THE NINETIETH DAY

CARSON CITY (Saturday), May 2, 2009

Senate called to order at 9:41 a.m.
President Krolicki presiding.
Roll called.
All present except Senator Lee, who was excused.
Prayer by Senator Maurice Washington.
Father God,
In the name of Jesus, we thank You for Your grace, Your goodness, Your love and Your kindness.
Thank you for this opportunity to be in this great Chamber doing the work of the people. We pray that you will give us insight, wisdom and direction. More than anything else, we pray that you will give us patience as we deal with the measures. Give us patience one for another and give us patience as we deliberate.
We pray, O God, that You and You alone will get all the glory and honor out of what we do and what we say and how we proceed.
This we pray in Christ Jesus' Name.

AMEN.

Pledge of Allegiance to the Flag.

Senator Horsford moved that further reading of the Journal be dispensed with, and the President and Secretary be authorized to make the necessary corrections and additions.
Motion carried.

REPORTS OF COMMITTEES

Mr. President:
Your Committee on Health and Education, to which were referred Assembly Bills Nos. 213, 364, 459, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

VALERIE WIENER, *Chair*

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, May 1, 2009

To the Honorable the Senate:
I have the honor to inform your honorable body that the Assembly on this day passed Senate Bills Nos. 199, 223, 342, 344.
Also, I have the honor to inform your honorable body that the Assembly on this day passed, as amended, Assembly Bill No. 395.
Also, I have the honor to inform your honorable body that the Assembly on this day adopted Senate Concurrent Resolution No. 2.
Also, I have the honor to inform your honorable body that the Assembly on this day concurred in the Senate Amendment No. 561 to Assembly Bill No. 114; Senate Amendment No. 562 to Assembly Bill No. 164; Senate Amendment No. 563 to Assembly Bill No. 187; Senate Amendment No. 96 to Assembly Bill No. 216; Senate Amendment No. 577 to Assembly Bill No. 322; Senate Amendment No. 515 to Assembly Bill No. 412.

DIANE M. KEETCH
Assistant Chief Clerk of the Assembly

MOTIONS, RESOLUTIONS AND NOTICES

Senator Horsford moved that the following persons be accepted as accredited press representatives, and that they be assigned space at the press table and allowed the use of appropriate media facilities: SUN PRODUCTIONS: Sunny Minedew and WINNEMUCCA PUBLISHING/HUMBOLDT TIMES: David M. Gouger.

Motion carried.

INTRODUCTION, FIRST READING AND REFERENCE

By the Committee on Finance:

Senate Bill No. 417—AN ACT relating to state financial administration; revising provisions governing the distribution of proceeds collected from certain fees that must be paid to reinstate the registration of a motor vehicle that has been suspended for failure to have proper insurance; and providing other matters properly relating thereto.

Senator Mathews moved that the bill be referred to the Committee on Finance.

Motion carried.

Assembly Bill No. 395.

Senator Care moved that the bill be referred to the Committee on Legislative Operations and Elections.

Motion carried.

SECOND READING AND AMENDMENT

Senate Bill No. 201.

Bill read second time and ordered to third reading.

Assembly Bill No. 29.

Bill read second time and ordered to third reading.

Assembly Bill No. 85.

Bill read second time and ordered to third reading.

Assembly Bill No. 194.

Bill read second time and ordered to third reading.

Assembly Bill No. 231.

Bill read second time and ordered to third reading.

Assembly Bill No. 242.

Bill read second time and ordered to third reading.

Assembly Bill No. 248.

Bill read second time.

The following amendment was proposed by the Committee on Commerce and Labor:

Amendment No. 574.

"SUMMARY—Revises provisions governing holding companies. (BDR 57-997)"

"AN ACT relating to holding companies; revising provisions relating to the approval of certain mergers or acquisitions of control; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

~~[Section 1 of this bill removes the requirement that the Commissioner of Insurance must approve certain mergers or acquisitions of control under certain circumstances and instead authorizes the Commissioner of Insurance to approve those mergers and acquisitions under those circumstances. Section 2 also revises]~~ *Sections 1 and 2 of this bill revise* the circumstances under which the Commissioner ~~[may]~~ *of Insurance shall* approve certain mergers or acquisitions and changes the process used by the Commissioner to approve those mergers or acquisitions. (NRS 692C.210*, 692C.256*)

Section 2 of this bill revises existing law so that certain circumstances related to competition which would have prevented the Commissioner from stopping an acquisition will only need to be considered by the Commissioner before stopping an acquisition. Section 2 also moves the burden from the Commissioner to the acquiring person to prove that no violation of competitive standards will exist after the acquisition. (NRS 692C.256)

Section 3 of this bill allows the Commissioner to consider the effect of an acquisition on the ~~[public]~~ interest *of the insurance-buying public* before issuing an order related to that acquisition. (NRS 692C.258)

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

Section 1. NRS 692C.210 is hereby amended to read as follows:

692C.210 1. Except as otherwise provided in subsection 5, the Commissioner shall ~~*[may]*~~ approve any merger or other acquisition of control referred to in NRS 692C.180 unless, after a public hearing thereon, he finds that:

(a) After the change of control, the domestic insurer specified in NRS 692C.180 would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(b) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this State or tend to create a monopoly;

(c) The financial condition of any acquiring party may jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of any remaining security holders who are unaffiliated with the acquiring party;

(d) The terms of the offer, request, invitation, agreement or acquisition referred to in NRS 692C.180 are unfair and unreasonable to the security holders of the insurer;

(e) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or

management, are unfair and unreasonable to policyholders of the insurer ~~[and]~~ *or* not in the public interest;

(f) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer ~~[and]~~ *or* of the public to permit the merger or other acquisition of control; ~~[or]~~

(g) If approved, the merger or acquisition of control would likely be harmful or prejudicial to the members of the public who purchase insurance ~~[.]~~ *; or*

(h) The practices of the applicant ~~[does not possess the ability to manage]~~ in managing claims ~~[according to applicable standards of market conduct.]~~ have evidenced a pattern in which the applicant has knowingly committed, or performed with such frequency as to indicate a general business practice of:

(1) Misrepresentation of pertinent facts or provisions of policies of insurance as they relate to coverages at issue;

(2) Failure to affirm or deny coverage of claims within a reasonable time after written proofs of loss have been furnished; or

(3) Failure to pay claims in a timely manner.

2. The public hearing specified in subsection 1 must be held within ~~[30]~~ *60* days after the statement required by NRS 692C.180 has been filed, and at least 20 days' notice thereof must be given by the Commissioner to the person filing the statement. Not less than 7 days' notice of the public hearing must be given by the person filing the statement to the insurer and to any other person designated by the Commissioner. The insurer shall give such notice to its security holders. The Commissioner shall make a determination within ~~[30]~~ *60* days after the conclusion of the hearing. If he determines that an infusion of capital to restore capital in connection with the change in control is required, the requirement must be met within 60 days after notification is given of the determination. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent and any other person whose interests may be affected thereby may present evidence, examine and cross-examine witnesses, and offer oral and written arguments and, in connection therewith, may conduct discovery proceedings in the same manner as is presently allowed in the district court of this State. All discovery proceedings must be concluded not later than 3 days before the commencement of the public hearing.

3. The Commissioner may retain at the acquiring party's expense attorneys, actuaries, accountants and other experts not otherwise a part of his staff as may be reasonably necessary to assist him in reviewing the proposed acquisition of control.

4. The period for review by the Commissioner must not exceed the 60 days allowed between the filing of the notice of intent to acquire required pursuant to subsection 2 of NRS 692C.180 and the date of the proposed acquisition if the proposed affiliation or change of control involves a financial institution, or an affiliate of a financial institution, and an insured.

5. When making a determination pursuant to paragraph (b) of subsection 1, the Commissioner:

(a) Shall require the submission of the information specified in subsection 2 of NRS 692C.254; *and*

(b) [~~Shall not disapprove the merger or acquisition of control if he finds that any of the circumstances specified in subsection 3 of NRS 692C.256 exist; and~~

~~(c)~~] May condition his approval of the merger or acquisition of control in the manner provided in subsection 4 of NRS 692C.258.

6. If, in connection with a change of control of a domestic insurer, the Commissioner determines that the person who is acquiring control of the domestic insurer must maintain or restore the capital of the domestic insurer in an amount that is required by the laws and regulations of this State, the Commissioner shall make the determination not later than 60 days after the notice of intent to acquire required pursuant to subsection 2 of NRS 692C.180 is filed with the Commissioner.

Sec. 2. NRS 692C.256 is hereby amended to read as follows:

692C.256 1. The Commissioner may issue an order pursuant to NRS 692C.258 relating to an acquisition if:

(a) The effect of the acquisition may substantially lessen competition in any line of insurance in this State or tend to create a monopoly; or

(b) The acquiring person fails to file sufficient materials or information pursuant to NRS 692C.254.

2. In determining whether to issue an order pursuant to subsection 1, the Commissioner shall consider the standards set forth in the Horizontal Merger Guidelines issued by the United States Department of Justice and the Federal Trade Commission and in effect at the time the Commissioner receives the notice required pursuant to NRS 692C.254.

3. The Commissioner shall [~~not issue~~] *, before issuing* an order specified in subsection 1 [~~:~~] *, consider:*

(a) If:

(1) The acquisition creates substantial economies of scale or economies in the use of resources that may not be created in any other manner; and

(2) The public benefit received from those economies exceeds the public benefit received from not lessening competition; or

(b) If:

(1) The acquisition substantially increases the availability of insurance; and

(2) The public benefit received by that increase exceeds the public benefit received from not lessening competition.

4. The public benefits set forth in subparagraph 2 of paragraphs (a) and (b) of subsection 3 may be considered together, as applicable, in assessing whether the public benefits received from the acquisition exceed any benefit to competition that would arise from disapproving the acquisition.

5. The ~~[Commissioner]~~ *acquiring person* has the burden of establishing *that the acquisition will not result in* a violation of the competitive standard set forth in subsection 1.

Sec. 3. NRS 692C.258 is hereby amended to read as follows:

692C.258 1. Except as otherwise provided in this section, if the Commissioner determines that an acquisition may substantially lessen competition in any line of insurance in this State , ~~[or]~~ tends to create a monopoly ~~[,]~~ *or is not in the ~~[public]~~ interest ~~[,]~~ of members of the public who purchase insurance,* he may issue an order:

(a) Requiring an involved insurer to cease and desist from doing business in this State relating to that line of insurance; or

(b) Denying the application of an acquired or acquiring insurer for a license or authority to do business in this State.

2. The Commissioner shall not issue an order pursuant to subsection 1 unless:

(a) He conducts a hearing concerning the acquisition in accordance with NRS 679B.310 to 679B.370, inclusive;

(b) A notice of the hearing is issued before the expiration of the waiting period for the acquisition specified in NRS 692C.254, but not less than 15 days before the hearing; and

(c) The hearing is conducted and the order is issued not later than 60 days after the expiration of the waiting period.

3. Each order issued pursuant to subsection 1 must include a written decision of the Commissioner setting forth his findings of fact and conclusions of law relating to the acquisition.

4. An order issued pursuant to this section does not become final until 30 days after it is issued, during which time the involved insurer may submit to the Commissioner a plan to remedy, within a reasonable period, the anticompetitive effect of the acquisition ~~[.]~~ *or the failure to protect the ~~[public]~~ interest ~~[.]~~ of members of the public who purchase insurance.* As soon as practicable after receiving the plan, the Commissioner shall, based upon the plan and any information included in the plan, issue a written determination setting forth:

(a) The conditions or actions, if any, required to:

(1) Eliminate the anticompetitive effect of the acquisition ~~[;]~~ *or protect the ~~[public]~~ interest ~~[;]~~ of members of the public who purchase insurance;* and

(2) Vacate or modify the order; and

(b) The period in which the conditions or actions specified in paragraph (a) must be performed.

5. An order issued pursuant to subsection 1 does not apply to an acquisition that is not consummated.

6. A person who violates a cease and desist order issued pursuant to this section during any period in which the order is in effect is subject, at the discretion of the Commissioner, to:

(a) The imposition of a civil penalty of not more than $10,000 per day for each day the violation continues;

(b) The suspension or revocation of the person's license or certificate of authority; or

(c) Both the imposition of a civil penalty pursuant to paragraph (a) and the suspension or revocation of the person's license or certificate of authority pursuant to paragraph (b).

7. In addition to any fine imposed pursuant to NRS 692C.480, any insurer or other person who fails to make any filing required by NRS 692C.252 to 692C.258, inclusive, and who fails to make a good faith effort to comply with any such requirement is subject to a fine of not more than $50,000.

8. The provisions of NRS 692C.430, 692C.440 and 692C.460 do not apply to an acquisition to which the provisions of NRS 692C.252 apply.

Senator Carlton moved the adoption of the amendment.

Remarks by Senators Carlton and Townsend.

Senator Carlton requested that the following remarks be entered in the Journal.

SENATOR CARLTON:

Amendment No. 574 to Assembly Bill No. 248 requires the Commissioner of Insurance to approve a merger or other acquisition if the Commissioner fails to make certain findings concerning such a transaction. The amendment makes changes to the standard for assessing the claims management practices of an applicant for such a transaction. The amendment also allows the Commissioner to deny a license or issue a cease-and-desist order if an acquisition is not in the interest of the members of the public who buy insurance.

SENATOR TOWNSEND:

Please explain the change of language that occurs twice in the bill on page 4 of the amendment, at the bottom, section 3, line 50, 51 and 52 and is repeated on page 5. It has to do with "it is not in the public interest" which is changed to "it is not in the interest of members of the public who purchase insurance."

SENATOR CARLTON:

It was an issue brought before the committee by all sides that they thought this language was more clarifying. We did not have a much deeper discussion on it. It did not seem to be contentious in any way. It was something that was agreed to by all sides just to make certain everyone understood whom this applied to.

SENATOR TOWNSEND:

In section 1, which has to do with the merger, acquisition and control within an insurance carrier, the Commissioner "shall," it used to say "may," "approve a merger unless he finds that…" with the new language on page 3 "…the practice of the applicant in managing claims having evidenced a pattern in which the applicant has knowingly committed or performed with such frequency as to indicate a general business practice of," at the bottom, "failure to pay claims in a timely manner." Where did this come from?

SENATOR CARLTON:

We had the Insurance Commissioner, the sponsor of the bill, and a representative from the Attorney General's Office all at the table discussing this. Portions of this were proposed by the Attorney General's Office and worked out with the sponsor. I was not involved in those conversations. I would not want to comment on what the actual discussion was. I am willing to roll this to the next legislative day so that I might obtain answers to the Senator's questions.

Senator Carlton moved that Assembly Bill No. 248 be taken from the Second Reading File and placed on the Second Reading File for the next legislative day.

Motion carried.

Assembly Bill No. 257.

Bill read second time and ordered to third reading.

Assembly Bill No. 259.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 578.

"SUMMARY—Makes various changes relating to criminal offenders. (BDR 16-631)"

"AN ACT relating to criminal offenders; revising provisions relating to the residential confinement of certain offenders; authorizing a court to provide for the forfeiture of credits for good behavior of a probationer under certain circumstances; revising provisions concerning certain credits to be applied to a period of probation or parole; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Existing law provides that an offender who has been convicted of a category B felony is not eligible for residential confinement. Section 1 of this bill requires the standards adopted by the Director of the Department of Corrections concerning eligibility for residential confinement to provide that an offender who has been convicted of a category B felony is eligible for residential confinement if: (1) the offender is not otherwise ineligible for residential confinement; and (2) the Director makes a written finding that assigning the offender to residential confinement is not likely to pose a threat to the safety of the public. (NRS 209.392)

Existing law authorizes the State Board of Parole Commissioners to provide for the forfeiture of credits for good behavior of a parolee who violates a condition of his parole and, as appropriate, for the restoration of such credits. Section 4 of this bill authorizes a court to provide for the forfeiture of credits for good behavior of a probationer who violates a condition of his probation and, as appropriate, for the restoration of such credits.

Existing law provides that an offender who is sentenced to serve a period of probation for a felony and who demonstrates certain good behavior must be allowed certain deductions from his period of probation. Section 5 of this bill amends existing law to provide generally that a person who is sentenced to a period of probation for a felony or a gross misdemeanor must be allowed a deduction from his period of probation of: (1) ten days for each month he serves and is current on any fee to defray the cost of his supervision and on any fines, fees and restitution ordered by the court; and (2) an additional

10 days for each month he serves and is actively involved in employment or enrolled in certain programs. (NRS 176A.500)

Existing law authorizes a court to order a probationer who violates a condition of his probation to a term of residential confinement and to direct the person to be confined, for not more than 6 months, to a community correctional center, conservation camp, facility of minimum security or other place of confinement operated by the Department of Corrections for the custody, care or training of offenders, other than a prison designed to house 125 or more offenders within a secure perimeter. Section 6 of this bill authorizes a court to direct such a person who was placed on probation for a felony conviction to be confined to any of those facilities and institutions, including a prison designed to house 125 or more offenders within a secure perimeter. Further, section 6 of this bill authorizes the Department of Corrections to select the facility or institution in which to place the person. (NRS 176A.660)

Section 3 of this bill amends chapter 213 of NRS, which governs parolees in a manner similar to section 6 of this bill. Section 3 provides that a parolee who is returned to confinement in a facility or institution of the Department of Corrections is authorized to earn credits to reduce his sentence pursuant to chapter 209 of NRS, with the exception of certain credits which are earned by an offender who is released on parole. (NRS 213.152)

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

Section 1. NRS 209.392 is hereby amended to read as follows:

209.392 1. Except as otherwise provided in NRS 209.3925 and 209.429, the Director may, at the request of an offender who is eligible for residential confinement pursuant to the standards adopted by the Director pursuant to subsection 3 and who has:

(a) Demonstrated a willingness and ability to establish a position of employment in the community;

(b) Demonstrated a willingness and ability to enroll in a program for education or rehabilitation; or

(c) Demonstrated an ability to pay for all or part of the costs of his confinement and to meet any existing obligation for restitution to any victim of his crime,

➥ assign the offender to the custody of the Division of Parole and Probation of the Department of Public Safety to serve a term of residential confinement, pursuant to NRS 213.380, for not longer than the remainder of his sentence.

2. Upon receiving a request to serve a term of residential confinement from an eligible offender, the Director shall notify the Division of Parole and Probation. If any victim of a crime committed by the offender has, pursuant to subsection 4 of NRS 213.130, requested to be notified of the consideration of a prisoner for parole and has provided a current address, the Division of Parole and Probation shall notify the victim of the offender's request and

advise the victim that he may submit documents regarding the request to the Division of Parole and Probation. If a current address has not been provided as required by subsection 4 of NRS 213.130, the Division of Parole and Probation must not be held responsible if such notification is not received by the victim. All personal information, including, but not limited to, a current or former address, which pertains to a victim and which is received by the Division of Parole and Probation pursuant to this subsection is confidential.

3. The Director, after consulting with the Division of Parole and Probation, shall adopt, by regulation, standards providing which offenders are eligible for residential confinement. The standards adopted by the Director must provide that an offender who:

(a) Has recently committed a serious infraction of the rules of an institution or facility of the Department;

(b) Has not performed the duties assigned to him in a faithful and orderly manner;

(c) Has been convicted of:

(1) Any crime that is punishable as a felony involving the use or threatened use of force or violence against the victim within the immediately preceding 3 years;

(2) A sexual offense that is punishable as a felony; or

(3) [~~A~~] *Except as otherwise provided in subsection 4, a* category A or B felony;

(d) Has more than one prior conviction for any felony in this State or any offense in another state that would be a felony if committed in this State, not including a violation of NRS 484.379, 484.3795, 484.37955 or 484.379778; or

(e) Has escaped or attempted to escape from any jail or correctional institution for adults,

➥ is not eligible for assignment to the custody of the Division of Parole and Probation to serve a term of residential confinement pursuant to this section.

4. *The standards adopted by the Director pursuant to subsection 3 must provide that an offender who has been convicted of a category B felony is eligible for assignment to the custody of the Division of Parole and Probation to serve a term of residential confinement pursuant to this section if:*

(a) The offender is not otherwise ineligible pursuant to subsection 3 for an assignment to serve a term of residential confinement; and

(b) The Director makes a written finding that such an assignment of the offender is not likely to pose a threat to the safety of the public.

5. If an offender assigned to the custody of the Division of Parole and Probation pursuant to this section escapes or violates any of the terms or conditions of his residential confinement:

(a) The Division of Parole and Probation may, pursuant to the procedure set forth in NRS 213.410, return the offender to the custody of the Department.

(b) The offender forfeits all or part of the credits for good behavior earned by him before the escape or violation, as determined by the Director. The Director may provide for a forfeiture of credits pursuant to this paragraph only after proof of the offense and notice to the offender and may restore credits forfeited for such reasons as he considers proper. The decision of the Director regarding such a forfeiture is final.

~~[5.]~~ *6.* The assignment of an offender to the custody of the Division of Parole and Probation pursuant to this section shall be deemed:

(a) A continuation of his imprisonment and not a release on parole; and

(b) For the purposes of NRS 209.341, an assignment to a facility of the Department,

➥ except that the offender is not entitled to obtain any benefits or to participate in any programs provided to offenders in the custody of the Department.

~~[6.]~~ *7.* An offender does not have a right to be assigned to the custody of the Division of Parole and Probation pursuant to this section, or to remain in that custody after such an assignment, and it is not intended that the provisions of this section or of NRS 213.371 to 213.410, inclusive, create any right or interest in liberty or property or establish a basis for any cause of action against the State, its political subdivisions, agencies, boards, commissions, departments, officers or employees.

Sec. 2. (Deleted by amendment.)

Sec. 3. NRS 213.152 is hereby amended to read as follows:

213.152 1. Except as otherwise provided in subsection ~~[6,]~~ *7,* if a parolee violates a condition of his parole, the Board may order him to a term of residential confinement in lieu of suspending his parole and returning him to confinement. In making this determination, the Board shall consider the criminal record of the parolee and the seriousness of the crime committed.

2. In ordering the parolee to a term of residential confinement, the Board shall:

(a) Require:

(1) The parolee to be confined to his residence during the time he is away from his employment, community service or other activity authorized by the Division; and

(2) Intensive supervision of the parolee, including, without limitation, unannounced visits to his residence or other locations where he is expected to be in order to determine whether he is complying with the terms of his confinement; or

(b) Require the parolee to be confined to a facility *or institution* of the Department of Corrections ~~[approved by the Board]~~ for a period not to exceed 6 months. *The Department may select the facility or institution in which to place the parolee.*

3. An electronic device approved by the Division may be used to supervise a parolee ordered to a term of residential confinement. The device must be minimally intrusive and limited in capability to recording or

transmitting information concerning the presence of the parolee at his residence, including, but not limited to, the transmission of still visual images which do not concern the activities of the person while inside his residence. A device which is capable of recording or transmitting:

(a) Oral or wire communications or any auditory sound; or

(b) Information concerning the activities of the parolee while inside his residence,

➥ must not be used.

4. *A parolee who is confined to a facility or institution of the Department of Corrections pursuant to paragraph (b) of subsection 2:*

(a) May earn credits to reduce his sentence pursuant to chapter 209 of NRS; and

(b) Shall not be deemed to be released on parole for purposes of NRS 209.447 or 209.4475 during the period of that confinement.

5. The Board shall not order a parolee to a term of residential confinement unless he agrees to the order.

~~[5.]~~ *6.* A term of residential confinement may not be longer than the unexpired maximum term of the original sentence of the parolee.

~~[6.]~~ *7.* The Board shall not order a parolee who is serving a sentence for committing a battery which constitutes domestic violence pursuant to NRS 33.018 to a term of residential confinement unless the Board makes a finding that the parolee is not likely to pose a threat to the victim of the battery.

~~[7.]~~ *8.* As used in this section ~~[, "facility"]~~ *:*

(a) "Facility" has the meaning ascribed to it in NRS 209.065.

(b) "Institution" has the meaning ascribed to it in NRS 209.071.

Sec. 4. Chapter 176A of NRS is hereby amended by adding thereto a new section to read as follows:

1. If a court before which a probationer is brought pursuant to NRS 176A.630 determines that the probationer has violated a condition of his probation, the probationer forfeits all or part of the credits for good behavior earned by him pursuant to NRS 176A.500 during his probation, in the discretion of the court.

2. A forfeiture may be made only by the court after proof of the violation and notice to the probationer.

3. The court may restore credits forfeited for such reasons as it considers proper.

4. If the court provides for the forfeiture or restoration of credits for good behavior of a probationer pursuant to this section, the clerk of the court shall notify the Chief Parole and Probation Officer of the forfeiture or restoration of credits.

Sec. 5. NRS 176A.500 is hereby amended to read as follows:

176A.500 1. The period of probation or suspension of sentence may be indeterminate or may be fixed by the court and may at any time be extended

or terminated by the court, but the period, including any extensions thereof, must not be more than:

(a) Three years for a:

(1) Gross misdemeanor; or

(2) Suspension of sentence pursuant to NRS 176A.260 or 453.3363; or

(b) Five years for a felony.

2. At any time during probation or suspension of sentence, the court may issue a warrant for violating any of the conditions of probation or suspension of sentence and cause the defendant to be arrested. Except for the purpose of giving a dishonorable discharge from probation, and except as otherwise provided in this subsection, the time during which a warrant for violating any of the conditions of probation is in effect is not part of the period of probation. If the warrant is cancelled or probation is reinstated, the court may include any amount of that time as part of the period of probation.

3. Any parole and probation officer or any peace officer with power to arrest may arrest a probationer without a warrant, or may deputize any other officer with power to arrest to do so by giving him a written statement setting forth that the probationer has, in the judgment of the parole and probation officer, violated the conditions of probation. Except as otherwise provided in subsection 4, the parole and probation officer, or the peace officer, after making an arrest shall present to the detaining authorities, if any, a statement of the charges against the probationer. The parole and probation officer shall at once notify the court which granted probation of the arrest and detention or residential confinement of the probationer and shall submit a report in writing showing in what manner the probationer has violated the conditions of probation.

4. A parole and probation officer or a peace officer may immediately release from custody without any further proceedings any person he arrests without a warrant for violating a condition of probation if the parole and probation officer or peace officer determines that there is no probable cause to believe that the person violated the condition of probation.

5. ~~[An offender]~~ *A person* who is sentenced to serve a period of probation for a felony ~~[who has no serious infraction of the regulations of the Division, the terms and conditions of his probation or the laws of the State recorded against him, and who performs in a faithful, orderly and peaceable manner the duties assigned to him,]~~ *or a gross misdemeanor* must be allowed for the period of his probation a deduction ~~[of 20]~~ *as set forth in subsection 6 if the offender is:*

(a) Current with any fee to defray the cost of his supervision charged pursuant to NRS 213.1076 and with any fines, fees and restitution ordered by the court, including, without limitation, any payment of restitution required pursuant to NRS 176A.430; and

(b) Actively involved in employment or enrolled in a program of education, rehabilitation or any other program approved by the Division.

6. ~~[A]~~ Except as otherwise provided in subsection 7, a person described in subsection 5 must be allowed for the period of his probation a deduction of:

(a) Ten days from that period for each month he serves ~~[.]~~ *and is current on any fees to defray the cost of his supervision owed and on any fines, fees and restitution ordered by the court; and*

(b) ~~[Except as otherwise provided in subsection 7, an]~~ An additional 10 days from that period for each month he serves and is actively involved in employment or enrolled in a program of education, rehabilitation or any other program approved by the Division.

7. A person who is sentenced to serve a period of probation for a felony or a gross misdemeanor and who ~~[is]~~ :

(a) Is a participant in a specialty court program must be allowed a deduction from the period of probation for being actively involved in employment or enrolled in a program of education, rehabilitation or any other program approved by the Division only if the person successfully completes the specialty court program ~~[.]~~ ; or

(b) Owes any restitution ordered by the court, including, without limitation, any payment of restitution required pursuant to NRS 176A.430, must be allowed a deduction from the period of probation for making payments of restitution only if the person pays the full amount of restitution imposed.

➥ Such a deduction must not exceed the length of time remaining on the person's period of probation.

8. As used in this section, "specialty court program" means a program established by a court to facilitate testing, treatment and oversight of certain persons over whom the court has jurisdiction and who the court has determined suffer from mental illnesses or abuse alcohol or drugs. Such a program includes, without limitation, a program established pursuant to NRS 176A.250 or 453.580.

Sec. 6. NRS 176A.660 is hereby amended to read as follows:

176A.660 1. If a person who has been placed on probation violates a condition of his probation, the court may order him to a term of residential confinement in lieu of causing the sentence imposed to be executed. In making this determination, the court shall consider the criminal record of the person and the seriousness of the crime committed.

2. In ordering the person to a term of residential confinement, the court shall:

(a) Direct that he be placed under the supervision of the Division and require:

(1) The person to be confined to his residence during the time he is away from his employment, community service or other activity authorized by the Division; and

(2) Intensive supervision of the person, including, without limitation, unannounced visits to his residence or other locations where he is expected to

be in order to determine whether he is complying with the terms of his confinement; or

(b) ~~[Direct]~~ *If the person was placed on probation for a felony conviction, direct* that he be placed under the supervision of the Department of Corrections and require the person to be confined to a facility *or institution* of the Department ~~[approved by the Division and the court]~~ for a period not to exceed 6 months. *The Department may select the facility or institution in which to place the person.*

3. An electronic device approved by the Division may be used to supervise a person ordered to a term of residential confinement. The device must be minimally intrusive and limited in capability to recording or transmitting information concerning the person's presence at his residence, including, but not limited to, the transmission of still visual images which do not concern the person's activities while inside his residence. A device which is capable of recording or transmitting:

(a) Oral or wire communications or any auditory sound; or

(b) Information concerning the person's activities while inside his residence,

➥ must not be used.

4. The court shall not order a person to a term of residential confinement unless he agrees to the order.

5. A term of residential confinement may not be longer than the maximum term of a sentence imposed by the court.

6. As used in this section ~~[, "facility"]~~ *:*

(a) "Facility" has the meaning ascribed to it in NRS 209.065.

(b) "Institution" has the meaning ascribed to it in NRS 209.071.

Sec. 7. 1. The amendatory provisions of this act apply to offenses committed before, on or after July 1, 2009.

2. For the purpose of calculating credits earned by a person pursuant to NRS 213.152, the amendatory provisions of section 3 of this act must be applied to credits earned by the person before, on or after July 1, 2009.

3. For the purpose of calculating credits earned by a person pursuant to NRS 176A.500, the amendatory provisions of section 5 of this act must be applied only to credits earned by the person on or after July 1, 2009.

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

Senator Care moved the adoption of the amendment.

Remarks by Senators Care and Carlton.

Senator Care requested that the following remarks be entered in the Journal.

SENATOR CARE:

The amendment allows a person on probation to earn credits toward a reduction of his sentence if he pays the full amount of the restitution he owes.

SENATOR CARLTON:

It is only restitution, not any of the fees that are associated along with the probation and parole?

SENATOR CARE:

This bill came on behalf of the Advisory Commission on the Administration of Justice.

The amendment states in subsection 7(b) of section 5 of the bill, it adds an additional circumstance under which a person who is sentenced to a period of probation for a felony or a gross misdemeanor could receive credits toward reduction of his sentence. This adds something else; as to fees, no, it does not say anything about fees.

SENATOR CARLTON:

My concern is that sometimes restitution fees are quite high and sometimes the victim has already been compensated through insurance so the person on parole or probation is actually paying restitution to the insurance company. As long as it is just restitution, I would hate to see us turn it into a debtor's parole-and-probation situation where a person has to pay to get out. Sometimes people do not have the resources to do that when the restitution costs end up with multiple zeros behind it.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 362.

Bill read second time and ordered to third reading.

Assembly Bill No. 516.

Bill read second time and ordered to third reading.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Care moved that Senate Bills Nos. 412, 414; Assembly Bills Nos. 47, 48, 49, 122, 168, 174, 177, 209, 230, 274, 353 be taken from the General File and placed on the General File for the next legislative day.

Motion carried.

UNFINISHED BUSINESS

SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the President and Secretary signed Assembly Bills Nos. 23, 28, 37, 61, 74, 93, 96, 105, 114, 133, 163, 164, 180, 187, 188, 216, 226, 247, 253, 264, 280, 286, 322, 332, 338, 384, 407, 412, 417, 477, 509, 517, 518.

REMARKS FROM THE FLOOR

Senator Horsford requested that his remarks be entered in the Journal.

I would like to make a few comments based on the Economic Forum's meeting yesterday and the final determination of the revenue projections that this Legislature will be required to use in balancing the State budget. Today, we face an even larger budget deficit than we thought we faced when the Session started 90 days ago.

Based on preliminary review of the Economic Forum's decisions, in order to fund the Governor's budget, as proposed in January, would require an additional $584 million in new revenue. Not that we need any reminder of what the Governor's budget does after more than three months of review, but it includes the 6-percent cuts to teachers' and state workers' salaries, eliminating retiree benefits, dismantling higher education due to 38 percent in cuts which would mean choosing between closing UNR or UNLV, and cuts to K-12 education that can not be sustained in the classroom.

Recognizing that there is 45 percent less revenue today than there was just two years ago, the decisions we will have to make in the closing weeks of this Legislature will continue to become even more difficult. In addition to the $584 million in revenue needed to fund the Governor's budget, the Legislature also has to make up another $200 million in the local school support

revenue as required in the Nevada Plan for our schools throughout the State. This results in at least a $784-million shortfall that this Legislature will have to address.

I think we all understand that deep cuts will be necessary. Fiscal discipline requires that we make the appropriate cuts we can. All of us will have to share in the pain these cuts will cause, and all of us will have to share in the solutions to balance the rest of the budget.

The Governor has told us that he wants to fill the budget gap by slashing education to the bone. I will not do that. I will not balance this budget solely on the backs of our schools and our children, period.

But, we will not be able to restore all of the Governor's cuts; the budget gap is too large. My goal is to restore as much education funding as possible. That is my sole goal through this process.

In order to restore some of the cuts, we will need to identify new revenue to fund education and healthcare for children and seniors. It is my hope and expectation that any new revenues would be shared by every Nevada citizen, company, interest group and corporation. Casinos, mining, unions, large corporations and taxpayers will all have to share in this burden. All of Nevada's interests must come together to share this burden. This will not be easy, but it can be done. It will take courage and hard work. But, we owe it to our children.

I do not know what these revenue increases will look like yet, and there is no secret plan being concocted despite what has been reported in the media and elsewhere. But, no one group, especially taxpayers, will bear the full burden. I will ask CEOs and casinos to pay their fair share. I will ask my family and your family to pay a share as well. I will ask everyone in Nevada to share this burden in order to protect our schools. Furthermore, it is important to note that any new revenue will largely support education since education currently accounts for nearly 55 percent of our state budget.

Today, I am asking hard-working Nevadans to make a sacrifice for their children's education and our State's future. I am also asking corporations, casinos and other interests to share in the revenue solution. I do not make these comments lightly, but I will not allow this Governor to make our children carry the entire burden for this budget gap.

Thank you, Mr. President.

Senator Horsford moved that the Senate adjourn until Monday, May 4, 2009, at 11 a.m.

Motion carried.

Senate adjourned at 10:01 a.m.

Approved: BRIAN K. KROLICKI
President of the Senate

Attest: CLAIRE J. CLIFT
Secretary of the Senate