own, and I have been fortunate enough to use them every once in a while. But when I read this, I thought that even adults, particularly this courageous group of people I serve with, need to hear these words again.

Standing in the mess hall of the United States Military Academy at West Point, New York, Douglas MacArthur, who was being honored, told this to the cadets. And I want you to listen, if you would. It is a little bit long and I hope it doesn't take too much of our time:

“Duty. Honor. Country. Those three hallowed words reverently dictate what you ought to be, what you can be, what you will be. They are your rallying points to build courage when courage seems to fail, to regain faith when there seems to be little cause for faith, to create hope when hope becomes forlorn. . . .

The unbelievers will say they are but words. . . . But these are some of the things they do. They build your basic character. They mold you for your future roles as the custodians of the nation’s defense. They make you strong enough to know when you are weak, and brave enough to face yourself when you are afraid.

They teach you to be proud and unbending in honest failure, but humble and gentle in success; not to substitute words for action; not to seek the path of comfort, but to face the stress and spur of difficulty and challenge; to learn to stand up in the storm, but to have compassion on those who fall; to master yourself before you seek to master others; to have a heart that is clean, a goal that is high; to learn to laugh, yet never forget how to weep; to reach into the future, yet never neglect the past; to be serious, yet never take yourself too seriously; to be modest so that you will remember the simplicity of true greatness, the open mind of true wisdom, the meekness of true strength.”

When I read those words several weeks ago, I thought that I would have this opportunity at the end, to say this to people who do not need to be reminded, because I see that kind of courage in all of you. Some would think that I am leaving and that it is going to be difficult. I have no doubt it will be great, though, because the people that I leave behind are people with that kind of courage, that kind of faith, that kind of duty, and a sense of state—the people that I have served with for these 20 years, and the people who are left to serve after me. Thank you for allowing me to be one of your members and for being the colleagues that I have had. Thank you, Madam Speaker.

#### MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, June 1, 2009

*To the Honorable the Assembly:*

I have the honor to inform your honorable body that the Senate on this day adopted Assembly Concurrent Resolution No. 34.

Also, I have the honor to inform your honorable body that the Senate on this day failed to sustain the Governor’s veto of Assembly Bill No. 304.

Also, I have the honor to inform your honorable body that the Senate on this day sustained the Governor’s veto of Assembly Bill No. 458.

Also, I have the honor to inform your honorable body that the Senate amended, and on this day passed, as amended, Assembly Bill No. 317, Amendment No. 1005, and respectfully requests your honorable body to concur in said amendment.

Also, I have the honor to inform your honorable body that the Senate on this day passed, as amended, Senate Bill No. 309.

SHERRY L. RODRIGUEZ  
*Assistant Secretary of the Senate*

#### REMARKS FROM THE FLOOR

Assemblyman Ocegüera requested that the following remarks be entered in the Journal.

ASSEMBLYMAN CARPENTER:

All good things have to come to an end, and you’ve noticed, the Suzy Q has been floating on the waters of the Assembly. I have given an end of the session speech that I wasn’t going to run 12 times, but tonight I think it is going to be the end. I will not be returning here. I want to give an idea of the memories that I am going to have of the nine people that I have served with.

When I came into the Assembly over 20-some years ago, I was the only Republican to be elected and come to the Assembly that year. So this year, I am the only Republican that is going to be put out to pasture. What I'm going to do here is that the Suzy Q is floating around in this tub of water, and we have all of our members that are still on the boat. I guess we're going to have to abandon the boat tonight. If you can swim and make it to shore, you'll still be able to do things. If, like me, you cannot swim, that may be the end of you. So I am going to share a few memories of the people I have served with here for many years. Then I'm going to cut the wire they are attached to, and they're going into the drink.

The first person I want to share some memories with is my friend Jerry Claborn. Jerry is certainly a great guy, and I'm going to remember him because he is the one who enabled us to get predator control. Us cowboys tried to do it, but we were too close and people said we had too much conflict, but Jerry came along, and we were able to do that. So Jerry, thank you for saving our deer herd and our ranching industry. I think very highly of you. Thank you very much. Jerry, I hate to see you be the first one that goes into the drink, but you are a tough guy and here it goes [snip]. Jerry—he is floating like he always does.

The next person I want to talk a little bit about is the great nuclear physicist. He is a protector of state parks and old bones. He brought that bill to Natural Resources this session, so from now on, whenever you see an old bone, just go easy around it and remember that Harry may be watching you if you try to do any harm to that old bone. Harry, thank you very much. And I hate to put you into the drink, but today is the day to abandon the ship [snip]. Harry, you're still floating—doing better than this fish here. It's clear at the bottom of the water.

The next person is someone that I have come to admire and is really my friend. What I think about Bernie Anderson is that he is the guy that enabled every court in Nevada to have drug court. Bernie and I went down to Las Vegas and saw the drug court in action and decided that was the thing to do. So Bernie, I'll always remember you for your short speeches and how we saved a lot of people from going to prison—and some of them actually got off of drugs. Bernie, you are the next guy to go into the drink [snip]. Boy, Bernie, you sunk. I think he is kind of coming up about halfway.

The next person I have fond memories of is my friend Moose. Moose always called me Big John—I don't know why. Sometimes I'd have a couple of bills in his committee and need a little money, and Moose would always go by and say, "No money, Big John. No money, Big John." But Moose kind of reminded me the other day, you know, about the first session I was here when Moose had the Martin Luther King, Jr. holiday bill. I took a heck of a lot of pressure not to support that bill, like Moose said. You know, it was a tough deal because some of those people out there in the brushes maybe sometimes look at things different than they should. It wasn't easy for me to make up my mind. I think I told Moose I would vote for it, and then I had to go back and tell him, "Well, I guess I won't vote for it, Moose." In the end, I got to thinking that I didn't want to be someone that they'll say, "This guy was prejudiced." I went to school in Ely, and there were all kinds of people there. I went to school with Greeks and Italians and blacks and whites, so I'd learned to love all those people that I went to school with. And I thought, "By golly, Moose is right. We need that holiday." When it came down to the nitty gritty vote, I went with Moose, and I've always been proud of that. Thank you, Moose.

Moose, I don't know whether you're going to float or whether you're going to sink. I've got to find you on this boat here. You are kind of a wily guy, Moose [snip]. You're a good floater, Moose.

The next person I want to remember is Sheila Leslie. No matter what you may think of Sheila and the things she stands for, she stands tall for them. I've always appreciated her because I could go to her for things that really mattered in the State of Nevada in regard to children and health care and mental health court and things like that. I've always appreciated Sheila because I think she has always been my friend. I'll have fond memories of you, Sheila. So we'll see whether you're going to sink or swim here [snip]. Huh—the darn Suzy Q ran clear over you! Anyway, I think you're going to be able to rise to the top and swim away.

Kathy McClain is next. What I remember about Kathy McClain is veterans and old people. She brings those bills in. Are you the one who had a bill this year where you said that guys over 70 were old? Well, maybe you are right, but I hope not because I think you are only as old as you feel and as old as you act. Kathy, hopefully you and I will never grow old. It has been great



to serve with you and we are going to see how you survive this great splash in the water [snip]. You are a real floater.

Ellen Koivisto, I remember, after your first or second session, you came up to me and said what you thought you really enjoyed here and that's to be able to say you had made a lot of friends. Ellen, you have been my friend for a long, long time. Ellen is a champion of all those nurses out there. They love you. I have always enjoyed our time in the Legislature. So, it is time to see whether you seek or swim. The Suzy Q is just going all over the water here. Maybe she thinks Ellen doesn't want to abandon ship but you have to [snip]. You are a great swimmer.

Then there is my friend Mark Manendo. You are the captain, man. Mark, you know, we have always had a great time. Mark and I have gotten along great. Mark, he is the guru of the .08 and .10 and point whatever you might want to call it when it comes to DUI. But, Mark and I have always had kind of a running battle about mobile home parks. I wouldn't want to wish this on anyone except Mark and that is that he inherits a mobile home park and has to manage it according to NRS 118B. It has been great, me with Mark and all of my other friends here. We will see what is going to happen to you, Mark [snip]. You floated. So, you don't have to get that mobile home park.

And now, hopefully, I didn't miss anyone. Maybe Donna put more people on here. I don't know. Who did I miss? Golly. Sheesh. I missed the most important person. I guess I am used to doing that. After 20 years, sometimes I have a hard time thinking.

Madam Speaker requested the privilege of the Chair for the purpose of making the following remarks:

I guess I don't get snipped, then.

ASSEMBLYMAN CARPENTER:

About all I can say is that I am so proud to have been able to serve with the first lady Speaker in the history of the Nevada Legislature. Everyone has talked about how great you are and I just wanted to say that it has been a great joy to serve with you and I am probably the first guy that ever put the Speaker in the drink. So, here it goes [snip]. Whoah. Wow. She stayed on. See? That shows how great our Speaker is. Try to throw her overboard and she won't even go.

And then, for the guy who cannot swim and doesn't want to be in the drink, this is it [snip]. I landed upside down.

Thank you, Madam Speaker. I hope that all of my friends will hold me in kind regard as they go on their journey out of here. It has been a great time and this year has been especially memorable, when all my family was here, all of the Girl Scouts, and the last few days of all the great things that have been said about me and the other people who have served with me. I just appreciate it and thank you all so very much.

#### UNFINISHED BUSINESS

##### REPORTS OF CONFERENCE COMMITTEES

*Madam Speaker:*

The Conference Committee concerning Senate Bill No. 263, consisting of the undersigned members, has met and reports that:

It has agreed to recommend that Amendment Nos. 684 and 870 of the Assembly be concurred in.

It has agreed to recommend that Amendment No. 891 of the Assembly be receded from and a 4th reprint be created in accordance with this action.

RUBEN KIHUEN  
TICK SEGERBLOM  
JOHN HAMBRICK

*Assembly Conference Committee*

WILLIAM RAGGIO  
DEAN RHOADS  
JOHN LEE

*Senate Conference Committee*

Assemblyman Kihuen moved that the Assembly adopt the report of the Conference Committee concerning Senate Bill No. 263.

Remarks by Assemblyman Kihuen.

Motion carried by a constitutional majority.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Ocegüera moved that Senate Concurrent Resolution No. 37 be taken from the Chief Clerk's desk and placed on the Resolution File.

Motion carried.

Assemblyman Ocegüera moved that Senate Bill No. 143 be taken from the Chief Clerk's desk and placed on General File.

Motion carried.

Senate Concurrent Resolution No. 37.

Assemblyman Ocegüera moved the adoption of the resolution.

Remarks by Assemblymen Ocegüera and Gansert.

Madam Speaker requested the privilege of the Chair for the purpose of making remarks.

Resolution adopted, as amended.

GENERAL FILE AND THIRD READING

Senate Bill No. 143.

Bill read third time.

Roll call on Senate Bill No. 143:

YEAS—28.

NAYS—Christensen, Cobb, Gansert, Goedhart, Goicoechea, Grady, Gustavson, Hambrick, Hardy, McArthur, Parnell, Settelmeyer, Stewart, Woodbury—14.

Senate Bill No. 143 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

UNFINISHED BUSINESS

CONSIDERATION OF SENATE AMENDMENTS

Assembly Bill No. 317.

The following Senate amendment was read:

Amendment No. 1005.

AN ACT relating to taxation; providing for the disbursement of a portion of the proceeds of the state tax imposed on certain businesses to regional organizations for economic development; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill **temporarily** requires the Department of Taxation to disburse to a regional organization for economic development which directly assists in the location of a business in this State, other than a gaming business, 50 percent of the state business tax paid by that business for **not more than** 10 fiscal years as a result of the location of the business in this State. ~~The total amount of these disbursements, together with any other amounts allocated by~~

~~the Legislature, to such a regional organization during any fiscal year is limited to \$1 million.]~~ The money disbursed to such a regional organization must be used to promote economic development in this State and not for administrative expenses.

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

Section 1. Chapter 363B of NRS is hereby amended by adding thereto a new section to read as follows:

*1. Except as otherwise provided in this section, the Department shall, on a quarterly basis, disburse to an eligible organization 50 percent of the amount of tax paid by an employer pursuant to NRS 363B.110, after the deduction of any abatements and exemptions to which that employer is entitled, which is attributable to any employment that results from the location, with the direct assistance of that eligible organization, of the business of that employer in this State. The provisions of this subsection apply only to the applicable amount of tax paid by the employer for each calendar quarter that:*

*(a) Commences not less than 30 days after the eligible organization files with the Department an affidavit, executed by an officer of the employer ~~and~~ and an officer of the eligible organization, stating that the eligible organization directly recruited the employer to locate its business in this State or otherwise directly assisted the employer to locate its business in this State; and*

*(b) Ends not later than the last day of the 10th fiscal year after the commencement of the pertinent location by the employer of its business in this State.*

*2. The total amount disbursed ~~to each eligible organization~~ during each fiscal year pursuant to this section ~~is~~ to:*

*(a) Each eligible organization located in a county whose population is 100,000 or more, together with any other amounts allocated or appropriated by the Legislature to the eligible organization for that fiscal year, must not exceed the sum of \$1,000,000 ~~is~~; and*

*(b) All other eligible organizations must not exceed the cumulative sum of \$1,000,000, without regard to any other amounts allocated or appropriated by the Legislature to those eligible organizations for that fiscal year.*

*3. Any money disbursed to an eligible organization pursuant to this section:*

*(a) Must be expended by the eligible organization to promote the advantages of locating or expanding businesses in this State, to recruit and attract businesses from outside this State, to retain and expand businesses in this State, and to engage in research and analysis in support of economic development in this State; and*

(b) *Must not be expended for any administrative expenses of the eligible organization.*

4. *The Department : ~~may~~*

(a) *May:*

*(1) Require an eligible organization to submit such documentation as the Department determines to be necessary for the administration of this section.*

~~+(b)+~~ *(2) Refuse to make any further disbursements of money pursuant to this section to an eligible organization that:*

~~+(1)+~~ *(I) Fails or refuses to submit any documentation as required by the Department pursuant to ~~paragraph (a)~~ subparagraph (1); or*

~~+(2)+~~ *(II) Expends any money received pursuant to this section in a manner that does not comply with the requirements of subsection 3.*

*(b) Shall, on or before the last day of the month immediately following each calendar quarter, submit to the Interim Finance Committee a report which:*

*(1) States the total amount of money disbursed pursuant to this section for each of the immediately preceding 4 calendar quarters; and*

*(2) Identifies each eligible organization to which any money was disbursed pursuant to this section for any of the immediately preceding 4 calendar quarters and states the total amount of money disbursed to each of those eligible organizations for each of the those calendar quarters.*

5. *Each eligible organization that receives any disbursement of money pursuant to this section for a calendar quarter shall, within 30 days after receiving that disbursement, submit to the Interim Finance Committee a report which:*

*(a) Identifies each of the employers regarding whom the disbursement was received, identifies the type of business or industry conducted by the employer, and states the number of persons employed by the employer in this State during that calendar quarter and the average weekly wages paid to those persons during that calendar quarter; and*

*(b) Summarizes the manner in which the eligible organization has expended or intends to expend the amount of that disbursement.*

6. *Any disbursement of money to an eligible organization pursuant to this section shall be deemed to constitute an appropriation of public money for the purposes of NRS 218.855.*

~~+6+~~ 7. *For the purposes of this section:*

(a) *"Eligible organization" means a regional organization for economic development which is recognized by the Commission on Economic Development and which:*

*(1) Operates on a nonprofit basis;*

*(2) Receives funding from dues paid by the members of the organization; and*

*(3) Does not constitute a government, governmental agency or political subdivision of a government.*

(b) *”Employer” does not include any employer who is required to hold a license issued by the Nevada Gaming Commission pursuant to title 41 of NRS.*

Sec. 2. NRS 363B.060 is hereby amended to read as follows:

363B.060 The Department shall:

1. Administer and enforce the provisions of this chapter, and may adopt such regulations as it deems appropriate for those purposes.

2. ~~Deposit~~ *Except as otherwise provided in section 1 of this act,* **deposit** all taxes, interest and penalties it receives pursuant to this chapter in the State Treasury for credit to the State General Fund.

Sec. 3. This act becomes effective on July 1, 2009, ~~it~~ **and expires by limitation on June 30, 2011.**

Assemblywoman McClain moved that the Assembly concur in the Senate amendment to Assembly Bill No. 317.

Remarks by Assemblymen McClain and Ocegüera.

Motion carried by a constitutional majority.

Bill ordered to enrollment.

#### REMARKS FROM THE FLOOR

Assemblyman Ocegüera requested that the following remarks be entered in the Journal.

Madam Speaker requested the privilege of the Chair for the purpose of making the following remarks:

I would like to give some closing remarks. I am hoping we will be beginning our *sine die* ceremony shortly.

Let me begin by expressing my appreciation for the opportunity you have given me to serve as Speaker for these last two sessions. This has clearly been one of the most rewarding experiences of my life. Over the past few days we have had retrospection and tributes which have been a great opportunity to share our memories of the people who have meant so much to us. There has also been much discussion about how difficult this session has been, how difficult times are right now, and how many challenges we still face. And while I think it is important to reflect on the past, I want to take a few moments tonight to look at the future.

I look at Nevada’s future with great hope and optimism. Why? Just look at this session. We were faced with a challenge never before faced by our state. We had a 44 percent decline in revenue. We had a proposed budget from the Governor with dramatic cuts to K-12 and higher education; closure of conservation camps; cuts to corrections and parole staffing levels; the closing of almost every mental health clinic; and the terminating of children and pregnant women from health insurance.

There were also items in the budget that really had little rhyme or reason to them, such as the closing of a prison to save \$22 million in operating costs only to spend \$220 million to build a replacement; elimination of rural mental health clinics and substitute bussing the mentally ill into urban centers; and the eliminating of auditors at the Gaming Control Board, which are the positions we need to collect the money that we use to operate our state.

But look at how we came together.

In our body, we see two women leading the Assembly—from entirely different backgrounds, philosophical approaches, and life experiences. On the Senate side, we see our venerable icon, Bill Raggio, who has to be considered one of the most significant historical figures in the legislative process. And you see a majority leader, Steven Horsford, who is the first African American leader of the Senate, and who, in his two sessions, has gained a reputation for being focused, aggressive, and determined. And there is the rest of the Legislature, from all walks of

life, everything from an inner city mortgage broker to a rancher from Eureka. And so, while our legislators are very different people, we all came together to attack unprecedented challenges facing our state. Our diversity and backgrounds, opinions, political party, and geography are exactly the reason why there are great years ahead for our state.

Despite our differences, what has united us has been our love of the state, commitment to our children, empathy for the elderly, and confidence in our state's future. Legislators of both parties, both houses, came together to not only solve the immediate challenges of a budget crisis, home foreclosures, service reduction, and lost Nevada jobs, but also to find ways to move our state forward. We paved the way for a better future by helping to create a whole new industry in renewable energy. We paved the way for new investment, a new business model, a cleaner environment, and a more self-reliant and independent Nevada. And equally importantly, we created opportunity for Nevadans to be retrained and reemployed in this dynamic industry. We looked into the future and set the course for securing and stabilizing our public employee retirement funds instead of passing the problem forward. We enacted real reform to our budget process by the creation of a forced savings account, a rainy day fund, so that we don't find ourselves in this dire situation again. We put into place real protections for those in jeopardy of losing their homes; by stemming that problem we saved home values for all.

What is next? Much has been said about the need to broaden our tax base. But we should not lose sight, also, of the need to broaden our economy by working to attract a broader base of industries to our state. I sponsored a measure that will look to try and transform our state into a transportation, warehousing, manufacturing, and assembly hub for the mountain west, which will, in turn, create good, stable jobs for our state's needs.

The keys to our future, I believe, are new ideas, balanced with traditional Nevada values and a shared optimism about the opportunities we have, even in bad times. And while I am committed to the future, I must take one opportunity to look back before I end tonight.

These last, hectic days have been bittersweet. While I am proud of everything we have accomplished, I am saddened that so many longstanding friends and colleagues will not be returning to this chamber. We will lose invaluable experience and wisdom, whether it is the cowboy sage and my friend, John Carpenter; whether it's my friend who I would pick most to be in a foxhole with me, Bernie Anderson; or the gentle giant among men, Moose Arberry; or my friend Sheila Leslie; or Give 'Em Hell Harry Mortenson; or the always poised and personable Ellen Koivisto; or the irrepressible Kathy McClain; or the remarkable Jerry Claborn; or the irascible Mark Manendo.

This will be my last session serving in the Assembly. I have been honored to represent the people in my district for these last 14 years. I have grown to understand and respect the traditions of the Assembly under the great, amazing tutelage of Assembly Speaker Joe Dini and Assembly Speaker Richard Perkins. They gave me all the opportunities I needed. One of my proudest moments of my life was taking the gavel and opening the 74th Session of the Nevada Legislature, as Speaker. This has been a difficult session and yet with the help of every member here, we have done the job we were sent here to do. We have represented the people of our districts with conviction and distinction, working in a bipartisan manner to address the fiscal crisis in this state and the myriad of other problems, large and small, that was our duty to resolve. It has been my privilege to work with you and by your side.

I thank you for your friendship and the confidence you have shown in me. I will always treasure the friendships I have made here and I have every confidence in my colleagues who I leave behind. Colleagues like my Majority Leader, John Ocegueda, who I have grown so close to over the years and who I have every confidence in to lead this state; or my Assistant Majority Leader, Marcus Conklin, who I have just become fast friends with. I respect his work ethic. He is one of the hardest workers in the building. There also is my Assistant Majority Whip, Debbie Smith. She has grown so much. She is an incredible legislator. There is my other Assistant Majority Whip, William Horne, who has grown so much and excelled as a committee chair this session. There are my other committee chairs like Marilyn Kirkpatrick. What a superstar. There is Kelvin Atkinson, my good friend—watching him grow over the years has been one of my biggest joys. Bonnie Parnell has a steady hand, is smart, and is loved by all. My Ways and Means subcommittee chairs like Mo Denis—I have loved watching you step up into leadership;

you are so understated, so smart, and so right. And there are all my other colleagues, rather they are ones I recruited, mentored, learned from, or argued with.

I have learned something from every person in this body, whether I agreed with you or not. My friend John Carpenter, I learned so much from you. Put Nevada first, nothing else matters. Have the courage of your convictions and you will sleep a lot better at night. To my friends, to my colleagues, I know I leave the Assembly in good hands. I thank you for all your years of service, I thank you for all you do for the State of Nevada, and I thank you for the privilege of having you elect me to serve and to lead this body. Thank you very much.

Madam Speaker announced if there were no objections, the Assembly would recess subject to the call of the Chair.

Assembly in recess at 10:44 p.m.

### ASSEMBLY IN SESSION

At 11:30 p.m.

Madam Speaker presiding.

Quorum present.

### UNFINISHED BUSINESS

#### REPORTS OF CONFERENCE COMMITTEES

*Madam Speaker:*

The Conference Committee concerning Senate Bill No. 35, consisting of the undersigned members, has met and reports that:

It has agreed to recommend that Amendment No. 624 of the Assembly be concurred in.

It has agreed to recommend that the bill be further amended as set forth in Conference Amendment No. 20, which is attached to and hereby made a part of this report.

WILLIAM HORNE  
BERNIE ANDERSON  
JOHN CARPENTER

*Assembly Conference Committee*

VALERIE WIENER  
DAVID PARKS  
MIKE MCGINNESS

*Senate Conference Committee*

AN ACT relating to criminal procedure; providing that an acquittal of an offense in another jurisdiction ~~is admissible~~ may be introduced in evidence by the defendant in the trial in this State for the same offense; eliminating the provision that prohibits the prosecution of a person in this State for a crime after the person is convicted or acquitted of the crime in another country; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

**Section 1** of this bill amends existing law to provide that after a person is acquitted of a crime in another jurisdiction and a criminal prosecution is brought in the courts of this State for the same offense, the acquittal in the other jurisdiction ~~is admissible~~ may be introduced in evidence by the defendant in the prosecution in this State. (NRS 193.280)

**Section 1.5** of this bill revises the provision that prohibits the prosecution of a person in this State for a crime after the person is convicted or acquitted of the crime in another state, territory or country by eliminating the prohibition on the prosecution of a person in this State for a crime after the

person is convicted or acquitted of the crime in another country.  
(NRS 171.070)

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

Section 1. NRS 193.280 is hereby amended to read as follows:

193.280 Whenever, upon the trial of any person for a crime, it appears that the offense was committed in another state or country, under such circumstances that the courts of this state had jurisdiction thereof, and that the defendant has already been acquitted ~~for convicted~~ upon the merits, upon a criminal prosecution under the laws of such state or country, founded upon the act or omission with respect to which he is upon trial, such former acquittal ~~for conviction is a sufficient defense.~~ ~~is admissible~~ may be introduced in evidence by the defendant in the trial.

Sec. 1.5. NRS 171.070 is hereby amended to read as follows:

171.070 When an act charged as a public offense is within the jurisdiction of another state ~~or territory,~~ ~~or country,~~ as well as of this state, a conviction or acquittal thereof in the former is a bar to the prosecution or indictment therefor in this state.

Sec. 2. (Deleted by amendment.)

Sec. 3. The amendatory provisions of this act do not apply to offenses committed before July 1, 2009.

Sec. 4. This act becomes effective on July 1, 2009.

Assemblyman Anderson moved that the Assembly adopt the report of the Conference Committee concerning Senate Bill No. 35.

Motion carried.

*Madam Speaker:*

The Conference Committee concerning Senate Bill No. 182, consisting of the undersigned members, has met and reports that:

It has agreed to recommend that Amendment No. 947 of the Assembly be concurred in.

It has agreed to recommend that the bill be further amended as set forth in Conference Amendment No. 25, which is attached to and hereby made a part of this report.

TICK SEGERBLOM  
RUBEN KIHUEN  
JOHN HAMBRICK

*Assembly Conference Committee*

MICHAEL SCHNEIDER  
TERRY CARE  
MIKE MCGINNESS

*Senate Conference Committee*

Conference Amendment No. CA25.

AN ACT relating to common-interest communities; clarifying various provisions of existing law relating to certain provisions of governing documents that violate statutory provisions, elections and the authority of an association to levy certain assessments under certain circumstances; revising certain provisions governing the authority of an association to impose fines under certain circumstances; making various other changes to the provisions governing common-interest communities; providing penalties; and providing other matters properly relating thereto.



Legislative Counsel's Digest:

**Section 3** of this bill provides that a person who knowingly, willfully and with the intent to fraudulently alter the outcome of the election of a member to the executive board of an association or other votes of the units' owners engages in certain acts pertaining to the ballot or the casting of votes in such election is guilty of a category D felony. (NRS 116.31034) Existing law prohibits a community manager, an officer or a member of the executive board from accepting or soliciting compensation that would influence him or appear to be a conflict of interest. (NRS 116.31185) **Section 4** of this bill provides that a community manager or member of the executive board who asks for or receives compensation to influence his vote, opinion or action upon any official matter is guilty of a category D felony. **Section 4** also provides that a person who offers or gives any gratuity, compensation or reward, or makes a promise thereof, to a community manager or member of the executive board in exchange for a vote, opinion or action on any official matter is guilty of a category D felony.

Existing law requires each agency to provide by regulation for the filing and prompt disposition of petitions for declaratory orders and advisory opinions as to the applicability of any statutory provision, agency regulation or decision of the agency, and the Department of Business and Industry, which includes the Real Estate Division, has accordingly adopted regulations for such petitions. (NRS 233B.120; NAC 232.020) However, the Real Estate Division has not adopted any regulations pertaining to such petitions. **Section 5** of this bill enacts a specific statutory provision requiring the Real Estate Division to adopt regulations pertaining to such petitions.

Existing law contains provisions concerning units or common elements of an association that are acquired by eminent domain. (NRS 116.1107) **Section 7** of this bill clarifies that existing law does not authorize an association to exercise the power of eminent domain. **Section 8** of this bill clarifies that any provision contained in a declaration, bylaw or other governing document of a common-interest community that violates the provisions of chapter 116 of NRS is superseded by the provisions of chapter 116 of NRS, regardless of whether the provision became effective before the enactment of the statutory provision being violated. (NRS 116.1206)

**Section 8.5** of this bill provides that an association may not charge a fee for entry into the common-interest community against a person providing services to a unit, a unit's owner or a tenant of a unit's owner or against a visitor, guest or invitee of a unit's owner or a tenant of a unit's owner. (NRS 116.2111)

**Section 9** of this bill revises existing law to limit an association's power to include certain provisions in certain contracts involving the association. (NRS 116.3102)

Existing law authorizes an executive board to impose fines under certain circumstances. (NRS 116.31031) **Section 12** of this bill limits the imposition

of fines against a unit's owner for violations of the governing documents by a tenant or an invitee of the unit's owner or the tenant.

**Sections 13, 14 and 16** of this bill revise provisions relating to certain elections and meetings of an association by: (1) requiring members of the executive board to be units' owners; (2) providing that officers of an association are not required to be units' owners, unless the governing documents provide otherwise; (3) providing certain rights for candidates for election to an executive board; (4) reducing the votes necessary for removal of a member of an executive board; (5) prohibiting an association from interfering with the collection of signatures for a special meeting or removal election; and (6) providing immunity from criminal or civil liability for an association, its officers, employees and agents for the disclosure or publication of certain information pursuant to certain duties required of the association or its officers, employees and agents. **Section 14 also provides that punitive damages may not be recovered against the members of the executive board or the officers of an association for acts or omissions that occur in their capacity as members or officers.** (NRS 116.31034, 116.31036, 116.3108)

**Section 15** of this bill clarifies existing law concerning the respective duties of an association and the units' owners regarding the maintenance, repair and replacement of the common elements and the units. (NRS 116.3107)

**Sections 17-19** of this bill revise provisions relating to board meetings and hearings by: (1) requiring that meetings of the executive board be audio recorded and available in a certain manner; (2) requiring that certain written complaints be placed on the agenda; and (3) providing due process protections to units' owners at certain hearings. (NRS 116.31083, 116.31085, 116.31087) **Section 17** also revises existing law to allow public comments to be made at both the beginning and the end of a meeting. (NRS 116.31083)

Existing law provides that an association has the statutory obligation to: (1) fund adequately its reserves; (2) include in its annual budget a statement concerning its reserves and whether it will be necessary to impose any special assessments; and (3) review its study of the reserves on an annual basis and make any appropriate adjustments necessary to ensure that the reserves are always funded adequately. (NRS 116.3115, 116.31151, 116.31152) **Section 21** of this bill clarifies existing law by explicitly stating that notwithstanding any provision of the governing documents to the contrary, the executive board may, without seeking or obtaining the approval of units' owners, impose any necessary and reasonable assessments to establish adequate reserves. This section also provides that any such assessments imposed must be based on the study of the reserves of the association conducted pursuant to NRS 116.31152.

**Section 22** of this bill authorizes the filing of a civil action to recover certain fees, administrative penalties and interest that were imposed erroneously. (NRS 116.31155)

Existing law provides that an executive board of an association must, upon written request of a unit's owner, make available certain records and papers of the association, except for certain personnel records, records of other units' owners or contracts between the association and an attorney. (NRS 116.31175) Section 23.5 of this bill removes from the exemptions for the production of records those records which pertain to a contract between the association and an attorney.

Sections 24, 26 and 28 of this bill provide certain additional rights to units' owners by: (1) increasing the scope and definition of prohibited retaliatory action; (2) authorizing the exhibition of certain political signs in certain areas; and (3) mandating notice before interruption of utility service to a unit's owner. (NRS 116.31183, 116.325, 116.345)

Section 25 of this bill expands the prohibition against certain contracts between an association and a member of the executive board or officer to include contracts involving financing. (NRS 116.31187) Section 27 of this bill: (1) provides that existing law concerning drought tolerant landscaping must be construed broadly; and (2) clarifies the definition of "drought tolerant landscaping." (NRS 116.330) Section 29 of this bill provides that if a community manager fails or refuses to comply with the governing documents of the association or the provisions of chapter 116 of NRS, any person or class of persons may bring a civil action for damages or other relief. (NRS 116.4117)

Section 30 of this bill increases the membership of the Commission by adding two members who are units' owners but who are not required to have served as members of an executive board. (NRS 116.600) Section 31 of this bill revises provisions relating to the Commission's duties by providing for the use of training officers to perform certain duties. (NRS 116.605)

Section 36 of this bill clarifies that if the Commission or hearing officer orders an audit of an association, the audit is conducted at the expense of the association. (NRS 116.790)

Existing law provides that a written affidavit, supporting documentation and information compiled as the result of an investigation of an alleged violation are confidential unless and until a formal complaint is filed. (NRS 116.757, 116A.270) Sections 33 and 37 of this bill clarify existing law to provide that such confidential information must not be disclosed to any person, including a person who is the subject of an investigation or complaint, unless and until a formal complaint is filed.

Section 39 of this bill provides that the Commission must adopt regulations requiring an applicant for a certificate as a community manager or the applicant's employer to post a bond. Section 39 also provides for the issuance of temporary certificates for community managers for a period of 1 year under certain circumstances. (NRS 116A.410)

Section 40 of this bill revises existing law to provide that upon selection or appointment of an arbitrator, the arbitrator must provide certain information concerning the procedures of the arbitration and applicable law to each party

to the arbitration, and each party must return to the arbitrator an acknowledgment of the information provided by the arbitrator. (NRS 38.330)

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

Section 1. Chapter 116 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

Sec. 2. (Deleted by amendment.)

Sec. 3. *1. A person shall not knowingly, willfully and with the intent to fraudulently alter the true outcome of an election of a member of the executive board or any other vote of the units' owners engage in, attempt to engage in, or conspire with another person to engage in, any of the following acts:*

*(a) Changing or falsifying a voter's ballot so that the ballot does not reflect the voter's true ballot.*

*(b) Forging or falsely signing a voter's ballot.*

*(c) Fraudulently casting a vote for himself or for another person that the person is not authorized to cast.*

*(d) Rejecting, failing to count, destroying, defacing or otherwise invalidating the valid ballot of another voter.*

*(e) Submitting a counterfeit ballot.*

*2. A person who violates this section is guilty of a category D felony and shall be punished as provided in NRS 193.130.*

Sec. 4. *1. Except as otherwise provided in subsection 3, a community manager or member of the executive board who asks for or receives, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon an agreement or understanding that his vote, opinion or action upon any matter then pending or which may be brought before him in his capacity as a community manager or member of the executive board, will be influenced thereby, is guilty of a category D felony and shall be punished as provided in NRS 193.130.*

*2. Except as otherwise provided in subsection 3, a person who offers or gives, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon an agreement or understanding that the vote, opinion or action of a community manager or member of the executive board upon any matter then pending or which may be brought before the community manager or member of the executive board in his capacity as a community manager or member of the executive board will be influenced thereby, is guilty of a category D felony and shall be punished as provided in NRS 193.130.*

*3. The provisions of this section do not prohibit:*

*(a) An employee of a declarant or an affiliate of a declarant who is a member of an executive board from asking for or receiving, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, from the declarant or affiliate.*

*(b) A declarant or an affiliate of a declarant whose employee is a member of an executive board from offering or giving, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, to the employee who is a member of the executive board.*

*(c) A community manager from asking for or receiving, directly or indirectly, or an employer of a community manager from offering or giving, directly or indirectly, any compensation for work performed by the community manager pursuant to the laws of this State.*

Sec. 5. 1. *The Division shall provide by regulation for the filing and prompt disposition of petitions for declaratory orders and advisory opinions as to the applicability or interpretation of:*

*(a) Any provision of this chapter or chapter 116A or 116B of NRS;*

*(b) Any regulation adopted by the Commission, the Administrator or the Division; or*

*(c) Any decision of the Commission, the Administrator or the Division or any of its sections.*

2. *Declaratory orders disposing of petitions filed pursuant to this section have the same status as agency decisions.*

3. *A petition filed pursuant to this section must:*

*(a) Set forth the name and address of the petitioner; and*

*(b) Contain a clear and concise statement of the issues to be decided by the Division in its declaratory order or advisory opinion.*

4. *A petition filed pursuant to this section is submitted for consideration by the Division when it is filed with the Administrator.*

5. *The Division shall:*

*(a) Respond to a petition filed pursuant to this section within 60 days after the date on which the petition is submitted for consideration; and*

*(b) Upon issuing its declaratory order or advisory opinion, mail a copy of the declaratory order or advisory opinion to the petitioner.*

Sec. 6. (Deleted by amendment.)

Sec. 7. NRS 116.1107 is hereby amended to read as follows:

116.1107 1. If a unit is acquired by eminent domain or part of a unit is acquired by eminent domain leaving the unit's owner with a remnant that may not practically or lawfully be used for any purpose permitted by the declaration, the award must include compensation to the unit's owner for that unit and its allocated interests, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

2. Except as otherwise provided in subsection 1, if part of a unit is acquired by eminent domain, the award must compensate the unit's owner

for the reduction in value of the unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides:

(a) That unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration; and

(b) The portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and to the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

3. If part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken must be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.

4. The judicial decree must be recorded in every county in which any portion of the common-interest community is located.

**5. *The provisions of this section do not authorize an association to exercise the power of eminent domain pursuant to chapter 37 of NRS, and an association may not exercise the power of eminent domain, as provided in NRS 37.0097.***

Sec. 8. NRS 116.1206 is hereby amended to read as follows:

116.1206 1. Any provision contained in a declaration, bylaw or other governing document of a common-interest community that violates the provisions of this chapter ~~shall~~:

(a) ***Shall*** be deemed to conform with those provisions by operation of law, and any such declaration, bylaw or other governing document is not required to be amended to conform to those provisions.

(b) ***Is superseded by the provisions of this chapter, regardless of whether the provision contained in the declaration, bylaw or other governing document became effective before the enactment of the provision of this chapter that is being violated.***

2. In the case of amendments to the declaration, bylaws or plats and plans of any common-interest community created before January 1, 1992:

(a) If the result accomplished by the amendment was permitted by law before January 1, 1992, the amendment may be made either in accordance with that law, in which case that law applies to that amendment, or it may be made under this chapter; and

(b) If the result accomplished by the amendment is permitted by this chapter, and was not permitted by law before January 1, 1992, the amendment may be made under this chapter.

3. An amendment to the declaration, bylaws or plats and plans authorized by this section to be made under this chapter must be adopted in conformity

with the applicable provisions of chapter 117 or 278A of NRS and with the procedures and requirements specified by those instruments. If an amendment grants to any person any rights, powers or privileges permitted by this chapter, all correlative obligations, liabilities and restrictions in this chapter also apply to that person.

Sec. 8.5. NRS 116.2111 is hereby amended to read as follows:

116.2111 1. Except as otherwise provided in this section and subject to the provisions of the declaration and other provisions of law, a unit's owner:

(a) May make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common-interest community;

(b) May not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the common-interest community, without permission of the association; and

(c) After acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common-interest community. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

2. An association may not:

(a) Unreasonably restrict, prohibit or otherwise impede the lawful rights of a unit's owner to have reasonable access to his unit.

(b) ***Charge any fee for a person to enter the common-interest community to provide services to a unit, a unit's owner or a tenant of a unit's owner or for any visitor to the common-interest community or invitee of a unit's owner or a tenant of a unit's owner to enter the common-interest community.***

(c) Unreasonably restrict, prohibit or withhold approval for a unit's owner to add to a unit:

(1) Improvements such as ramps, railings or elevators that are necessary to improve access to the unit for any occupant of the unit who has a disability;

(2) Additional locks to improve the security of the unit;

(3) Shutters to improve the security of the unit or to reduce the costs of energy for the unit; or

(4) A system that uses wind energy to reduce the costs of energy for the unit if the boundaries of the unit encompass 2 acres or more within the common-interest community.

~~{(e)}~~ (d) With regard to approving or disapproving any improvement or alteration made to a unit, act in violation of any state or federal law.

3. Any improvement or alteration made pursuant to subsection 2 that is visible from any other portion of the common-interest community must be installed, constructed or added in accordance with the procedures set forth in

the governing documents of the association and must be selected or designed to the maximum extent practicable to be compatible with the style of the common-interest community.

4. A unit's owner may not add to the unit a system that uses wind energy as described in subparagraph 4 of paragraph ~~[(b)]~~ (c) of subsection 2 unless he first obtains the written consent of each owner of property within 300 feet of any boundary of the unit.

Sec. 9. NRS 116.3102 is hereby amended to read as follows:

116.3102 1. Except as otherwise provided in subsection 2, and subject to the provisions of the declaration, the association may do any or all of the following:

- (a) Adopt and amend bylaws, rules and regulations.
- (b) Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from the units' owners.
- (c) Hire and discharge managing agents and other employees, agents and independent contractors.
- (d) Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common-interest community.
- (e) Make contracts and incur liabilities. ***Any contract between the association and a private entity for the furnishing of goods or services must not include a provision granting the private entity the right of first refusal with respect to extension or renewal of the contract.***
- (f) Regulate the use, maintenance, repair, replacement and modification of common elements.
- (g) Cause additional improvements to be made as a part of the common elements.
- (h) Acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but:
  - (1) Common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to NRS 116.3112; and
  - (2) Part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to NRS 116.3112.
- (i) Grant easements, leases, licenses and concessions through or over the common elements.
- (j) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of NRS 116.2102, and for services provided to the units' owners.
- (k) Impose charges for late payment of assessments.
- (l) Impose construction penalties when authorized pursuant to NRS 116.310305.



(m) Impose reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in NRS 116.31031.

(n) Impose reasonable charges for the preparation and recordation of any amendments to the declaration or any statements of unpaid assessments, and impose reasonable fees, not to exceed the amounts authorized by NRS 116.4109, for preparing and furnishing the documents and certificate required by that section.

(o) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance.

(p) Assign its right to future income, including the right to receive assessments for common expenses, but only to the extent the declaration expressly so provides.

(q) Exercise any other powers conferred by the declaration or bylaws.

(r) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association.

(s) Direct the removal of vehicles improperly parked on property owned or leased by the association, as authorized pursuant to NRS 487.038, or improperly parked on any road, street, alley or other thoroughfare within the common-interest community in violation of the governing documents. In addition to complying with the requirements of NRS 487.038 and any requirements in the governing documents, if a vehicle is improperly parked as described in this paragraph, the association must post written notice in a conspicuous place on the vehicle or provide oral or written notice to the owner or operator of the vehicle at least 48 hours before the association may direct the removal of the vehicle, unless the vehicle:

(1) Is blocking a fire hydrant, fire lane or parking space designated for the handicapped; or

(2) Poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community.

(t) Exercise any other powers necessary and proper for the governance and operation of the association.

2. The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

Sec. 10. (Deleted by amendment.)

Sec. 11. (Deleted by amendment.)

Sec. 12. NRS 116.31031 is hereby amended to read as follows:

116.31031 1. Except as otherwise provided in this section, if a unit's owner or a tenant or ~~guest~~ *an invitee* of a unit's owner *or a tenant* violates any provision of the governing documents of an association, the executive board may, if the governing documents so provide:

(a) Prohibit, for a reasonable time, the unit's owner or the tenant or ~~guest~~ **the invitee** of the unit's owner **or the tenant** from:

(1) Voting on matters related to the common-interest community.

(2) Using the common elements. The provisions of this subparagraph do not prohibit the unit's owner or the tenant or ~~guest~~ **the invitee** of the unit's owner **or the tenant** from using any vehicular or pedestrian ingress or egress to go to or from the unit, including any area used for parking.

(b) Impose a fine against the unit's owner or the tenant or ~~guest~~ **the invitee** of the unit's owner **or the tenant** for each violation, except that a fine may not be imposed for a violation that is the subject of a construction penalty pursuant to NRS 116.310305. If the violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents. If the violation does not pose an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents, but the amount of the fine must not exceed \$100 for each violation or a total amount of \$1,000, whichever is less. The limitations on the amount of the fine do not apply to any interest, charges or costs that may be collected by the association pursuant to this section if the fine becomes past due.

**2. The executive board may not impose a fine pursuant to subsection 1 against a unit's owner for a violation of any provision of the governing documents of an association committed by an invitee of the unit's owner or the tenant unless the unit's owner:**

**(a) Participated in or authorized the violation;**

**(b) Had prior notice of the violation; or**

**(c) Had an opportunity to stop the violation and failed to do so.**

**3. The executive board may not impose a fine pursuant to subsection 1 unless:**

(a) Not less than 30 days before the violation, the person against whom the fine will be imposed had been provided with written notice of the applicable provisions of the governing documents that form the basis of the violation; and

(b) Within a reasonable time after the discovery of the violation, the person against whom the fine will be imposed has been provided with:

(1) Written notice specifying the details of the violation, the amount of the fine, and the date, time and location for a hearing on the violation; and

(2) A reasonable opportunity to contest the violation at the hearing.

~~3.4~~ **4. The executive board must schedule the date, time and location for the hearing on the violation so that the person against whom the fine will be**

imposed is provided with a reasonable opportunity to prepare for the hearing and to be present at the hearing.

~~{4-}~~ 5. The executive board must hold a hearing before it may impose the fine, unless the person against whom the fine will be imposed:

- (a) Pays the fine;
- (b) Executes a written waiver of the right to the hearing; or
- (c) Fails to appear at the hearing after being provided with proper notice of the hearing.

~~{5-}~~ 6. If a fine is imposed pursuant to subsection 1 and the violation is not cured within 14 days, or within any longer period that may be established by the executive board, the violation shall be deemed a continuing violation. Thereafter, the executive board may impose an additional fine for the violation for each 7-day period or portion thereof that the violation is not cured. Any additional fine may be imposed without notice and an opportunity to be heard.

~~{6-}~~ 7. If the governing documents so provide, the executive board may appoint a committee, with not less than three members, to conduct hearings on violations and to impose fines pursuant to this section. While acting on behalf of the executive board for those limited purposes, the committee and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the executive board and its members.

~~{7-}~~ 8. The provisions of this section establish the minimum procedural requirements that the executive board must follow before it may impose a fine. The provisions of this section do not preempt any provisions of the governing documents that provide greater procedural protections.

~~{8-}~~ 9. Any past due fine:

(a) Bears interest at the rate established by the association, not to exceed the legal rate per annum.

(b) May include any costs of collecting the past due fine at a rate established by the association. If the past due fine is for a violation that does not threaten the health, safety or welfare of the residents of the common-interest community, the rate established by the association for the costs of collecting the past due fine:

(1) May not exceed \$20, if the outstanding balance is less than \$200.

(2) May not exceed \$50, if the outstanding balance is \$200 or more, but is less than \$500.

(3) May not exceed \$100, if the outstanding balance is \$500 or more, but is less than \$1,000.

(4) May not exceed \$250, if the outstanding balance is \$1,000 or more, but is less than \$5,000.

(5) May not exceed \$500, if the outstanding balance is \$5,000 or more.

(c) May include any costs incurred by the association during a civil action to enforce the payment of the past due fine.

~~{9-}~~ 10. As used in this section:

(a) "Costs of collecting" includes, without limitation, any collection fee, filing fee, recording fee, referral fee, fee for postage or delivery, and any other fee or cost that an association may reasonably charge to the unit's owner for the collection of a past due fine. The term does not include any costs incurred by an association during a civil action to enforce the payment of a past due fine.

(b) "Outstanding balance" means the amount of a past due fine that remains unpaid before any interest, charges for late payment or costs of collecting the past due fine are added.

Sec. 12.5. NRS 116.310315 is hereby amended to read as follows:

116.310315 If an association has imposed a fine against a unit's owner or a tenant or ~~guest~~ *an invitee* of a unit's owner *or a tenant* pursuant to NRS 116.31031 for violations of the governing documents of the association, the association:

1. Shall, in the books and records of the association, account for the fine separately from any assessment, fee or other charge; and

2. Shall not apply, in whole or in part, any payment made by the unit's owner for any assessment, fee or other charge toward the payment of the outstanding balance of the fine or any costs of collecting the fine, unless the unit's owner provides written authorization which directs the association to apply the payment made by the unit's owner in such a manner.

Sec. 13. NRS 116.31034 is hereby amended to read as follows:

116.31034 1. Except as otherwise provided in subsection 5 of NRS 116.212, not later than the termination of any period of declarant's control, the units' owners shall elect an executive board of at least three members, ~~at least a majority~~ *all* of whom must be units' owners. ~~Unless the governing documents provide otherwise, the remaining members of the executive board do not have to be units' owners.~~ *Unless the governing documents provide otherwise, the officers of the association are not required to be units' owners.* The executive board shall elect the officers of the association. *Unless the governing documents provide otherwise, the officers of the association are not required to be units' owners.* The members of the executive board and the officers of the association shall take office upon election.

2. The term of office of a member of the executive board may not exceed 2 years, except for members who are appointed by the declarant. Unless the governing documents provide otherwise, there is no limitation on the number of terms that a person may serve as a member of the executive board.

3. The governing documents of the association must provide for terms of office that are staggered in such a manner that, to the extent possible, an equal number of members of the executive board are elected at each election. The provisions of this subsection do not apply to:

(a) Members of the executive board who are appointed by the declarant; and

(b) Members of the executive board who serve a term of 1 year or less.

4. Not less than 30 days before the preparation of a ballot for the election of members of the executive board, the secretary or other officer specified in

the bylaws of the association shall cause notice to be given to each unit's owner of his eligibility to serve as a member of the executive board. Each unit's owner who is qualified to serve as a member of the executive board may have his name placed on the ballot along with the names of the nominees selected by the members of the executive board or a nominating committee established by the association.

5. Each person whose name is placed on the ballot as a candidate for a member of the executive board must:

(a) Make a good faith effort to disclose any financial, business, professional or personal relationship or interest that would result or would appear to a reasonable person to result in a potential conflict of interest for the candidate if the candidate were to be elected to serve as a member of the executive board; and

(b) Disclose whether the candidate is a member in good standing. For the purposes of this paragraph, a candidate shall not be deemed to be in "good standing" if the candidate has any unpaid and past due assessments or construction penalties that are required to be paid to the association.

➡ The candidate must make all disclosures required pursuant to this subsection in writing to the association with his candidacy information. The association shall distribute the disclosures to each member of the association with the ballot in the manner established in the bylaws of the association.

6. Unless a person is appointed by the declarant:

(a) A person may not be a member of the executive board or an officer of the association if the person, his spouse or his parent or child, by blood, marriage or adoption, performs the duties of a community manager for that association.

(b) A person may not be a member of the executive board of a master association or an officer of that master association if the person, his spouse or his parent or child, by blood, marriage or adoption, performs the duties of a community manager for:

(1) That master association; or

(2) Any association that is subject to the governing documents of that master association.

7. An officer, employee, agent or director of a corporate owner of a unit, a trustee or designated beneficiary of a trust that owns a unit, a partner of a partnership that owns a unit, a member or manager of a limited-liability company that owns a unit, and a fiduciary of an estate that owns a unit may be an officer of the association or a member of the executive board. In all events where the person serving or offering to serve as an officer of the association or a member of the executive board is not the record owner, he shall file proof in the records of the association that:

(a) He is associated with the corporate owner, trust, partnership, limited-liability company or estate as required by this subsection; and

(b) Identifies the unit or units owned by the corporate owner, trust, partnership, limited-liability company or estate.

8. The election of any member of the executive board must be conducted by secret written ballot unless the declaration of the association provides that voting rights may be exercised by delegates or representatives as set forth in NRS 116.31105. If the election of any member of the executive board is conducted by secret written ballot:

(a) The secretary or other officer specified in the bylaws of the association shall cause a secret ballot and a return envelope to be sent, prepaid by United States mail, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner.

(b) Each unit's owner must be provided with at least 15 days after the date the secret written ballot is mailed to the unit's owner to return the secret written ballot to the association.

(c) A quorum is not required for the election of any member of the executive board.

(d) Only the secret written ballots that are returned to the association may be counted to determine the outcome of the election.

(e) The secret written ballots must be opened and counted at a meeting of the association. A quorum is not required to be present when the secret written ballots are opened and counted at the meeting.

(f) The incumbent members of the executive board and each person whose name is placed on the ballot as a candidate for a member of the executive board may not possess, be given access to or participate in the opening or counting of the secret written ballots that are returned to the association before those secret written ballots have been opened and counted at a meeting of the association.

9. *An association shall not adopt any rule or regulation that has the effect of prohibiting or unreasonably interfering with a candidate in his campaign for election as a member of the executive board, except that his campaign may be limited to 90 days before the date that ballots are required to be returned to the association. A candidate may request that the secretary or other officer specified in the bylaws of the association send, 30 days before the date of the election and at the association's expense, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner a candidate informational statement. The candidate informational statement:*

*(a) Must be no longer than a single, typed page;*

*(b) Must not contain any defamatory, libelous or profane information; and*

*(c) May be sent with the secret ballot mailed pursuant to subsection 8 or in a separate mailing.*

➡ *The association and its directors, officers, employees and agents are immune from criminal or civil liability for any act or omission which arises out of the publication or disclosure of any information related to any*

*person and which occurs in the course of carrying out any duties required pursuant to this subsection.*

10. Each member of the executive board shall, within 90 days after his appointment or election, certify in writing to the association, on a form prescribed by the Administrator, that he has read and understands the governing documents of the association and the provisions of this chapter to the best of his ability. The Administrator may require the association to submit a copy of the certification of each member of the executive board of that association at the time the association registers with the Ombudsman pursuant to NRS 116.31158.

Sec. 14. NRS 116.31036 is hereby amended to read as follows:

116.31036 1. Notwithstanding any provision of the declaration or bylaws to the contrary, any member of the executive board, other than a member appointed by the declarant, may be removed from the executive board, with or without cause, if at a removal election held pursuant to this section ~~[the]~~ :

(a) ~~The~~ number of votes cast ~~[in favor of removal]~~ constitutes ~~[-~~

~~(a) At]~~ at least 35 percent of the total number of voting members of the association; and

(b) At least a majority of all votes cast in that removal election ~~[-]~~ **are cast in favor of removal.**

2. The removal of any member of the executive board must be conducted by secret written ballot unless the declaration of the association provides that voting rights may be exercised by delegates or representatives as set forth in NRS 116.31105. If the removal of a member of the executive board is conducted by secret written ballot:

(a) The secretary or other officer specified in the bylaws of the association shall cause a secret ballot and a return envelope to be sent, prepaid by United States mail, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner.

(b) Each unit's owner must be provided with at least 15 days after the date the secret written ballot is mailed to the unit's owner to return the secret written ballot to the association.

(c) Only the secret written ballots that are returned to the association may be counted to determine the outcome.

(d) The secret written ballots must be opened and counted at a meeting of the association. A quorum is not required to be present when the secret written ballots are opened and counted at the meeting.

(e) The incumbent members of the executive board, including, without limitation, the member who is subject to the removal, may not possess, be given access to or participate in the opening or counting of the secret written ballots that are returned to the association before those secret written ballots have been opened and counted at a meeting of the association.

3. If a member of an executive board is named as a respondent or sued for liability for actions undertaken in his role as a member of the board, the association shall indemnify him for his losses or claims, and undertake all costs of defense, unless it is proven that he acted with willful or wanton misfeasance or with gross negligence. After such proof, the association is no longer liable for the cost of defense, and may recover costs already expended from the member of the executive board who so acted. Members of the executive board are not personally liable to the victims of crimes occurring on the property. Punitive damages may not be recovered against ~~the~~ :

~~(a) The association ~~is~~ [but may be recovered from persons whose activity gave rise to the damages.] :~~

~~(b) ***The members of the executive board for acts or omissions that occur in their official capacity as members of the executive board; or***~~

~~(c) ***The officers of the association for acts or omissions that occur in their capacity as officers of the association.***~~

4. The provisions of this section do not prohibit the Commission from taking any disciplinary action against a member of an executive board pursuant to NRS 116.745 to 116.795, inclusive.

Sec. 15. NRS 116.3107 is hereby amended to read as follows:

116.3107 1. Except to the extent provided by the declaration, subsection 2 and NRS 116.31135, the association ~~is responsible~~ ***has the duty to provide*** for ~~the~~ maintenance, repair and replacement of the common elements, and each unit's owner ~~is responsible~~ ***has the duty to provide*** for ~~the~~ maintenance, repair and replacement of his unit. Each unit's owner shall afford to the association and the other units' owners, and to their agents or employees, access through his unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any unit through which access is taken, the unit's owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof.

2. In addition to the liability that a declarant as a unit's owner has under this chapter, the declarant alone is liable for all expenses in connection with real estate subject to developmental rights. No other unit's owner and no other portion of the common-interest community is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to developmental rights inures to the declarant.

3. In a planned community, if all developmental rights have expired with respect to any real estate, the declarant remains liable for all expenses of that real estate unless, upon expiration, the declaration provides that the real estate becomes common elements or units.

Sec. 16. NRS 116.3108 is hereby amended to read as follows:

116.3108 1. A meeting of the units' owners must be held at least once each year. If the governing documents do not designate an annual meeting date of the units' owners, a meeting of the units' owners must be held 1 year after the date of the last meeting of the units' owners. If the units' owners



have not held a meeting for 1 year, a meeting of the units' owners must be held on the following March 1.

2. Special meetings of the units' owners may be called by the president, by a majority of the executive board or by units' owners constituting at least 10 percent, or any lower percentage specified in the bylaws, of the total number of voting members of the association. The same number of units' owners may also call a removal election pursuant to NRS 116.31036. To call a special meeting or a removal election, the units' owners must submit a written petition which is signed by the required percentage of the total number of voting members of the association pursuant to this section and which is mailed, return receipt requested, or served by a process server to the executive board or the community manager for the association. If the petition calls for a special meeting, the executive board shall set the date for the special meeting so that the special meeting is held not less than 15 days or more than 60 days after the date on which the petition is received. If the petition calls for a removal election and:

(a) The voting rights of the units' owners will be exercised by delegates or representatives as set forth in NRS 116.31105, the executive board shall set the date for the removal election so that the removal election is held not less than 15 days or more than 60 days after the date on which the petition is received; or

(b) The voting rights of the units' owners will be exercised through the use of secret written ballots pursuant to NRS 116.31036, the secret written ballots for the removal election must be sent in the manner required by NRS 116.31036 not less than 15 days or more than 60 days after the date on which the petition is received, and the executive board shall set the date for the meeting to open and count the secret written ballots so that the meeting is held not more than 15 days after the deadline for returning the secret written ballots.

↪ ***The association shall not adopt any rule or regulation which prevents or unreasonably interferes with the collection of the required percentage of signatures for a petition pursuant to this subsection.***

3. Not less than 15 days or more than 60 days in advance of any meeting of the units' owners, the secretary or other officer specified in the bylaws shall cause notice of the meeting to be hand-delivered, sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner or, if the association offers to send notice by electronic mail, sent by electronic mail at the request of the unit's owner to an electronic mail address designated in writing by the unit's owner. The notice of the meeting must state the time and place of the meeting and include a copy of the agenda for the meeting. The notice must include notification of the right of a unit's owner to:

(a) Have a copy of the minutes or a summary of the minutes of the meeting provided to the unit's owner upon request and, if required by the

executive board, upon payment to the association of the cost of providing the copy to the unit's owner.

(b) Speak to the association or executive board, unless the executive board is meeting in executive session.

4. The agenda for a meeting of the units' owners must consist of:

(a) A clear and complete statement of the topics scheduled to be considered during the meeting, including, without limitation, any proposed amendment to the declaration or bylaws, any fees or assessments to be imposed or increased by the association, any budgetary changes and any proposal to remove an officer of the association or member of the executive board.

(b) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items. In an emergency, the units' owners may take action on an item which is not listed on the agenda as an item on which action may be taken.

(c) A period devoted to comments by units' owners and discussion of those comments. Except in emergencies, no action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to paragraph (b).

5. If the association adopts a policy imposing fines for any violations of the governing documents of the association, the secretary or other officer specified in the bylaws shall prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner, a schedule of the fines that may be imposed for those violations.

6. The secretary or other officer specified in the bylaws shall cause minutes to be recorded or otherwise taken at each meeting of the units' owners. Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the minutes or a summary of the minutes of the meeting to be made available to the units' owners. A copy of the minutes or a summary of the minutes must be provided to any unit's owner upon request and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.

7. Except as otherwise provided in subsection 8, the minutes of each meeting of the units' owners must include:

(a) The date, time and place of the meeting;

(b) The substance of all matters proposed, discussed or decided at the meeting; and

(c) The substance of remarks made by any unit's owner at the meeting if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.

8. The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of a meeting of the units' owners.

9. The association shall maintain the minutes of each meeting of the units' owners until the common-interest community is terminated.

10. A unit's owner may record on audiotape or any other means of sound reproduction a meeting of the units' owners if the unit's owner, before recording the meeting, provides notice of his intent to record the meeting to the other units' owners who are in attendance at the meeting.

11. The units' owners may approve, at the annual meeting of the units' owners, the minutes of the prior annual meeting of the units' owners and the minutes of any prior special meetings of the units' owners. A quorum is not required to be present when the units' owners approve the minutes.

12. As used in this section, "emergency" means any occurrence or combination of occurrences that:

- (a) Could not have been reasonably foreseen;
- (b) Affects the health, welfare and safety of the units' owners or residents of the common-interest community;
- (c) Requires the immediate attention of, and possible action by, the executive board; and
- (d) Makes it impracticable to comply with the provisions of subsection 3 or 4.

Sec. 17. NRS 116.31083 is hereby amended to read as follows:

116.31083 1. A meeting of the executive board must be held at least once every 90 days.

2. Except in an emergency or unless the bylaws of an association require a longer period of notice, the secretary or other officer specified in the bylaws of the association shall, not less than 10 days before the date of a meeting of the executive board, cause notice of the meeting to be given to the units' owners. Such notice must be:

- (a) Sent prepaid by United States mail to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner;
- (b) If the association offers to send notice by electronic mail, sent by electronic mail at the request of the unit's owner to an electronic mail address designated in writing by the unit's owner; or
- (c) Published in a newsletter or other similar publication that is circulated to each unit's owner.

3. In an emergency, the secretary or other officer specified in the bylaws of the association shall, if practicable, cause notice of the meeting to be sent prepaid by United States mail to the mailing address of each unit within the common-interest community. If delivery of the notice in this manner is impracticable, the notice must be hand-delivered to each unit within the common-interest community or posted in a prominent place or places within the common elements of the association.

4. The notice of a meeting of the executive board must state the time and place of the meeting and include a copy of the agenda for the meeting or the date on which and the locations where copies of the agenda may be

conveniently obtained by the units' owners. The notice must include notification of the right of a unit's owner to:

(a) Have a copy of the **audio recording, the** minutes or a summary of the minutes of the meeting provided to the unit's owner upon request and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.

(b) Speak to the association or executive board, unless the executive board is meeting in executive session.

5. The agenda of the meeting of the executive board must comply with the provisions of subsection 4 of NRS 116.3108. ~~The~~ A period required to be devoted to comments by the units' owners and discussion of those comments must be scheduled for **both** the beginning **and the end** of each meeting. ***During the period devoted to comments by the units' owners and discussion of those comments at the beginning of each meeting, comments by the units' owners and discussion of those comments must be limited to items listed on the agenda.*** In an emergency, the executive board may take action on an item which is not listed on the agenda as an item on which action may be taken.

6. At least once every 90 days, unless the declaration or bylaws of the association impose more stringent standards, the executive board shall review, at a minimum, the following financial information at one of its meetings:

(a) A current year-to-date financial statement of the association;

(b) A current year-to-date schedule of revenues and expenses for the operating account and the reserve account, compared to the budget for those accounts;

(c) A current reconciliation of the operating account of the association;

(d) A current reconciliation of the reserve account of the association;

(e) The latest account statements prepared by the financial institutions in which the accounts of the association are maintained; and

(f) The current status of any civil action or claim submitted to arbitration or mediation in which the association is a party.

7. The secretary or other officer specified in the bylaws shall cause ***each meeting of the executive board to be audio recorded and the*** minutes to be recorded or otherwise taken at each meeting of the executive board ~~[-]~~, ***but if the executive board is meeting in executive session, the meeting must not be audio recorded.*** Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the **audio recording of the meeting, the** minutes ~~for~~ **of the meeting and** a summary of the minutes of the ~~meetings~~ **meeting** to be made available to the units' owners. A copy of the **audio recording, the** minutes or a summary of the minutes must be provided to any unit's owner upon request and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.

8. Except as otherwise provided in subsection 9 and NRS 116.31085, the minutes of each meeting of the executive board must include:

- (a) The date, time and place of the meeting;
- (b) Those members of the executive board who were present and those members who were absent at the meeting;
- (c) The substance of all matters proposed, discussed or decided at the meeting;
- (d) A record of each member's vote on any matter decided by vote at the meeting; and
- (e) The substance of remarks made by any unit's owner who addresses the executive board at the meeting if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.

9. The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of its meetings.

10. The association shall maintain the minutes of each meeting of the executive board until the common-interest community is terminated.

11. A unit's owner may record on audiotape or any other means of sound reproduction a meeting of the executive board, unless the executive board is meeting in executive session, if the unit's owner, before recording the meeting, provides notice of his intent to record the meeting to the members of the executive board and the other units' owners who are in attendance at the meeting.

12. As used in this section, "emergency" means any occurrence or combination of occurrences that:

- (a) Could not have been reasonably foreseen;
- (b) Affects the health, welfare and safety of the units' owners or residents of the common-interest community;
- (c) Requires the immediate attention of, and possible action by, the executive board; and
- (d) Makes it impracticable to comply with the provisions of subsection 2 or 5.

Sec. 18. NRS 116.31085 is hereby amended to read as follows:

116.31085 1. Except as otherwise provided in this section, a unit's owner may attend any meeting of the units' owners or of the executive board and speak at any such meeting. The executive board may establish reasonable limitations on the time a unit's owner may speak at such a meeting.

2. An executive board may not meet in executive session to enter into, renew, modify, terminate or take any other action regarding a contract . ~~unless it is a contract between the association and an attorney.~~

3. An executive board may meet in executive session only to:

- (a) Consult with the attorney for the association on matters relating to proposed or pending litigation if the contents of the discussion would otherwise be governed by the privilege set forth in NRS 49.035 to 49.115,

inclusive . ~~[or to enter into, renew, modify, terminate or take any other action regarding a contract between the association and the attorney.]~~

(b) Discuss the character, alleged misconduct, professional competence, or physical or mental health of a community manager or an employee of the association.

(c) Except as otherwise provided in subsection 4, discuss a violation of the governing documents, including, without limitation, the failure to pay an assessment.

(d) Discuss the alleged failure of a unit's owner to adhere to a schedule required pursuant to NRS 116.310305 if the alleged failure may subject the unit's owner to a construction penalty.

4. An executive board shall meet in executive session to hold a hearing on an alleged violation of the governing documents unless the person who may be sanctioned for the alleged violation requests in writing that an open hearing be conducted by the executive board. If the person who may be sanctioned for the alleged violation requests in writing that an open hearing be conducted, the person:

(a) Is entitled to attend all portions of the hearing related to the alleged violation, including, without limitation, the presentation of evidence and the testimony of witnesses; ~~and~~

(b) *Is entitled to due process, as set forth in the standards adopted by regulation by the Commission, which must include, without limitation, the right to counsel, the right to present witnesses and the right to present information relating to any conflict of interest of any member of the hearing panel; and*

(c) Is not entitled to attend the deliberations of the executive board.

5. *The provisions of subsection 4 establish the minimum protections that the executive board must provide before it may make a decision. The provisions of subsection 4 do not preempt any provisions of the governing documents that provide greater protections.*

6. Except as otherwise provided in this subsection, any matter discussed by the executive board when it meets in executive session must be generally noted in the minutes of the meeting of the executive board. The executive board shall maintain minutes of any decision made pursuant to subsection 4 concerning an alleged violation and, upon request, provide a copy of the decision to the person who was subject to being sanctioned at the hearing or to his designated representative.

~~{6.}~~ 7. Except as otherwise provided in subsection 4, a unit's owner is not entitled to attend or speak at a meeting of the executive board held in executive session.

Sec. 19. NRS 116.31087 is hereby amended to read as follows:

116.31087 1. If an executive board receives a written complaint from a unit's owner alleging that the executive board has violated any provision of this chapter or any provision of the governing documents of the association, the executive board shall ~~[, if action is required by the executive board,]~~ ,

*upon the written request of the unit's owner*, place the subject of the complaint on the agenda of the next regularly scheduled meeting of the executive board.

2. Not later than 10 business days after the date that the association receives such a complaint, the executive board or an authorized representative of the association shall acknowledge the receipt of the complaint and notify the unit's owner that, if ~~action is required by the executive board,~~ ***the unit's owner submits a written request that the subject of the complaint be placed on the agenda of the next regularly scheduled meeting of the executive board,*** the subject of the complaint will be placed on the agenda of the next regularly scheduled meeting of the executive board.

Sec. 20. (Deleted by amendment.)

Sec. 21. NRS 116.3115 is hereby amended to read as follows:

116.3115 1. Until the association makes an assessment for common expenses, the declarant shall pay all common expenses. After an assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association in accordance with the requirements set forth in NRS 116.31151. Unless the declaration imposes more stringent standards, the budget must include a budget for the daily operation of the association and a budget for the reserves required by paragraph (b) of subsection 2.

2. Except for assessments under subsections 4 to 7, inclusive:

(a) All common expenses, including the reserves, must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to subsections 1 and 2 of NRS 116.2107.

(b) The association shall establish adequate reserves, funded on a reasonable basis, for the repair, replacement and restoration of the major components of the common elements. The reserves may be used only for those purposes, including, without limitation, repairing, replacing and restoring roofs, roads and sidewalks, and must not be used for daily maintenance. The association may comply with the provisions of this paragraph through a funding plan that is designed to allocate the costs for the repair, replacement and restoration of the major components of the common elements over a period of years if the funding plan is designed in an actuarially sound manner which will ensure that sufficient money is available when the repair, replacement and restoration of the major components of the common elements are necessary. ***Notwithstanding any provision of the governing documents to the contrary, to establish adequate reserves pursuant to this paragraph, including, without limitation, to establish or carry out a funding plan, the executive board may, without seeking or obtaining the approval of the units' owners, impose any necessary and reasonable assessments against the units in the common-interest community. Any such assessments imposed by the executive board must be based on the study of the reserves of the association conducted pursuant to NRS 116.31152.***

3. Any past due assessment for common expenses or installment thereof bears interest at the rate established by the association not exceeding 18 percent per year.

4. To the extent required by the declaration:

(a) Any common expense associated with the maintenance, repair, restoration or replacement of a limited common element must be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides;

(b) Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited; and

(c) The costs of insurance must be assessed in proportion to risk and the costs of utilities must be assessed in proportion to usage.

5. Assessments to pay a judgment against the association may be made only against the units in the common-interest community at the time the judgment was entered, in proportion to their liabilities for common expenses.

6. If any common expense is caused by the misconduct of any unit's owner, the association may assess that expense exclusively against his unit.

7. The association of a common-interest community created before January 1, 1992, is not required to make an assessment against a vacant lot located within the community that is owned by the declarant.

8. If liabilities for common expenses are reallocated, assessments for common expenses and any installment thereof not yet due must be recalculated in accordance with the reallocated liabilities.

9. The association shall provide written notice to each unit's owner of a meeting at which an assessment for a capital improvement is to be considered or action is to be taken on such an assessment at least 21 calendar days before the date of the meeting.

Sec. 22. NRS 116.31155 is hereby amended to read as follows:

116.31155 1. Except as otherwise provided in subsection 2, an association shall:

(a) If the association is required to pay the fee imposed by NRS 78.150, 82.193, 86.263, 87.541, 87A.560 or 88.591, pay to the Administrator a fee established by regulation of the Administrator for every unit in the association used for residential use.

(b) If the association is organized as a trust or partnership, or as any other authorized business entity, pay to the Administrator a fee established by regulation of the Administrator for each unit in the association.

2. If an association is subject to the governing documents of a master association, the master association shall pay the fees required pursuant to this section for each unit in the association that is subject to the governing documents of the master association, unless the governing documents of the master association provide otherwise. The provisions of this subsection do not relieve any association that is subject to the governing documents of a master association from its ultimate responsibility to pay the fees required



pursuant to this section to the Administrator if they are not paid by the master association.

3. The fees required to be paid pursuant to this section must be:

(a) Paid at such times as are established by the Division.

(b) Deposited with the State Treasurer for credit to the Account for Common-Interest Communities and Condominium Hotels created by NRS 116.630.

(c) Established on the basis of the actual costs of administering the Office of the Ombudsman and the Commission and not on a basis which includes any subsidy beyond those actual costs. In no event may the fees required to be paid pursuant to this section exceed \$3 per unit.

4. The Division shall impose an administrative penalty against an association or master association that violates the provisions of this section by failing to pay the fees owed by the association or master association within the times established by the Division. The administrative penalty that is imposed for each violation must equal 10 percent of the amount of the fees owed by the association or master association or \$500, whichever amount is less. The amount of the unpaid fees owed by the association or master association bears interest at the rate set forth in NRS 99.040 from the date the fees are due until the date the fees are paid in full.

5. A unit's owner may not be required to pay any portion of the fees or any administrative penalties or interest required to be paid pursuant to this section to both an association and a master association.

6. An association that is subject to the governing documents of a master association may not be required to pay any portion of the fees or any administrative penalties or interest required to be paid pursuant to this section to the extent they have already been paid by the master association.

7. A master association may not be required to pay any portion of the fees or any administrative penalties or interest required to be paid pursuant to this section to the extent they have already been paid by an association that is subject to the governing documents of the master association.

8. Upon the payment of the fees and any administrative penalties and interest required by this section, the Administrator shall provide to the association or master association evidence that it paid the fees and the administrative penalties and interest in compliance with this section.

**9. Any person, association or master association which has been requested or required to pay any fees, administrative penalties or interest pursuant to this section and which believes that such fees, administrative penalties or interest has been imposed in error may, without exhausting any available administrative remedies, bring an action in a court of competent jurisdiction to recover:**

**(a) Any amount paid in error for any fees, administrative penalties or interest during the immediately preceding 3 years;**

**(b) Interest on the amount paid in error at the rate set forth in NRS 99.040; and**

(c) *Reasonable costs and attorney's fees.*

Sec. 23. (Deleted by amendment.)

**Sec. 23.5. NRS 116.31175 is hereby amended to read as follows:**

116.31175 1. Except as otherwise provided in this subsection, the executive board of an association shall, upon the written request of a unit's owner, make available the books, records and other papers of the association for review during the regular working hours of the association, including, without limitation, all contracts to which the association is a party and all records filed with a court relating to a civil or criminal action to which the association is a party. The provisions of this subsection do not apply to:

(a) The personnel records of the employees of the association, except for those records relating to the number of hours worked and the salaries and benefits of those employees; and

(b) The records of the association relating to another unit's owner, except for those records described in subsection 2. ~~1. and~~

~~(c) A contract between the association and an attorney.~~

2. The executive board of an association shall maintain a general record concerning each violation of the governing documents, other than a violation involving a failure to pay an assessment, for which the executive board has imposed a fine, a construction penalty or any other sanction. The general record:

(a) Must contain a general description of the nature of the violation and the type of the sanction imposed. If the sanction imposed was a fine or construction penalty, the general record must specify the amount of the fine or construction penalty.

(b) Must not contain the name or address of the person against whom the sanction was imposed or any other personal information which may be used to identify the person or the location of the unit, if any, that is associated with the violation.

(c) Must be maintained in an organized and convenient filing system or data system that allows a unit's owner to search and review the general records concerning violations of the governing documents.

3. If the executive board refuses to allow a unit's owner to review the books, records or other papers of the association, the Ombudsman may:

(a) On behalf of the unit's owner and upon written request, review the books, records or other papers of the association during the regular working hours of the association; and

(b) If he is denied access to the books, records or other papers, request the Commission, or any member thereof acting on behalf of the Commission, to issue a subpoena for their production.

4. The books, records and other papers of an association must be maintained for at least 10 years. The provisions of this subsection do not apply to:

(a) The minutes of a meeting of the units' owners which must be maintained in accordance with NRS 116.3108; or

(b) The minutes of a meeting of the executive board which must be maintained in accordance with NRS 116.31083.

5. The executive board shall not require a unit's owner to pay an amount in excess of \$10 per hour to review any books, records, contracts or other papers of the association pursuant to the provisions of this section.

Sec. 24. NRS 116.31183 is hereby amended to read as follows:

116.31183 An executive board, a member of an executive board, *a community manager* or an officer, employee or agent of an association shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner because the unit's owner has:

1. Complained in good faith about any alleged violation of any provision of this chapter or the governing documents of the association;

2. *Recommended the selection or replacement of an attorney, community manager or vendor;* or

~~{2-}~~ 3. Requested in good faith to review the books, records or other papers of the association.

Sec. 25. NRS 116.31187 is hereby amended to read as follows:

116.31187 1. Except as otherwise provided in this section, a member of an executive board or an officer of an association shall not:

(a) On or after October 1, 2003, enter into a contract or renew a contract with the association to provide *financing*, goods or services to the association; or

(b) Otherwise accept any commission, personal profit or compensation of any kind from the association for providing *financing*, goods or services to the association.

2. The provisions of this section do not prohibit a declarant, an affiliate of a declarant or an officer, employee or agent of a declarant or an affiliate of a declarant from:

(a) Receiving any commission, personal profit or compensation from the association, the declarant or an affiliate of the declarant for any *financing*, goods or services furnished to the association;

(b) Entering into contracts with the association, the declarant or affiliate of the declarant; or

(c) Serving as a member of the executive board or as an officer of the association.

Sec. 26. NRS 116.325 is hereby amended to read as follows:

116.325 1. The executive board shall not and the governing documents must not prohibit a unit's owner or an occupant of a unit from exhibiting ~~one or more political signs~~ *one or more political signs* within such physical portion of the common-interest community as that owner or occupant has a right to occupy and use exclusively ~~[if the political sign is]~~, *subject to the following conditions:*

(a) *All political signs exhibited must* not *be* larger than 24 inches by 36 inches.

*(b) If the unit is occupied by a tenant, the unit's owner may not exhibit any political sign unless the tenant consents, in writing, to the exhibition of the political sign.*

*(c) All political signs exhibited are subject to any applicable provisions of law governing the posting of political signs.*

*(d) A unit's owner or an occupant of a unit may exhibit as many political signs as desired, but may not exhibit more than one political sign for each candidate, political party or ballot question.*

2. The provisions of this section establish the minimum rights of a unit's owner or an occupant of a unit to exhibit ~~the~~ political ~~sign~~ signs. The provisions of this section do not preempt any provisions of the governing documents that provide greater rights and do not require the governing documents or the executive board to impose any restrictions on the exhibition of political signs other than those established by other provisions of law.

3. As used in this section, "political sign" means a sign that expresses support for or opposition to a candidate, political party or ballot question ~~in~~ *in any federal, state or local election or any election of an association.*

Sec. 27. NRS 116.330 is hereby amended to read as follows:

116.330 1. The executive board shall not and the governing documents must not prohibit a unit's owner from installing or maintaining drought tolerant landscaping within such physical portion of the common-interest community as that owner has a right to occupy and use exclusively, *including, without limitation, the front yard or back yard of the unit's owner*, except that:

(a) Before installing drought tolerant landscaping, the unit's owner must submit a detailed description or plans for the drought tolerant landscaping for architectural review and approval in accordance with the procedures, if any, set forth in the governing documents of the association; and

(b) The drought tolerant landscaping must be selected or designed to the maximum extent practicable to be compatible with the style of the common-interest community.

*↪ The provisions of this subsection must be construed liberally in favor of effectuating the purpose of encouraging the use of drought tolerant landscaping, and the executive board shall not and the governing documents must not unreasonably deny or withhold approval for the installation of drought tolerant landscaping or unreasonably determine that the drought tolerant landscaping is not compatible with the style of the common-interest community.*

2. Installation of drought tolerant landscaping within any common element or conversion of traditional landscaping or cultivated vegetation, such as turf grass, to drought tolerant landscaping within any common element shall not be deemed to be a change of use of the common element unless:

(a) The common element has been designated as a park, open play space or golf course on a recorded plat map; or

(b) The traditional landscaping or cultivated vegetation is required by a governing body under the terms of any applicable zoning ordinance, permit or approval or as a condition of approval of any final subdivision map.

3. As used in this section, "drought tolerant landscaping" means landscaping which conserves water, protects the environment and is adaptable to local conditions. ***The term includes, without limitation, the use of mulches such as decorative rock and artificial turf.***

Sec. 28. NRS 116.345 is hereby amended to read as follows:

116.345 1. An association of a planned community may not restrict, prohibit or otherwise impede the lawful residential use of any property that is within or encompassed by the boundaries of the planned community and that is not designated as part of the planned community.

2. Except as otherwise provided in this subsection, an association may not restrict the access of a person to any of his property. An association may restrict access to and from a unit within a planned community if the right to restrict such access was included in the declaration or in a separate recorded instrument at the time that the owner of the unit acquired title to the unit. The provisions of this subsection do not prohibit an association from charging the owner of the property a reasonable and nondiscriminatory fee to operate or maintain a gate or other similar device designed to control access to the planned community that would otherwise impede ingress or egress to the property.

3. An association may not expand, construct or situate a building or structure that is not part of any plat or plan of the planned community if the expansion, construction or situation of the building or structure was not previously disclosed to the units' owners of the planned community unless the association obtains the written consent of a majority of the units' owners and residents of the planned community who own property or reside within 500 feet of the proposed location of the building or structure.

4. ***An association may not interrupt any utility service furnished to a unit's owner or a tenant of a unit's owner except for the nonpayment of utility charges when due. The interruption of any utility service pursuant to this subsection must be performed in a manner which is consistent with all laws, regulations and governing documents relating to the interruption of any utility service. An association shall in every case send a written notice of its intent to interrupt any utility service to the unit's owner or the tenant of the unit's owner at least 10 days before the association interrupts any utility service.***

5. The provisions of this section do not abrogate any easement, restrictive covenant, decision of a court, agreement of a party or any contract, governing document or declaration of covenants, conditions and restrictions, or any other decision, rule or regulation that a local governing body or other entity that makes decisions concerning land use or planning is authorized to make or enact that exists before October 1, 1999, including, without limitation, a zoning ordinance, permit or approval process or any other

requirement of a local government or other entity that makes decisions concerning land use or planning.

Sec. 29. NRS 116.4117 is hereby amended to read as follows:

116.4117 1. ~~HH~~ *Subject to the requirements set forth in subsection 2, if* a declarant, **community manager** or any other person subject to this chapter fails to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons suffering actual damages from the failure to comply ~~has a claim~~ **may bring a civil action** for **damages or other** appropriate relief.

2. Subject to the requirements set forth in NRS 38.310 and except as otherwise provided in NRS 116.3111, a civil action for damages ~~caused by~~ **or other appropriate relief for** a failure or refusal to comply with any provision of this chapter or the governing documents of an association may be brought:

(a) By the association against:

- (1) A declarant; ~~for~~
- (2) **A community manager; or**
- (3) A unit's owner.

(b) By a unit's owner against:

- (1) The association;
- (2) A declarant; or
- (3) Another unit's owner of the association.

(c) **By a class of units' owners constituting at least 10 percent of the total number of voting members of the association against a community manager.**

3. ~~Punitive~~ **Except as otherwise provided in NRS 116.31036, punitive** damages may be awarded for a willful and material failure to comply with **any provision of** this chapter if the failure is established by clear and convincing evidence.

4. The court may award reasonable attorney's fees to the prevailing party.

5. The civil remedy provided by this section is in addition to, and not exclusive of, any other available remedy or penalty.

Sec. 30. NRS 116.600 is hereby amended to read as follows:

116.600 1. The Commission for Common-Interest Communities and Condominium Hotels is hereby created.

2. The Commission consists of ~~five~~ **seven** members appointed by the Governor. The Governor shall appoint to the Commission:

(a) One member who is a unit's owner residing in this State and who has served as a member of an executive board in this State;

(b) **Two members who are units' owners residing in this State but who are not required to have served as members of an executive board;**

(c) One member who is in the business of developing common-interest communities in this State;

~~(e)~~ (d) One member who holds a certificate;

~~[(d)]~~ (e) One member who is a certified public accountant licensed to practice in this State pursuant to the provisions of chapter 628 of NRS; and

~~[(e)]~~ (f) One member who is an attorney licensed to practice in this State.

3. Each member of the Commission must be a resident of this State. At least ~~three~~ **four** members of the Commission must be residents of a county whose population is 400,000 or more.

4. Each member of the Commission must have resided in a common-interest community or have been actively engaged in a business or profession related to common-interest communities for not less than 3 years immediately preceding the date of his appointment.

5. After the initial terms, each member of the Commission serves a term of 3 years. Each member may serve not more than two consecutive full terms. If a vacancy occurs during a member's term, the Governor shall appoint a person qualified under this section to replace the member for the remainder of the unexpired term.

6. While engaged in the business of the Commission, each member is entitled to receive:

(a) A salary of not more than \$80 per day, as established by the Commission; and

(b) The per diem allowance and travel expenses provided for state officers and employees generally.

Sec. 31. NRS 116.605 is hereby amended to read as follows:

116.605 1. The Division shall ***employ one or more training officers who are qualified by training and experience to*** provide ~~for arrange to have provided~~ to each member of the Commission courses of instruction concerning rules of procedure and substantive law appropriate for members of the Commission. ***Such courses of instruction may be made available to the staff of the Division as well as to community managers.***

2. ***The training officer shall:***

(a) ***Prepare and make available a manual containing the policies and procedures to be followed by executive boards and community managers; and***

(b) ***Perform any other duties as directed by the Division.***

3. Each member of the Commission must attend the courses of instruction ***described in subsection 1*** not later than 6 months after the date that the member is first appointed to the Commission.

Sec. 32. NRS 116.675 is hereby amended to read as follows:

116.675 1. The Commission may appoint one or more hearing panels. Each hearing panel must consist of one or more independent hearing officers. ***An independent hearing officer may be, without limitation, a member of the Commission or an employee of the Commission.***

2. The Commission may by regulation delegate to one or more hearing panels the power of the Commission to conduct hearings and other proceedings, determine violations, impose fines and penalties and take other disciplinary action authorized by the provisions of this chapter.

3. While acting under the authority of the Commission, a hearing panel and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the Commission and its members.

4. A final order of a hearing panel:

(a) May be appealed to the Commission if, not later than 20 days after the date that the final order is issued by the hearing panel, any party aggrieved by the final order files a written notice of appeal with the Commission.

(b) Must be reviewed and approved by the Commission if, not later than 40 days after the date that the final order is issued by the hearing panel, the Division, upon the direction of the Chairman of the Commission, provides written notice to all parties of the intention of the Commission to review the final order.

Sec. 33. NRS 116.757 is hereby amended to read as follows:

116.757 1. Except as otherwise provided in this section and NRS 239.0115, a written affidavit filed with the Division pursuant to NRS 116.760, all documents and other information filed with the written affidavit and all documents and other information compiled as a result of an investigation conducted to determine whether to file a formal complaint with the Commission are confidential. ***The Division shall not disclose any information that is confidential pursuant to this subsection, in whole or in part, to any person, including, without limitation, a person who is the subject of an investigation or complaint, unless and until a formal complaint is filed pursuant to subsection 2 and the disclosure is required pursuant to subsection 2.***

2. A formal complaint filed ***by the Administrator*** with the Commission and all documents and other information considered by the Commission or a hearing panel when determining whether to impose discipline or take other administrative action pursuant to NRS 116.745 to 116.795, inclusive, are public records.

Sec. 34. (Deleted by amendment.)

Sec. 35. (Deleted by amendment.)

Sec. 36. NRS 116.790 is hereby amended to read as follows:

116.790 1. If the Commission or a hearing panel, after notice and hearing, finds that the executive board or any person acting on behalf of the association has committed a violation, the Commission or the hearing panel may take any or all of the following actions:

(a) Order an audit of the association ~~to be~~, ***at the expense of the association.***

(b) Require the executive board to hire a community manager who holds a certificate.

2. The Commission, or the Division with the approval of the Commission, may apply to a court of competent jurisdiction for the appointment of a receiver for an association if, after notice and a hearing, the Commission or a hearing officer finds that any of the following violations occurred:



(a) The executive board, or any member thereof, has been guilty of fraud or collusion or gross mismanagement in the conduct or control of its affairs;

(b) The executive board, or any member thereof, has been guilty of misfeasance, malfeasance or nonfeasance; or

(c) The assets of the association are in danger of waste or loss through attachment, foreclosure, litigation or otherwise.

3. In any application for the appointment of a receiver pursuant to this section, notice of a temporary appointment of a receiver may be given to the association alone, by process as in the case of an application for a temporary restraining order or injunction. The hearing thereon may be had after 5 days' notice unless the court directs a longer or different notice and different parties.

4. The court may, if good cause exists, appoint one or more receivers pursuant to this section to carry out the business of the association. The members of the executive board who have not been guilty of negligence or active breach of duty must be preferred in making the appointment.

5. The powers of any receiver appointed pursuant to this section may be continued as long as the court deems necessary and proper. At any time, for sufficient cause, the court may order the receivership terminated.

6. Any receiver appointed pursuant to this section has, among the usual powers, all the functions, powers, tenure and duties to be exercised under the direction of the court as are conferred on receivers and as provided in NRS 78.635, 78.640 and 78.645, whether or not the association is insolvent. Such powers include, without limitation, the powers to:

(a) Take charge of the estate and effects of the association;

(b) Appoint an agent or agents;

(c) Collect any debts and property due and belonging to the association and prosecute and defend, in the name of the association, or otherwise, any civil action as may be necessary or proper for the purposes of collecting debts and property;

(d) Perform any other act in accordance with the governing documents of the association and this chapter that may be necessary for the association to carry out its obligations; and

(e) By injunction, restrain the association from exercising any of its powers or doing business in any way except by and through a receiver appointed by the court.

Sec. 37. NRS 116A.270 is hereby amended to read as follows:

116A.270 1. Except as otherwise provided in this section and NRS 239.0115, a complaint filed with the Division alleging a violation of this chapter or chapter 116 or 116B of NRS, all documents and other information filed with the complaint and all documents and other information compiled as a result of an investigation conducted to determine whether to initiate disciplinary action are confidential. ~~[and may be disclosed]~~

**2. The Division shall not disclose any information that is confidential pursuant to subsection 1, in whole or in part ~~only~~, to any person,**

*including, without limitation, a person who is the subject of an investigation or complaint, unless and until a formal complaint is filed pursuant to subsection 3 and the disclosure is required pursuant to subsection 3, except that the Division may disclose the information described in subsection 1* as necessary in the course of administering this chapter or to a licensing board or agency or any other governmental agency, including, without limitation, a law enforcement agency, that is investigating a person who holds a certificate or permit issued pursuant to this chapter.

~~{2-}~~ 3. The *formal* complaint or other charging documents filed *by the Administrator* with the Commission to initiate disciplinary action and all documents and other information considered by the Commission or a hearing panel when determining whether to impose discipline are public records.

Sec. 38. NRS 116A.300 is hereby amended to read as follows:

116A.300 1. The Commission may appoint one or more hearing panels. Each hearing panel must consist of one or more independent hearing officers. *An independent hearing officer may be, without limitation, a member of the Commission or an employee of the Commission.*

2. The Commission may by regulation delegate to one or more hearing panels the power of the Commission to conduct hearings and other proceedings, determine violations, impose fines and penalties and take other disciplinary action authorized by the provisions of this chapter.

3. While acting under the authority of the Commission, a hearing panel and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the Commission and its members.

4. A final order of a hearing panel:

(a) May be appealed to the Commission if, not later than 20 days after the date that the final order is issued by the hearing panel, any party aggrieved by the final order files a written notice of appeal with the Commission.

(b) Must be reviewed and approved by the Commission if, not later than 40 days after the date that the final order is issued by the hearing panel, the Division, upon the direction of the Chairman of the Commission, provides written notice to all parties of the intention of the Commission to review the final order.

Sec. 39. NRS 116A.410 is hereby amended to read as follows:

116A.410 1. The Commission shall by regulation provide for the issuance by the Division of certificates. The regulations:

(a) Must establish the qualifications for the issuance of such a certificate, including, without limitation, the education and experience required to obtain such a certificate. *The regulations must include, without limitation, provisions that:*

*(1) Provide for the issuance of a temporary certificate for a 1-year period to a person who:*

*(1) Holds a professional designation in the field of management of a common-interest community from a nationally recognized organization;*

(II) Provides evidence that the person has been engaged in the management of a common-interest community for at least 5 years; and

(III) Has not been the subject of any disciplinary action in another state in connection with the management of a common-interest community.

(2) Except as otherwise provided in subparagraph (3), provide for the issuance of a temporary certificate for a 1-year period to a person who:

(I) Receives an offer of employment as a community manager from an association or its agent; and

(II) Has management experience determined to be sufficient by the executive board of the association or its agent making the offer in sub-subparagraph (I). The executive board or its agent must have sole discretion to make the determination required in this sub-subparagraph.

(3) Require a temporary certificate described in subparagraph (2) to expire before the end of the 1-year period if the certificate holder ceases to be employed by the association, or its agent, which offered him employment as described in subparagraph (2).

(4) Require a person who is issued a temporary certificate as described in subparagraph (1) or (2) to successfully complete not less than 18 hours of instruction relating to the Uniform Common-Interest Ownership Act within the 1-year period.

(5) Provide for the issuance of a certificate at the conclusion of the 1-year period if the person:

(I) Has successfully completed not less than 18 hours of instruction relating to the Uniform Common-Interest Ownership Act; and

(II) Has not been the subject of any disciplinary action pursuant to this chapter or chapter 116 of NRS or any regulations adopted pursuant thereto.

(6) Provide that a temporary certificate described in subparagraph (1) or (2), and a certificate described in subparagraph (5):

(I) Must authorize the person who is issued a temporary certificate described in subparagraph (1) or (2) or certificate described in subparagraph (5) to act in all respects as a community manager and exercise all powers available to any other community manager without regard to experience; and

(II) Must not be treated as a limited, restricted or provisional form of a certificate.

(b) Must require an applicant or the employer of the applicant to post a bond in a form and in an amount established by regulation. The Commission shall, by regulation, adopt a sliding scale for the amount of the bond that is based upon the amount of money that applicants are expected to control. In adopting the regulations establishing the form and sliding scale for the amount of a bond required to be posted pursuant to this paragraph, the Commission shall consider the availability and cost of such bonds.

(c) May require applicants to pass an examination in order to obtain a certificate. ~~It~~ other than a temporary certificate described in paragraph (a). If the regulations require such an examination, the Commission shall by regulation establish fees to pay the costs of the examination, including any costs which are necessary for the administration of the examination.

~~It~~ (d) May require an investigation of an applicant's background. If the regulations require such an investigation, the Commission shall by regulation establish fees to pay the costs of the investigation.

~~It~~ (e) Must establish the grounds for initiating disciplinary action against a person to whom a certificate has been issued, including, without limitation, the grounds for placing conditions, limitations or restrictions on a certificate and for the suspension or revocation of a certificate.

~~It~~ (f) Must establish rules of practice and procedure for conducting disciplinary hearings.

2. The Division may collect a fee for the issuance of a certificate in an amount not to exceed the administrative costs of issuing the certificate.

3. As used in this section, "management experience" means experience in a position in business or government, including, without limitation, in the military:

(a) In which the person holding the position was required, as part of holding the position, to engage in one or more management activities, including, without limitation, supervision of personnel, development of budgets or financial plans, protection of assets, logistics, management of human resources, development or training of personnel, public relations, or protection or maintenance of facilities; and

(b) Without regard to whether the person holding the position has any experience managing or otherwise working for an association.

Sec. 40. NRS 38.330 is hereby amended to read as follows:

38.330 1. If all parties named in a written claim filed pursuant to NRS 38.320 agree to have the claim submitted for mediation, the parties shall reduce the agreement to writing and shall select a mediator from the list of mediators maintained by the Division pursuant to NRS 38.340. Any mediator selected must be available within the geographic area. If the parties fail to agree upon a mediator, the Division shall appoint a mediator from the list of mediators maintained by the Division. Any mediator appointed must be available within the geographic area. Unless otherwise provided by an agreement of the parties, mediation must be completed within 60 days after the parties agree to mediation. Any agreement obtained through mediation conducted pursuant to this section must, within 20 days after the conclusion of mediation, be reduced to writing by the mediator and a copy thereof provided to each party. The agreement may be enforced as any other written agreement. Except as otherwise provided in this section, the parties are responsible for all costs of mediation conducted pursuant to this section.

2. If all the parties named in the claim do not agree to mediation, the parties shall select an arbitrator from the list of arbitrators maintained by the

Division pursuant to NRS 38.340. Any arbitrator selected must be available within the geographic area. If the parties fail to agree upon an arbitrator, the Division shall appoint an arbitrator from the list maintained by the Division. Any arbitrator appointed must be available within the geographic area. Upon appointing an arbitrator, the Division shall provide the name of the arbitrator to each party. *An arbitrator shall, not later than 5 days after his selection or appointment pursuant to this subsection, provide to the parties an informational statement relating to the arbitration of a claim pursuant to this section. The written informational statement:*

- (a) Must be written in plain English;*
- (b) Must explain the procedures and applicable law relating to the arbitration of a claim conducted pursuant to this section, including, without limitation, the procedures, timelines and applicable law relating to confirmation of an award pursuant to NRS 38.239, vacation of an award pursuant to NRS 38.241, judgment on an award pursuant to NRS 38.243, and any applicable statute or court rule governing the award of attorney's fees or costs to any party; and*
- (c) Must be accompanied by a separate form acknowledging that the party has received and read the informational statement, which must be returned to the arbitrator by the party not later than 10 days after receipt of the informational statement.*

3. The Division may provide for the payment of the fees for a mediator or an arbitrator selected or appointed pursuant to this section from the Account for Common-Interest Communities and Condominium Hotels created by NRS 116.630, to the extent that:

- (a) The Commission for Common-Interest Communities and Condominium Hotels approves the payment; and
- (b) There is money available in the account for this purpose.

4. Except as otherwise provided in this section and except where inconsistent with the provisions of NRS 38.300 to 38.360, inclusive, the arbitration of a claim pursuant to this section must be conducted in accordance with the provisions of NRS 38.231, 38.232, 38.233, 38.236 to 38.239, inclusive, 38.242 and 38.243. At any time during the arbitration of a claim relating to the interpretation, application or enforcement of any covenants, conditions or restrictions applicable to residential property or any bylaws, rules or regulations adopted by an association, the arbitrator may issue an order prohibiting the action upon which the claim is based. An award must be made within 30 days after the conclusion of arbitration, unless a shorter period is agreed upon by the parties to the arbitration.

5. If all the parties have agreed to nonbinding arbitration, any party to the **nonbinding** arbitration may, within 30 days after a decision and award have been served upon the parties, commence a civil action in the proper court concerning the claim which was submitted for arbitration. Any complaint filed in such an action must contain a sworn statement indicating that the issues addressed in the complaint have been arbitrated pursuant to the

provisions of NRS 38.300 to 38.360, inclusive. If such an action is not commenced within that period, any party to the arbitration may, within 1 year after the service of the award, apply to the proper court for a confirmation of the award pursuant to NRS 38.239.

6. If all the parties agree in writing to binding arbitration, the arbitration must be conducted in accordance with the provisions of this chapter. An award procured pursuant to such ***binding*** arbitration may be vacated and a rehearing granted upon application of a party pursuant to the provisions of NRS 38.241.

7. If, after the conclusion of ***binding*** arbitration, a party:

(a) Applies to have an award vacated and a rehearing granted pursuant to NRS 38.241; or

(b) Commences a civil action based upon any claim which was the subject of arbitration,

↪ the party shall, if he fails to obtain a more favorable award or judgment than that which was obtained in the initial ***binding*** arbitration, pay all costs and reasonable attorney's fees incurred by the opposing party after the application for a rehearing was made or after the complaint in the civil action was filed.

8. Upon request by a party, the Division shall provide a statement to the party indicating the amount of the fees for a mediator or an arbitrator selected or appointed pursuant to this section.

9. As used in this section, "geographic area" means an area within 150 miles from any residential property or association which is the subject of a written claim submitted pursuant to NRS 38.320.

Sec. 41. The Governor shall appoint to the Commission for Common-Interest Communities and Condominium Hotels pursuant to NRS 116.600, as amended by section 30 of this act:

1. One member who is a unit's owner residing in this State whose term begins on October 1, 2009, and expires on October 1, 2010; and

2. One member who is a unit's owner residing in this State whose term begins on October 1, 2009, and expires on October 1, 2011.

Sec. 42. The manual described in subsection 2 of NRS 116.605, as amended by section 31 of this act, must be prepared and made available by October 1, 2010.

Sec. 43. 1. This section becomes effective upon passage and approval.

2. Section 39 of this act becomes effective:

(a) Upon passage and approval for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On January 1, 2010, for all other purposes.

3. Sections 1 to 38, inclusive, 40, 41 and 42 of this act become effective on October 1, 2009.

Assemblyman Segerblom moved that the Assembly adopt the report of the Conference Committee concerning Senate Bill No. 182.

Motion carried by a constitutional majority.

#### MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, June 1, 2009

*To the Honorable the Assembly:*

I have the honor to inform your honorable body that the Senate amended, and on this day passed, as amended, Assembly Bill No. 397, Amendment No. 791, and respectfully requests your honorable body to concur in said amendment.

Also, I have the honor to inform your honorable body that the Senate amended, and on this day passed, as amended, Assembly Bill No. 451, Amendment No. 990, and respectfully requests your honorable body to concur in said amendment.

SHERRY L. RODRIGUEZ

*Assistant Secretary of the Senate*

#### CONSIDERATION OF SENATE AMENDMENTS

Assembly Bill No. 397.

The following Senate amendment was read:

Amendment No. 791.

AN ACT relating to community redevelopment; authorizing redevelopment agencies to expend money, subject to certain limitations, to improve schools located within certain cities or counties; requiring redevelopment agencies to file certain reports with the Director of the Legislative Counsel Bureau and with their respective governing bodies; **making an appropriation;** and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the legislative body of a community, having recognized the need for a redevelopment agency to function in the community, to establish a redevelopment revolving fund. (NRS 279.386, 279.396, 279.410, 279.620) Existing law also specifies the manner in which, and the permissible purposes for which, money may be expended from the redevelopment revolving fund. (NRS 279.628) ~~[This]~~ **Section 4 of this bill** expands the permissible purposes for which money may be expended from a redevelopment revolving fund to include use by a redevelopment agency for the improvement, with certain limitations, of schools in a city or county with a redevelopment area within its boundaries. **Sections 1 and 5** of this bill require a redevelopment agency to submit to the Director of the Legislative Counsel Bureau for transmittal to the Legislature and to the legislative body of the community a report when the agency has established a new redevelopment area and annual reports thereafter containing certain information relating to the redevelopment area.

**Section 6 of this bill makes an appropriation of \$15,000 to the Audit Division of the Legislative Counsel Bureau to conduct an audit of the use of property tax revenues received by redevelopment agencies.**

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

Section 1. Chapter 279 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. In addition to the report required pursuant to the provisions of subsection 2, and subject to the provisions of subsection 3, for each redevelopment area for which a redevelopment plan is adopted pursuant to the provisions of NRS 279.586 after the effective date of this act, on or before the January 1 next after the adoption of the plan, the agency shall submit to the Director of the Legislative Counsel Bureau, for transmittal to the Legislature, and to the legislative body a report on a form prescribed by the Committee on Local Government Finance that includes, without limitation, the following information for the redevelopment area:*

*(a) A legal description of the boundaries of the redevelopment area;*  
*(b) The date on which the redevelopment plan for the redevelopment area was adopted;*

*(c) The scheduled termination date of the redevelopment plan;*  
*(d) The total sum of the assessed value of the taxable property in the redevelopment area for:*

*(1) The fiscal year immediately preceding the adoption of the redevelopment plan; and*

*(2) The fiscal year during which the redevelopment plan was adopted, if such fiscal year ends before the reporting deadline;*

*(e) The combined overlapping tax rate of the redevelopment area;*

*(f) The property tax rate of the redevelopment area;*

*(g) The property tax revenue expected to be received from any tax increment area, as defined in NRS 278C.130, within the redevelopment area during the first fiscal year that the agency will receive an allocation pursuant to the provisions of NRS 279.676;*

*(h) Copies of any memoranda of understanding that the agency enters into during the fiscal year in which the redevelopment plan was adopted; and*

*(i) The amortization schedule for any debt incurred for the redevelopment area and the reasons for incurring the debt.*

*2. On or before January 1 of each year, for each redevelopment area for which a redevelopment plan has been adopted pursuant to the provisions of NRS 279.586, the agency shall submit to the Director of the Legislative Counsel Bureau, for transmittal to the Legislature, and to the legislative body a report on a form prescribed by the Committee on Local Government Finance that includes, without limitation, the following information for the redevelopment area for the previous fiscal year:*

*(a) The property tax revenue received from any tax increment area, as defined in NRS 278C.130, within the redevelopment area;*

*(b) The combined overlapping tax rate of the redevelopment area;*



- (c) *The property tax rate of the redevelopment area;*
- (d) *The total sum of the assessed value of the taxable property in the redevelopment area;*
- (e) *If the amount reported pursuant to the provisions of paragraph (d) is less than the amount reported pursuant to the provisions of paragraph (d) for any other previous fiscal year, an explanation of the reason for the difference;*
- (f) *Copies of any memoranda of understanding that the agency enters into;*
- (g) *The amortization schedule for any debt incurred for the redevelopment area, and the reasons for incurring the debt; and*
- (h) *Any change to the boundary of the redevelopment area and an explanation of the reason for the change.*

3. *Any report for a redevelopment area submitted pursuant to the provisions of subsection 1 must be submitted with the report for the redevelopment area submitted pursuant to the provisions of subsection 2.*

Sec. 2. NRS 279.382 is hereby amended to read as follows:

279.382 The provisions contained in NRS 279.382 to 279.685, inclusive, **and section 1 of this act**, may be cited as the Community Redevelopment Law.

Sec. 3. NRS 279.384 is hereby amended to read as follows:

279.384 As used in NRS 279.382 to 279.685, inclusive, **and section 1 of this act**, unless the context otherwise requires, the words and terms defined in NRS 279.386 to 279.414, inclusive, have the meanings ascribed to them in those sections.

Sec. 4. NRS 279.628 is hereby amended to read as follows:

279.628 1. By resolution of the legislative body adopted by a majority vote any money in the redevelopment revolving fund may be expended from time to time for:

- (a) The acquisition of real property in any redevelopment area.
- (b) The clearance, aiding in relocation of occupants of the site and preparation of any redevelopment area for redevelopment.

2. By resolution of the legislative body adopted by a two-thirds vote, any money in the redevelopment revolving fund may be paid to the agency, upon such terms and conditions as the legislative body may prescribe for any of the following purposes:

- (a) Deposit in a trust fund to be expended for the acquisition of real property in any redevelopment area.
- (b) The clearance of any redevelopment area for redevelopment.
- (c) Any expenses necessary or incidental to the carrying out of a redevelopment plan which has been adopted by the legislative body.

(d) ***Subject to the provisions of subsection 3, to be used by the agency for the improvement of schools in the community.***

**3. Money paid to the agency pursuant to paragraph (d) of subsection 2 may only be in the form of grants and may not be used for any regular expenses of a school.**

Sec. 5. On or before January 1, 2010, for each redevelopment area for which a redevelopment plan has been adopted pursuant to the provisions of NRS 279.586, the agency shall submit to the Director of the Legislative Counsel Bureau, for transmittal to the Legislature, and to the legislative body a report on a form prescribed by the Committee on Local Government Finance that includes, without limitation, the following information for the redevelopment area:

1. A legal description of the boundaries of the redevelopment area;
2. The date on which the redevelopment plan for the redevelopment area was adopted;
3. The scheduled termination date of the redevelopment plan;
4. The total sum of the assessed value of the taxable property in the redevelopment area for:
  - (a) The fiscal year immediately preceding the adoption of the redevelopment plan; and
  - (b) The fiscal year during which the redevelopment plan was adopted;
5. The combined overlapping tax rate of the redevelopment area;
6. The property tax rate of the redevelopment area;
7. The property tax revenue received from any tax increment area, as defined in NRS 278C.130, within the redevelopment area for the fiscal year ending June 30, 2009;
8. Copies of any memoranda of understanding that the agency enters into during the fiscal year ending June 30, 2009; and
9. The amortization schedule for any debt incurred for the redevelopment area and the reasons for incurring the debt.

~~Sec. 6. 1. There is hereby appropriated from the State General Fund to the Audit Division of the Legislative Counsel Bureau the sum of \$15,000 for an audit of the use of property tax revenues received by redevelopment agencies.~~

~~2. Any remaining balance of the appropriation made by subsection 1 must not be committed for expenditure after June 30, 2011, 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 16, 2011, 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 16, 2011.~~

~~Sec. 6.] Sec. 7.~~ This act becomes effective upon passage and approval.

Assemblywoman Kirkpatrick moved that the Assembly do not concur in the Senate amendment to Assembly Bill No. 397.

Remarks by Assemblywoman Kirkpatrick.

Motion carried.

Bill ordered transmitted to the Senate.

Assembly Bill No. 451.

The following Senate amendment was read:

Amendment No. 990.

SUMMARY—Establishes a program for the ~~issuance of state obligations to provide venture capital~~ **investment of state money in certificates of deposit at a reduced rate to provide lending institutions with money for reduced-rate loans** to certain ~~[minority-owned]~~ **small** businesses in this State. (BDR 31-613)

AN ACT relating to state obligations; establishing a program for the investment of state money in certificates of deposit at a reduced rate to provide lending institutions with money for reduced-rate loans to certain ~~[minority-owned and other]~~ small businesses in this State; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law allows the State Treasurer to invest the money of this State in negotiable certificates of deposit issued by commercial banks, insured credit unions or insured savings and loan associations. (NRS 355.140) Section 15 of this bill requires the State Treasurer to establish a Linked Deposit Program whereby the State, in an aggregate amount not to exceed \$20,000,000, invests in certificates of deposit with commercial banks, insured credit unions or insured savings and loan associations at a reduced rate of interest on the condition that the lending institution link the value of each certificate of deposit to a reduced-rate loan to certain types of small businesses. Section 15 also provides that the rate of interest paid to the State on the deposit is to be not more than 2 percentage points below the market rate for such a deposit, and the loan rate is to be reduced not more than 2 percentage points below the market rate for such a loan. Further, section 15 requires a lending institution to sign an agreement with the State Treasurer as to the terms of such a deposit and its linked loan.

Section 17 of this bill requires a lending institution that participates in the Linked Deposit Program to apply all the usual lending standards to determine the creditworthiness of a small business seeking a loan and further requires that a preference be given to certain small businesses that ~~;~~ **(1) are owned by a member of a racial or ethnic minority, a woman or an honorably discharged veteran of the Armed Forces of the United States, or (2) engage in the production and sale of fuel or power from an energy source other than a fossil fuel.** Section 19 of this bill limits such loans to not more than \$500,000 and to a term of not longer than 10 years. Section 18 of this bill limits the types of businesses that are eligible to participate in the Linked Deposit Program.

Section 21 of this bill prohibits the State Treasurer from making any new investments through the Linked Deposit Program after June 30, 2011.

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

Section 1. (Deleted by amendment.)

Sec. 2. (Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

Sec. 4. (Deleted by amendment.)

Sec. 5. (Deleted by amendment.)

Sec. 6. (Deleted by amendment.)

Sec. 7. (Deleted by amendment.)

Sec. 8. (Deleted by amendment.)

Sec. 9. (Deleted by amendment.)

Sec. 10. (Deleted by amendment.)

Sec. 11. (Deleted by amendment.)

Sec. 12. Chapter 355 of NRS is hereby amended by adding thereto the provisions set forth as sections 13 to 20, inclusive, of this act.

Sec. 13. *The Legislature hereby declares that the public policy of this State is to benefit the general welfare of the people of this State by improving the state economy through the encouragement of reduced-rate lending to minority-owned and certain other small businesses.*

Sec. 14. *As used in sections 13 to 20, inclusive, of this act, unless the context otherwise requires:*

1. *"Eligible small business" means a business that meets the requirements of section 18 of this act.*

2. *"Linked deposit" means a certificate of deposit issued pursuant to sections 15 to 20, inclusive, of this act to the State Treasurer by a qualified lending institution at an interest rate not more than 2 percent below the current market rate on the condition that the institution agrees to lend the value of the deposit, according to a deposit agreement made pursuant to section 15 of this act, to an eligible small business at a rate that is at least 2 percent lower than the current market rate for such a loan.*

3. *"Qualified lending institution" means a commercial bank, a savings and loan association or an insured credit union in this State that meets the eligibility requirements of section 16 of this act.*

Sec. 15. 1. *The State Treasurer shall establish a Linked Deposit Program to increase the availability of reduced-rate loans to certain small businesses owned and operated in this State.*

2. *The State Treasurer may invest in reduced-rate certificates of deposit with qualified lending institutions upon acceptance of a loan package pursuant to this section and section 17 of this act. Each certificate of deposit issued pursuant to this section by a qualified lending institution to the State Treasurer must be linked to a reduced-rate loan made by the qualified lending institution to an eligible small business.*

3. *The total amount invested in linked deposits by the State Treasurer at any one time may not exceed, in the aggregate, \$20,000,000.*

4. *The State Treasurer may accept or reject a linked deposit loan package presented by a qualified lending institution.*

5. *Upon acceptance of a linked deposit loan package from a qualified lending institution:*

(a) *The State Treasurer may place a linked deposit with the lending institution at a rate that is not more than 2 percentage points below the market rate for such a deposit at that lending institution. The State Treasurer shall determine and calculate all linked deposit rates.*

(b) *The qualified lending institution shall enter into a deposit agreement with the State Treasurer, which must include requirements necessary to carry out the purposes of sections 13 to 20, inclusive, of this act. The deposit agreement must specify, without limitation:*

(1) *The rate of interest to be paid on the deposit;*

(2) *The rate of interest to be charged for the loan linked to the deposit;*

(3) *That the qualified lending institution:*

(I) *Shall loan an amount equal to the amount of the deposit to an eligible small business at a rate that is reduced from the current market rate for such a loan in the same amount as the reduction in rate received from the State Treasurer for the linked deposit;*

(II) *Shall verify that the small business is eligible for such a loan;*

(III) *Shall collect and supply the State Treasurer with any information requested as to the loan and the eligible small business; and*

(IV) *Shall notify the State Treasurer immediately if the eligible small business becomes ineligible for the Linked Deposit Program during the term of the loan; and*

(4) *That the rate of interest to be paid on the deposit will revert to the current market rate at the time the eligible small business becomes ineligible for the Linked Deposit Program.*

6. *The State Treasurer shall compile and maintain on his Internet website a list of small businesses that have received loans from the Linked Deposit Program. The list must include, without limitation, for each business listed:*

(a) *The name of the business;*

(b) *The type of business;*

(c) *The location of the business;*

(d) *The amount and term of the linked deposit loan; and*

(e) *The name and location of the qualified lending institution that made the loan.*

Sec. 16. 1. ~~*The State Board of Finance shall qualify a lending institution for participation in the Linked Deposit Program established by the State Treasurer pursuant to section 15 of this act.*~~

~~2.1~~ To qualify for participation in the Linked Deposit Program, a lending institution must:

- (a) Be a commercial bank organized under chapter 659 of NRS, an insured savings and loan association organized under chapter 673 of NRS or an insured credit union organized under chapter 678 of NRS;
- (b) Agree to actively advertise to and inform small businesses of the availability of reduced-rate loans through the Linked Deposit Program;
- (c) Make information about the Linked Deposit Program available on the public Internet website of the institution, if any; and
- (d) Apply for qualification on a form provided by the State ~~Board of Finance.~~

~~2.1~~ Treasurer.

2. The State ~~Board of Finance~~ Treasurer shall adopt regulations necessary to carry out the provisions of this section.

Sec. 17. 1. A qualified lending institution that desires to receive a linked deposit shall accept and review applications for linked deposit loans from eligible small businesses on a form provided by the State Treasurer. The lending institution shall apply all usual lending standards to determine the creditworthiness of each eligible small business, including, without limitation, the consideration of:

- (a) Character, reputation and credit history of the applicant;
- (b) Experience and depth of management;
- (c) Strength of the business;
- (d) Past earnings, projected cash flow and future prospects;
- (e) Ability to repay the loan with earnings from the business;
- (f) Sufficient invested equity to operate on a sound financial basis; and
- (g) Potential for long-term success.

2. In determining which small business will receive a linked deposit loan, preference must be given, if the qualifications of the applicants are equal:

(a) First, to a business that is at least 51-percent owned by a resident of this State who is:

- (1) A member of a racial or ethnic minority;
- (2) A woman; or
- (3) An honorably discharged veteran of the Armed Forces of the United States.

(b) Second, to a business engaged in the production and sale of fuel or power from an energy source other than a fossil fuel, including, without limitation, geothermal, hydroelectric, solar or wind energy.

3. A qualified lending institution must submit a loan package to the State Treasurer for each Linked Deposit Program loan, on a form provided by the State Treasurer. The loan package must include, without limitation, verification by the qualified lending institution that the eligible small business meets the requirements of this section and section 18 of this act

*and that the use of proceeds as specified in the loan meets the requirements of section 19 of this act.*

*Sec. 18. 1. To be eligible for a loan from a qualified lending institution pursuant to the Linked Deposit Program established pursuant to section 15 of this act, a business must:*

- (a) Employ not more than 50 employees;*
- (b) Be headquartered in this State;*
- (c) Maintain offices or operating facilities in this State;*
- (d) Transact business in this State;*
- (e) Be organized for profit;*
- (f) Have gross annual sales of less than \$5,000,000 at the time of application pursuant to this section;*
- (g) Satisfy the lending criteria of the qualified lending institution;*
- (h) Submit verification of eligibility for a linked deposit loan with a qualified lending institution on a form provided by the State Treasurer; and*
- (i) Submit an application for a linked deposit loan with a qualified lending institution on a form provided by the qualified lending institution.*

*2. The following types of businesses are not eligible for a loan from a qualified lending institution under the Linked Deposit Program established pursuant to section 15 of this act:*

- (a) Nonprofit businesses;*
- (b) Financial businesses engaged primarily in the business of lending, including, without limitation, banks, finance companies and pawnbrokers;*
- (c) Speculative real estate development companies;*
- (d) Subsidiaries of businesses located in a foreign country;*
- (e) Businesses which have previously defaulted on a Linked Deposit Program loan or federally assisted financing; and*
- (f) Businesses which engage in any illegal activity, ~~for and~~*
- ~~*(g) Any business which is ineligible under regulations adopted by the State Treasurer pursuant to section 20 of this act.*~~

*Sec. 19. 1. A reduced-rate loan made pursuant to the Linked Deposit Program may not:*

- (a) Exceed \$500,000; and*
- (b) Have a term of more than 10 years.*

*2. An eligible small business may use loan proceeds from a linked deposit reduced-rate loan for the following purposes:*

- (a) Working capital;*
- (b) Real property acquisition;*
- (c) Establishing a line of credit;*
- (d) Financing of accounts receivable;*
- (e) Purchase of equipment, except that such equipment must not be purchased to replace the work or function of employees, resulting in layoffs or downsizing; and*

*(f) Any other purpose permissible under regulations adopted by the State Treasurer pursuant to section 20 of this act.*

Sec. 20. *The State Treasurer shall adopt regulations necessary to carry out the provisions of sections 13 to 20, inclusive, of this act.*

Sec. 21. Notwithstanding the provisions of section 15 of this act, the State Treasurer shall not accept a linked deposit loan package or invest in a reduced-rate certificate of deposit after June 30, 2011.

Sec. 22. This section and sections 12 to 21, inclusive, of this act become effective upon passage and approval for the purpose of adopting regulations and on October 1, 2009, for all other purposes.

Assemblywoman Kirkpatrick moved that the Assembly concur in the Senate amendment to Assembly Bill No. 451.

Remarks by Assemblywoman Kirkpatrick.

Motion carried by a constitutional majority.

Bill ordered to enrollment.

#### MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, June 1, 2009

*To the Honorable the Assembly:*

I have the honor to inform your honorable body that the Senate on this day sustained the Governor's veto of Assembly Bill No. 267.

Also, I have the honor to inform your honorable body that the Senate on this day passed Assembly Joint Resolution No. 1.

Also, I have the honor to inform your honorable body that the Senate on this day adopted the report of the Conference Committee concerning Assembly Bill No. 24; Assembly Bill No. 52; Assembly Bill No. 223; Assembly Bill No. 309; Assembly Bill No. 350; Assembly Bill No. 561; Senate Bill No. 35.

Also, I have the honor to inform your honorable body that the Senate on this day concurred in the Assembly Amendment No. 1001 to Senate Bill No. 3; Assembly Amendment No. 1002 to Senate Bill No. 212.

Also, I have the honor to inform your honorable body that the Senate on this day adopted the report of the Conference Committee concerning Senate Bill No. 263.

Also, I have the honor to inform your honorable body that the Senate on this day refused to adopt the report of the Conference Committee concerning Assembly Bill No. 454.

SHERRY L. RODRIGUEZ  
*Assistant Secretary of the Senate*

Madam Speaker announced if there were no objections, the Assembly would recess subject to the call of the Chair.

Assembly in recess at 11:47 p.m.

#### ASSEMBLY IN SESSION

At 11:53 p.m.

Madam Speaker presiding.

Quorum present.

SENATE CHAMBER, Carson City, June 1, 2009

*To the Honorable the Assembly:*

I have the honor to inform your honorable body that the Senate on this day adopted the report of the Conference Committee concerning Assembly Bill No. 88.



Also, I have the honor to inform your honorable body that the Senate on this day adopted Senate Concurrent Resolution No. 38.

SHERRY L. RODRIGUEZ  
*Assistant Secretary of the Senate*

SENATE CHAMBER, Carson City, June 2, 2009

*To the Honorable the Assembly:*

I have the honor to inform your honorable body that the Senate on this day adopted the report of the Conference Committee concerning Assembly Bill No. 385; Assembly Bill No. 523.

Also, I have the honor to inform your honorable body that the Senate on this day concurred in the Assembly Amendment No. 999 to Senate Bill No. 143; Assembly Amendment No. 1006 to Senate Concurrent Resolution No. 37.

SHERRY L. RODRIGUEZ  
*Assistant Secretary of the Senate*

#### UNFINISHED BUSINESS

#### SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the Speaker and Chief Clerk signed Assembly Bills Nos. 25, 46, 60, 121, 130, 146, 246, 259, 355, 410, 463, 467, 482, 492, 494, 503, 521, 543, 552, 562, 563; Assembly Concurrent Resolution No. 30; Senate Bills Nos. 17, 45, 101, 183, 234, 283, 412, 415.

#### GUESTS EXTENDED PRIVILEGE OF ASSEMBLY FLOOR

On request of Assemblyman Cobb, the privilege of the floor of the Assembly Chamber for this day was extended to Denis Gomez.

On request of Assemblyman Manendo, the privilege of the floor of the Assembly Chamber for this day was extended to Marie Manendo.

On request of Assemblyman Mortenson, the privilege of the floor of the Assembly Chamber for this day was extended to Sheila Sease.

Madam Speaker appointed Assemblymen Oceguela, Horne, and Gansert as a committee to wait upon His Excellency, Governor Jim Gibbons, Governor of the State of Nevada, and to inform him that the Assembly was ready to adjourn *sine die*.

Madam Speaker appointed Assemblymen Anderson, Leslie, and Stewart as a committee to wait upon the Senate and to inform that honorable body that the Assembly was ready to adjourn *sine die*.

Assemblyman Oceguela reported that his committee had informed the Governor that the Assembly was ready to adjourn *sine die*.

Assemblyman Oceguela moved that the Seventy-Fifth Session of the Assembly of the Legislature of the State of Nevada adjourn *sine die*.

Motion carried.

Adjourned at 11:56 p.m.

Approved:

BARBARA E. BUCKLEY  
*Speaker of the Assembly*

Attest: SUSAN FURLONG REIL  
*Chief Clerk of the Assembly*