

THE ONE HUNDRED AND FOURTEENTH DAY

CARSON CITY (Tuesday), May 26, 2009

Senate called to order at 11:52 a.m.

President Krolicki presiding.

Roll called.

All present except Senator Schneider, who was excused

Prayer by the Chaplain, Pastor Albert Tilstra.

Eternal Father, our shelter in the time of storm, our rock in a weary land. Lord, we live in challenging times that require more than human solutions for our problems. In the midst of these days, help our lawmakers to find in You a sure place to stand and a strong support they can absolutely trust. Give them such faith in You that they will seek and follow Your guidance, living lives that honor Your Name.

Rule in their hearts as they deliberate so that Your higher wisdom will prevail. Help them to remember that they must give an account to You for how responsible they are in carrying out their duties.

We pray in Your mighty Name.

AMEN.

Pledge of allegiance to the Flag.

Senator Mathews moved that the Senate recess subject to the call of the Chair.

Motion carried.

Senate in recess at 11:55 a.m.

SENATE IN SESSION

At 11:59 a.m.

President Krolicki presiding.

Quorum present.

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

MAGGIE CARLTON, *Vice Chair*

Mr. President:

Your Committee on Energy, Infrastructure and Transportation, to which was referred Assembly Bill No. 522, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MICHAEL A. SCHNEIDER, *Chair*

Mr. President:

Your Committee on Judiciary, to which was referred Assembly Bill No. 65, 81, 279, 554, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

TERRY CARE, *Chair*

MESSAGES FROM THE GOVERNOR

STATE OF NEVADA
EXECUTIVE CHAMBER
CARSON CITY, NEVADA 89701

May 21, 2009

THE HONORABLE SENATOR STEVEN A. HORSFORD *Majority Leader*,

Legislative Building, 401 South Carson Street, Carson City, NV 89701

DEAR SENATOR HORSFORD:

I am returning Senate Bill No. 201 to the 75th Session of the Nevada Legislature accompanied by my letter of objection.

Sincerely,

JIM GIBBONS

Governor of Nevada

May 25, 2009

THE HONORABLE SENATOR STEVEN A. HORSFORD *Majority Leader*,

Legislative Building, 401 South Carson Street, Carson City, NV 89701

DEAR SENATOR HORSFORD:

I am returning Senate Bill No. 283 to the 75th Session of the Nevada Legislature accompanied by my letter of objection.

Sincerely,

JIM GIBBONS

Governor of Nevada

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, May 23, 2009

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day concurred in the Senate Amendment No. 770 to Assembly Bill No. 152; Senate Amendments Nos. 699, 908, to Assembly Bill No. 162; Senate Amendments Nos. 601, 818, to Assembly Bill No. 262; Senate Amendments Nos. 696, 911 to Assembly Bill No. 287; Senate Amendment No. 765 to Assembly Bill No. 314; Senate Amendment No. 739 to Assembly Bill No. 319; Senate Amendments Nos. 679, 888 to Assembly Bill No. 378; Senate Amendments Nos. 764, 915 to Assembly Bill No. 381; Senate Amendment No. 838 to Assembly Bill No. 467; Senate Amendments Nos. 726, 903 to Assembly Bill No. 474; Senate Amendment No. 707 to Assembly Bill No. 535.

Also, I have the honor to inform your honorable body that the Assembly on this day respectfully refused to concur in the Senate Amendment No. 740 to Assembly Bill No. 181; Senate Amendment No. 812 to Assembly Bill No. 202; Senate Amendments Nos. 693, 876 to Assembly Bill No. 309; Senate Amendments Nos. 694, 871 to Assembly Bill No. 320; Senate Amendment No. 763 to Assembly Bill No. 454.

DIANE M. KEETCH

Assistant Chief Clerk of the Assembly

INTRODUCTION, FIRST READING AND REFERENCE

By the Committee on Finance:

Senate Bill No. 434—AN ACT relating to State Government; combining the Office of Disability Services of the Department of Health and Human Services and other disability programs with the Aging Services Division of the Department; renaming the Aging Services Division as the Aging and

Disability Services Division; and providing other matters properly relating thereto.

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

Motion carried.

By the Committee on Finance:

Senate Bill No. 435—AN ACT relating to statutes; revising certain legislative measures enacted during the 75th Session of the Legislature to correct technical errors and clarify legislative intent; and providing other matters properly relating thereto.

Senator Mathews moved that all necessary rules be suspended, reading so far had considered first reading, rules further suspended, and that Senate Bill No. 435 be declared an emergency measure under the Constitution and placed at the top of the General File on the next agenda for third reading and final passage.

Motion carried unanimously.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Carlton moved that Assembly Bill No. 522 be taken from the Second Reading File and placed on the Second Reading File for the next legislative day.

Motion carried.

UNFINISHED BUSINESS

CONSIDERATION OF ASSEMBLY AMENDMENTS

Senate Bill No. 312.

The following Assembly amendment was read:

Amendment No. 800.

"SUMMARY—Revises provisions governing the verification of motor vehicle liability insurance policies by the Department of Motor Vehicles. (BDR 43-286)"

"AN ACT relating to motor vehicles; revising provisions governing the verification of motor vehicle liability insurance policies by the Department of Motor Vehicles; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Existing law requires every owner of a motor vehicle which is registered or required to be registered in this State to continuously provide insurance for the payment of tort liabilities arising from the maintenance or use of the motor vehicle. (NRS 485.185) Existing law also requires the Department *of Motor Vehicles* to create a system to verify that owners of motor vehicles, other than golf carts and larger motortrucks, truck tractors and buses, maintain the required liability insurance. (NRS 485.130, 485.313) Section 4 of this bill adds provisions: (1) requiring the Department to work in cooperation with insurers to develop the system; (2) requiring that the verification be conducted through the secure transmission and receipt of information necessary to verify that owners of motor vehicles maintain the

required liability insurance; (3) authorizing the Department to contract with any person to provide services relating to the system; ~~and~~ (4) *requiring the Director of the Department to adopt certain regulations; and* (5) making the system applicable to *certain vehicles that are part of a fleet and all* motortrucks, truck tractors and buses.

If the Department determines that a motor vehicle is not covered by a policy of liability insurance, existing law requires the Department to send a form for verification of liability insurance to the owner of the vehicle. Section 7 of this bill amends the provisions relating to the Department's process for verifying whether the owner of the vehicle maintains liability insurance. (NRS 485.317)

Existing law provides that an owner of certain motor vehicles who provides proof of liability insurance provided by an insurance company that is not approved to do business in this State may register the motor vehicle and have 7 calendar days to provide proof of liability by an insurance company that is licensed and approved to do business in this State. (NRS 482.215) Section 2 of this bill removes the provision allowing an owner 7 calendar days to provide proof of liability insurance by an insurance company that is licensed and approved to do business in this State. Existing law further provides that the owner of a fleet of motor vehicles and certain other motor vehicles must provide evidence of liability insurance on a form that is satisfactory to the Department. (NRS 482.215) Section 2 specifies that such liability insurance must be provided by an insurance company licensed and approved to do business in this State. Section 5 of this bill deletes provisions of existing law that prescribe the specific form and content of the records of motor vehicle liability policies which insurers must provide to the Department. (NRS 485.314)

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

Section 1. NRS 481.063 is hereby amended to read as follows:

481.063 1. The Director may charge and collect reasonable fees for official publications of the Department and from persons making use of files and records of the Department or its various divisions for a private purpose. All money so collected must be deposited in the State Treasury for credit to the Motor Vehicle Fund.

2. Except as otherwise provided in subsection 5, the Director may release personal information, except a photograph, from a file or record relating to the driver's license, identification card, or title or registration of a vehicle of a person if the requester submits a written release from the person who holds a lien on the vehicle, or an agent of that person, or the person about whom the information is requested which is dated not more than 90 days before the date of the request. The written release must be in a form required by the Director.

3. Except as otherwise provided in subsection 2, the Director shall not release to any person who is not a representative of the Division of Welfare and Supportive Services of the Department of Health and Human Services or

an officer, employee or agent of a law enforcement agency, an agent of the public defender's office or an agency of a local government which collects fines imposed for parking violations, who is not conducting an investigation pursuant to NRS 253.0415, 253.044 or 253.220, who is not authorized to transact insurance pursuant to chapter 680A of NRS or who is not licensed as a private investigator pursuant to chapter 648 of NRS and conducting an investigation of an insurance claim:

(a) A list which includes license plate numbers combined with any other information in the records or files of the Department;

(b) The social security number of any person, if it is requested to facilitate the solicitation of that person to purchase a product or service; or

(c) The name, address, telephone number or any other personally identifiable information if the information is requested by the presentation of a license plate number.

↪ When such personally identifiable information is requested of a law enforcement agency by the presentation of a license plate number, the law enforcement agency shall conduct an investigation regarding the person about whom information is being requested or, as soon as practicable, provide the requester with the requested information if the requester officially reports that the motor vehicle bearing that license plate was used in a violation of NRS 205.240, 205.345, 205.380 or 205.445.

4. Except as otherwise provided in subsections 2 and 5, the Director shall not release any personal information from a file or record relating to a driver's license, identification card, or title or registration of a vehicle.

5. Except as otherwise provided in paragraph (a) and subsection 6, if a person or governmental entity provides a description of the information requested and its proposed use and signs an affidavit to that effect, the Director may release any personal information, except a photograph, from a file or record relating to a driver's license, identification card, or title or registration of a vehicle for use:

(a) By any governmental entity, including, but not limited to, any court or law enforcement agency, in carrying out its functions, or any person acting on behalf of a federal, state or local governmental agency in carrying out its functions. The personal information may include a photograph from a file or record relating to a driver's license, identification card, or title or registration of a vehicle.

(b) In connection with any civil, criminal, administrative or arbitration proceeding before any federal or state court, regulatory body, board, commission or agency, including, but not limited to, use for service of process, investigation in anticipation of litigation, and execution or enforcement of judgments and orders, or pursuant to an order of a federal or state court.

(c) In connection with matters relating to:

- (1) The safety of drivers of motor vehicles;
- (2) Safety and thefts of motor vehicles;

- (3) Emissions from motor vehicles;
- (4) Alterations of products related to motor vehicles;
- (5) An advisory notice relating to a motor vehicle or the recall of a motor vehicle;
- (6) Monitoring the performance of motor vehicles;
- (7) Parts or accessories of motor vehicles;
- (8) Dealers of motor vehicles; or
- (9) Removal of nonowner records from the original records of motor vehicle manufacturers.

(d) By any insurer, self-insurer or organization that provides assistance or support to an insurer or self-insurer or its agents, employees or contractors, in connection with activities relating to the rating, underwriting or investigation of claims or the prevention of fraud.

(e) In providing notice to the owners of vehicles that have been towed, repossessed or impounded.

(f) By an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license who is employed by or has applied for employment with the employer.

(g) By a private investigator, private patrolman or security consultant who is licensed pursuant to chapter 648 of NRS, for any use permitted pursuant to this section.

(h) By a reporter or editorial employee who is employed by or affiliated with any newspaper, press association or commercially operated, federally licensed radio or television station for a journalistic purpose. The Department may not make any inquiries regarding the use of or reason for the information requested other than whether the information will be used for a journalistic purpose.

(i) In connection with an investigation conducted pursuant to NRS 253.0415, 253.044 or 253.220.

(j) In activities relating to research and the production of statistical reports, if the personal information will not be published or otherwise redisclosed, or used to contact any person.

(k) In the bulk distribution of surveys, marketing material or solicitations, if the Director has adopted policies and procedures to ensure that:

(1) The information will be used or sold only for use in the bulk distribution of surveys, marketing material or solicitations;

(2) Each person about whom the information is requested has clearly been provided with an opportunity to authorize such a use; and

(3) If the person about whom the information is requested does not authorize such a use, the bulk distribution will not be directed toward that person.

6. Except as otherwise provided in paragraph (j) of subsection 5, a person who requests and receives personal information may sell or disclose that information only for a use permitted pursuant to subsection 5. Such a person shall keep and maintain for 5 years a record of:

- (a) Each person to whom the information is provided; and
- (b) The purpose for which that person will use the information.

↪ The record must be made available for examination by the Department at all reasonable times upon request.

7. Except as otherwise provided in subsection 2, the Director may deny any use of the files and records if he reasonably believes that the information taken may be used for an unwarranted invasion of a particular person's privacy.

8. Except as otherwise provided in NRS 485.316, the Director shall not allow any person to make use of information retrieved from the ~~{database}~~ system created pursuant to NRS 485.313 for a private purpose and shall not in any other way release any information retrieved from that ~~{database}~~ system.

9. The Director shall adopt such regulations as he deems necessary to carry out the purposes of this section. In addition, the Director shall, by regulation, establish a procedure whereby a person who is requesting personal information may establish an account with the Department to facilitate his ability to request information electronically or by written request if he has submitted to the Department proof of his employment or licensure, as applicable, and a signed and notarized affidavit acknowledging:

(a) That he has read and fully understands the current laws and regulations regarding the manner in which information from the Department's files and records may be obtained and the limited uses which are permitted;

(b) That he understands that any sale or disclosure of information so obtained must be in accordance with the provisions of this section;

(c) That he understands that a record will be maintained by the Department of any information he requests; and

(d) That he understands that a violation of the provisions of this section is a criminal offense.

10. It is unlawful for any person to:

(a) Make a false representation to obtain any information from the files or records of the Department.

(b) Knowingly obtain or disclose any information from the files or records of the Department for any use not permitted by the provisions of this chapter.

11. As used in this section, "personal information" means information that reveals the identity of a person, including, without limitation, his photograph, social security number, driver's license number, identification card number, name, address, telephone number or information regarding a medical condition or disability. The term does not include the zip code of a person when separate from his full address, information regarding vehicular accidents or driving violations in which he has been involved or other information otherwise affecting his status as a driver.

Sec. 2. NRS 482.215 is hereby amended to read as follows:

482.215 1. All applications for registration, except applications for renewal of registration, must be made as provided in this section.

2. Except as otherwise provided in NRS 482.294, applications for all registrations, except renewals of registration, must be made in person, if practicable, to any office or agent of the Department or to a registered dealer.

3. Each application must be made upon the appropriate form furnished by the Department and contain:

(a) The signature of the owner, except as otherwise provided in subsection 2 of NRS 482.294, if applicable.

(b) His residential address.

(c) His declaration of the county where he intends the vehicle to be based, unless the vehicle is deemed to have no base. The Department shall use this declaration to determine the county to which the governmental services tax is to be paid.

(d) A brief description of the vehicle to be registered, including the name of the maker, the engine, identification or serial number, whether new or used, and the last license number, if known, and the state in which it was issued, and upon the registration of a new vehicle, the date of sale by the manufacturer or franchised and licensed dealer in this State for the make to be registered to the person first purchasing or operating the vehicle.

(e) Except as otherwise provided in this paragraph, if the applicant is not an owner of a fleet of vehicles or a person described in subsection 5:

(1) Proof satisfactory to the Department or registered dealer that the applicant carries insurance on the vehicle ~~{, and if the insurance is not}~~ provided by an insurance company licensed by the Division of Insurance of the Department of Business and Industry and approved to do business in this State as required by NRS 485.185 ; ~~{, the applicant must meet the requirements of NRS 485.185 within 7 calendar days;}~~ and

(2) A declaration signed by the applicant that he will maintain the insurance required by NRS 485.185 during the period of registration. If the application is submitted by electronic means pursuant to NRS 482.294, the applicant is not required to sign the declaration required by this paragraph.

(f) If the applicant is an owner of a fleet of vehicles or a person described in subsection 5, evidence of insurance ~~{,}~~ *provided by an insurance company licensed by the Division of Insurance of the Department of Business and Industry and approved to do business in this State as required by NRS 485.185:*

(1) In the form of a certificate of insurance on a form approved by the Commissioner of Insurance;

(2) In the form of a card issued pursuant to NRS 690B.023 which identifies the vehicle ; ~~{and indicates, at the time of application for registration, coverage which meets the requirements of NRS 485.185;}~~ or

(3) In another form satisfactory to the Department.

➡ The Department may file that evidence, return it to the applicant or otherwise dispose of it.

(g) If required, evidence of the applicant's compliance with controls over emission.

4. The application must contain such other information as is required by the Department or registered dealer and must be accompanied by proof of ownership satisfactory to the Department.

5. For purposes of the evidence required by paragraph (f) of subsection 3:

(a) Vehicles which are subject to the fee for a license and the requirements of registration of the Interstate Highway User Fee Apportionment Act, and which are based in this State, may be declared as a fleet by the registered owner thereof on his original application for or application for renewal of a proportional registration. The owner may file a single certificate of insurance covering that fleet.

(b) Other fleets composed of 10 or more vehicles based in this State or vehicles insured under a blanket policy which does not identify individual vehicles may each be declared annually as a fleet by the registered owner thereof for the purposes of an application for his original or any renewed registration. The owner may file a single certificate of insurance covering that fleet.

(c) A person who qualifies as a self-insurer pursuant to the provisions of NRS 485.380 may file a copy of his certificate of self-insurance.

(d) A person who qualifies for an operator's policy of liability insurance pursuant to the provisions of NRS 485.186 and 485.3091 may file evidence of that insurance.

Sec. 3. NRS 482.480 is hereby amended to read as follows:

482.480 There must be paid to the Department for the registration or the transfer or reinstatement of the registration of motor vehicles, trailers and semitrailers, fees according to the following schedule:

1. Except as otherwise provided in this section, for each stock passenger car and each reconstructed or specially constructed passenger car registered to a person, regardless of weight or number of passenger capacity, a fee for registration of \$33.

2. Except as otherwise provided in subsection 3:

(a) For each of the fifth and sixth such cars registered to a person, a fee for registration of \$16.50.

(b) For each of the seventh and eighth such cars registered to a person, a fee for registration of \$12.

(c) For each of the ninth or more such cars registered to a person, a fee for registration of \$8.

3. The fees specified in subsection 2 do not apply:

(a) Unless the person registering the cars presents to the Department at the time of registration the registrations of all ~~to~~ the cars registered to him.

(b) To cars that are part of a fleet.

4. For every motorcycle, a fee for registration of \$33 and for each motorcycle other than a trimobile, an additional fee of \$6 for motorcycle safety. The additional fee must be deposited in the State Highway Fund for

credit to the Account for the Program for the Education of Motorcycle Riders.

5. For each transfer of registration, a fee of \$6 in addition to any other fees.

6. Except as otherwise provided in subsection ~~49~~ 7 of NRS 485.317, to reinstate the registration of a motor vehicle *that is* suspended pursuant to that section:

(a) A fee of \$250 for a registered owner who failed to have insurance on the date specified ~~[in the form for verification that was mailed]~~ by the Department ; ~~[pursuant to subsection 3 of NRS 485.317;]~~ or

(b) A fee of \$50 for a registered owner of a dormant vehicle who cancelled the insurance coverage for that vehicle or allowed the insurance coverage for that vehicle to expire without first cancelling the registration for the vehicle in accordance with subsection 3 of NRS 485.320,

↪ both of which must be deposited in the Account for Verification of Insurance which is hereby created in the State Highway Fund. The money in the Account must be used to carry out the provisions of NRS 485.313 to 485.318, inclusive.

7. For every travel trailer, a fee for registration of \$27.

8. For every permit for the operation of a golf cart, an annual fee of \$10.

9. For every low-speed vehicle, as that term is defined in NRS 484.527, a fee for registration of \$33.

10. To reinstate the registration of a motor vehicle that is suspended pursuant to NRS 482.451, a fee of \$33.

Sec. 4. NRS 485.313 is hereby amended to read as follows:

485.313 1. The Department ~~[shall]~~ :

(a) *Shall, in cooperation with insurers, create a system for verifying through the secure transmission and receipt of information that the owners of motor vehicles maintain the insurance required by NRS 485.185 ~~[]~~ ; and*

(b) *May enter into a contract with any person to provide services relating to the system.*

2. *The Director shall adopt regulations to carry out the provisions of this section, including, without limitation, regulations for verifying that registered owners described in paragraph (b) of subsection 5 of NRS 482.215 maintain the insurance required by NRS 485.185.*

3. *As used in this section, "motor vehicle" ~~[does]~~ :*

(a) Does not include ~~[]~~

~~(a) A~~ a golf cart as that term is defined in NRS 482.044.

(b) Includes, without limitation:

(1) A motortruck, truck tractor, bus or other vehicle that is registered pursuant to paragraph (c) of subsection 1 of NRS 482.482 or NRS 706.801 to 706.861, inclusive.

(2) A vehicle that is registered as part of a fleet of vehicles and described in paragraph (b) of subsection 5 of NRS 482.215.

Sec. 5. NRS 485.314 is hereby amended to read as follows:

485.314 1. ~~{On or before the 15th calendar day of each month, each}~~
Each insurer that has executed a contract of insurance for a motor vehicle liability policy which may be used to meet the requirements of NRS 485.185 shall ~~{provide the Department with}~~ *maintain* a record of each such policy ~~{issued, amended or terminated in the previous month on the date the record is provided. The record must include:~~

~~(a) The name or identification number of each insured named in the policy of insurance;~~

~~(b) The make, year and vehicle identification number of each motor vehicle included in the policy of insurance;~~

~~(c) The number, effective date and expiration date of the policy of insurance; and~~

~~(d) Any other information required by the Department.~~

~~2. The record provided pursuant to subsection 1 must be submitted}~~ in a ~~{form}~~ *format* approved by the Department and ~~{may include, without limitation, magnetic tape or any other electronic medium deemed acceptable by the Department.~~

~~3.} provide the Department with access to the record.~~

2. The Department shall notify the Commissioner of Insurance if an insurer:

(a) Fails to comply with subsection 1 ; ~~{or 2;}~~ or

(b) In complying with subsection 1 , ~~{or 2,}~~ provides to the Department information that is false, incomplete or misleading.

Sec. 6. NRS 485.316 is hereby amended to read as follows:

485.316 1. Except as otherwise provided in ~~{subsections}~~ *subsection 2* ~~{and 3}~~ and NRS 239.0115, information which is maintained in the ~~{database}~~ *system* created pursuant to NRS 485.313 is confidential.

2. The Department may only disclose information which is maintained in the ~~{database, upon request, to a}~~ *system to:*

(a) A state or local governmental agency for the purpose of enforcing NRS 485.185, including investigating or litigating a violation or alleged violation ~~{.~~

~~3. The Department may only disclose information retrieved from the database to:~~

~~(a)}~~ ;

(b) *An authorized insurer;*

(c) *A person:*

(1) *With whom the Department has contracted to provide services relating to the system created pursuant to NRS 485.313; and*

(2) *To whom the information is disclosed only pursuant to a nondisclosure or confidentiality agreement which relates to the information;*

(d) *A person who requests information regarding his own status;*

~~{(b)}~~ (e) *The parent or legal guardian of the person about whom the information is requested if the person is an unemancipated minor or legally incapacitated;*

~~{{e}}~~ (f) A person who has a power of attorney from the person about whom the information is requested;

~~{{d}}~~ (g) A person who submits a notarized release from the person about whom the information is requested which is dated no more than 90 days before the date of the request; or

~~{{e}}~~ (h) A person who has suffered a loss or injury in an accident involving a motor vehicle, or his authorized insurer or a representative of his authorized insurer, who requests:

- (1) Information for use in the accident report; and
- (2) For each motor vehicle involved in the accident:
 - (I) The name and address of each registered owner;
 - (II) The name of the insurer; and
 - (III) The number of the policy of liability insurance.

~~{4.}~~ 3. A person who knowingly violates the provisions of this section is guilty of a category D felony and shall be punished as provided in NRS 193.130.

~~{5.}~~ 4. As used in this section, "authorized insurer" has the meaning ascribed to it in NRS 679A.030.

Sec. 7. NRS 485.317 is hereby amended to read as follows:

485.317 1. ~~{Subject to the limitations set forth in this subsection and subsection 2, the}~~ The Department shall ~~{, at least monthly, compare the current registrations of motor vehicles to the information in the database created pursuant to NRS 485.313 to}~~ verify that each motor vehicle ~~{:~~

(a) ~~Which is newly}~~ which is registered in this State ~~{; or~~

(b) ~~For which a policy of liability insurance has been issued, amended or terminated;~~

~~↔}~~ is covered by a policy of liability insurance as required by NRS 485.185.

~~{In identifying a motor vehicle for verification pursuant to this subsection, the Department may, if the motor vehicle was manufactured during or after 1981, use only the last eight digits of the vehicle identification number. In comparing the vehicle identification number of a motor vehicle to the vehicle identification number in a policy of liability insurance, to determine if the two vehicle identification numbers match, the Department may find that the two vehicle identification numbers match if no fewer than seven of the last eight digits of the two vehicle identification numbers match.}~~

2. Except as otherwise provided in this subsection, the Department may use any information to verify ~~{, pursuant to subsection 1,}~~ whether ~~{the}~~ a motor vehicle is covered by a policy of liability insurance as required by NRS 485.185. The Department may not use the name of the owner of a motor vehicle as the primary means of verifying that a motor vehicle is covered by a policy of liability insurance.

3. If ~~{, pursuant to subsection 1,}~~ the Department ~~{determines}~~ is unable to verify that a motor vehicle is ~~{not}~~ covered by a policy of liability insurance as required by NRS 485.185, the Department shall send a ~~{form for verification}~~ request for information by first-class mail to ~~{each}~~ the

registered owner ~~{that it determines has not maintained the insurance required by NRS 485.185.}~~ of the motor vehicle. The owner shall ~~{complete the form with}~~ submit all the information which is requested ~~{by}~~ to the Department ~~{, including whether he carries an owner's or operator's policy of liability insurance or a certificate of self insurance, and return the completed form}~~ within ~~{20}~~ 15 days after the date on which the ~~{form}~~ request for information was mailed by the Department. If the Department does not receive the ~~{completed form}~~ requested information within ~~{20}~~ 15 days after it mailed the ~~{form}~~ request to the owner, the Department shall send to the owner a notice of suspension of registration by certified mail. The notice must inform the owner that unless ~~{he submits a completed form to}~~ the Department is able to verify that the motor vehicle is covered by a policy of liability insurance as required by NRS 485.185 within ~~{15}~~ 10 days after the date on which the notice was sent by the Department, his registration will be suspended pursuant to subsection ~~{5. This subsection does not prohibit an authorized agent of the owner from providing to the Department:~~

~~(a) The information requested by the Department pursuant to this subsection.~~

~~(b) Additional information to amend or correct information already submitted to the Department pursuant to this subsection.~~

~~4. When the Department receives a completed form for verification, it shall verify the information on the form.~~

~~5.}~~ 4.

4. The Department shall suspend the registration and require the return to the Department of the license plates of any vehicle for which the ~~{form for verification set forth in subsection 3 is:~~

~~(a) Not returned to the Department by the registered owner or his authorized agent within the period specified in that subsection;~~

~~(b) Returned to the Department by the registered owner or his authorized agent and the Department is not able to verify the information on the form; or~~

~~(c) Returned by the registered owner or his authorized agent with an admission of having no insurance or without indicating an insurer or the number of a motor vehicle liability policy or a certificate of self insurance.~~

~~6. If the Department suspends a registration pursuant to subsection 5 because:~~

~~(a) Neither the owner nor his authorized agent returned a form for verification within the specified period or the owner or his authorized agent returned a form for verification that was not completed sufficiently, and the owner or his authorized agent, thereafter:~~

~~(1) Proves to the satisfaction of the Department that there was a justifiable cause for his failure to do so;~~

~~(2) Submits a completed form regarding his insurance on the date stated in the form mailed by the Department pursuant to subsection 3; and~~

~~(3) Presents evidence of current insurance; or~~

~~(b) The owner or his authorized agent submitted to the Department a form for verification containing information that the Department was unable to verify and, thereafter, the owner or his authorized agent presents to the Department:~~

~~(1) A corrected form or otherwise verifiable evidence setting forth that the owner possessed insurance on the date stated in the form; and~~

~~(2) Evidence of current insurance;~~

~~the Department shall rescind its suspension of the registration if it is able to verify the information on the form or the other evidence presented. The Department shall not charge a fee to reinstate a registration, the suspension of which was rescinded pursuant to this subsection. For the purposes of this subsection, "justifiable cause" may include, but is not limited to, the fact that the owner did not receive the form mailed by the Department pursuant to subsection 3.~~

~~7. Except as otherwise provided in subsections 8 and 9, if a registered owner whose registration is suspended pursuant to subsection 5, failed to have insurance on the date specified in the form for verification,] Department cannot verify the coverage of liability insurance required by NRS 485.185.~~

5. Except as otherwise provided in subsection 6, the Department shall reinstate the registration of the vehicle and reissue the license plates only upon ~~{filing by the registered owner of evidence}~~ verification of current insurance and payment of the fee for reinstatement of registration prescribed in paragraph (a) of subsection 6 of NRS 482.480.

~~{8.}~~ 6. If a registered owner proves to the satisfaction of the Department that his vehicle was a dormant vehicle during the period in which the information provided pursuant to NRS 485.314 indicated that there was no insurance for the vehicle, the Department shall reinstate his registration and, if applicable, reissue his license plates. If such an owner of a dormant vehicle failed to cancel the registration for the vehicle in accordance with subsection 3 of NRS 485.320, the Department shall not reinstate his registration or reissue his license plates unless the owner pays the fee set forth in paragraph (b) of subsection 6 of NRS 482.480.

~~{9.}~~ 7. If the Department suspends the registration of a motor vehicle pursuant to subsection ~~{5}~~ 4 because the registered owner of the motor vehicle failed to have insurance on the date specified in the form for verification, and if the registered owner, in accordance with regulations adopted by the Department, proves to the satisfaction of the Department that he was unable to comply with the provisions of NRS 485.185 on that date because of extenuating circumstances, the Department may:

(a) Reinstate the registration of the motor vehicle and reissue the license plates upon payment by the registered owner of a fee of \$50, which must be deposited in the Account for Verification of Insurance created by subsection 6 of NRS 482.480; or

(b) Rescind the suspension of the registration without the payment of a fee.

↪ The Department shall adopt regulations to carry out the provisions of this subsection.

~~{10. For the purposes of verification of insurance by the Department pursuant to this section, a motor vehicle shall be deemed to be covered by liability insurance unless the motor vehicle is without coverage for a period of more than 7 days.}~~

~~{Sec. 2.}~~ Sec. 8. This act becomes effective:

1. 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

2. On February 1, 2010, for all other purposes.

Senator Carlton moved that the Senate concur in the Assembly amendment to Senate Bill No. 312.

Motion carried by a constitutional majority.

Bill ordered enrolled.

Senate Bill No. 332.

The following Assembly amendment was read:

Amendment No. 745.

"SUMMARY—Revises provisions governing the use of alternative fuels and clean vehicles. (BDR 43-1147)"

"AN ACT relating to vehicles; revising provisions governing the use of alternative fuels and clean vehicles by fleets owned, operated or leased by certain state agencies and local governing bodies; authorizing a program to provide incentives to acquire clean vehicles and motor vehicles that use alternative fuels; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Sections 1-11 of this bill revise provisions governing the use of alternative fuels by certain fleet vehicles. (NRS 486A.010-486A.180) Section 4 revises the definition of "alternative fuel" to authorize the State Environmental Commission to define the term by regulation. (NRS 486A.030) Section 5 revises the definition of "fleet" to limit the applicability of sections 1-11 to a fleet of 50 or more motor vehicles ~~(that)~~ which are registered in the same county and which are under the common control of and owned, leased or operated by a state agency or a local governing body. (NRS 486A.080) Section 6 excludes certain vehicles that have a manufacturer's gross vehicle weight rating of more than 26,000 pounds from the requirements of sections 1-11. (NRS 486A.110)

Section 12 of this bill revises provisions encouraging the voluntary use of clean vehicles and motor vehicles that use alternative fuels by persons who are not subject to the requirements of sections 1-11 of this bill. (NRS 486A.200)

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

Section 1. Chapter 486A of NRS is hereby amended by adding thereto a new section to read as follows:

"Clean vehicle" means any motor vehicle which complies with the ~~standards and requirements~~ specifications for clean vehicles established by the Commission.

Sec. 2. NRS 486A.010 is hereby amended to read as follows:

486A.010 The Legislature finds that:

1. ~~{Protection of the}~~ The State's environment, particularly the quality of its air, ~~{requires a reduction,}~~ *can be improved*, especially in metropolitan areas, ~~{of the contaminants resulting from the combustion of conventional fuels in motor}~~ *through the use of alternative fuels and clean vehicles.*

2. A very large proportion of ~~{these}~~ air contaminants ~~{results}~~ *result* from the burning of liquid and gaseous fuels to operate trucks and buses, many of which are operated in fleets. Each fuel can be evaluated as to the air pollution it causes when burned in motor vehicles ~~[-~~

~~3. Conversion of these fleets to use cleaner burning alternative fuels can reduce contaminants sufficiently to permit the continued use of conventional fuels in individually owned motor}~~ *, and particular models of motor vehicles can be evaluated to assess the amount of contaminants those motor vehicles emit.*

3. *Fleets operated by state agencies and local governing bodies can reduce air contaminants through the use of cleaner-burning alternative fuels and the acquisition of clean vehicles.*

Sec. 3. NRS 486A.020 is hereby amended to read as follows:

486A.020 As used in NRS 486A.010 to 486A.180, inclusive, *and section 1 of this act*, unless the context otherwise requires, the words and terms defined in NRS 486A.030 to 486A.130, inclusive, *and section 1 of this act* have the meanings ascribed to them in those sections.

Sec. 4. NRS 486A.030 is hereby amended to read as follows:

486A.030 "Alternative fuel" means any fuel which complies with the standards and requirements *for alternative fuel* established by the Commission. ~~{The term includes:~~

1. ~~Reformulated gasoline; and~~

2. ~~Finished diesel fuel that:~~

(a) ~~Meets ASTM International specification D975; and~~

(b) ~~Includes at least 5 percent biodiesel fuel blend stock for distillate fuels meeting ASTM International specification D6751;~~

~~↪ which comply with any applicable regulations adopted by the United States Environmental Protection Agency pursuant to the standards for the control of emissions from motor vehicles established in the Clean Air Act Amendments of 1990, Public Law 101 549, November 15, 1990.}~~ *The term does not include a fuel that is required for use in this State pursuant to a*

state implementation plan adopted by this State pursuant to 42 U.S.C. § 7410.

Sec. 5. NRS 486A.080 is hereby amended to read as follows:

486A.080 "Fleet" means ~~10~~ 50 or more motor vehicles ~~(that)~~ which are registered in the same county and which are under the common control of and owned, leased or operated by [the State or a local governing body. The term includes fleets that are used by the State.] a state agency or a local governing body. The term does not include long haul trucks for use in interstate transportation or motor vehicles held for lease or rental to the general public.

Sec. 6. NRS 486A.110 is hereby amended to read as follows:

486A.110 "Motor vehicle" means every vehicle which is self-propelled, but not operated on rails, used upon a highway for the purpose of transporting persons or property. The term does not include a:

1. Farm tractor as defined in NRS 482.035;
2. Moped as defined in NRS 482.069; ~~and~~
3. Motorcycle as defined in NRS 482.070 ~~[-]~~ ; and
4. Vehicle having a manufacturer's gross vehicle weight rating of more than 26,000 pounds, unless the vehicle is designed for carrying more than 15 passengers.

Sec. 7. NRS 486A.140 is hereby amended to read as follows:

486A.140 The provisions of NRS 486A.010 to 486A.180, inclusive, *and section 1 of this act* do not apply to:

1. The owner of a fleet of motor vehicles that operates only in a county whose population is less than 100,000.
2. Any governmental agency exempted by federal statute or regulation.
3. Any person exempted by the Commission.

Sec. 8. NRS 486A.150 is hereby amended to read as follows:

486A.150 The Commission shall adopt regulations necessary to carry out the provisions of NRS 486A.010 to 486A.180, inclusive, *and section 1 of this act*, including, ~~[but not limited to,]~~ without limitation, regulations concerning:

1. Standards and requirements for alternative fuel. ~~[The Commission shall]~~ In establishing standards and requirements for alternative fuel, the Commission:

(a) Must consider fuels that are recognized by the Environmental Protection Agency, the Department of Energy and the California Air Resources Board to improve air quality or reduce harmful air emissions.

(b) Shall not discriminate against any product that is petroleum based.

2. ~~[Standards and requirements]~~ Specifications for clean vehicles and motor vehicles that use alternative fuels. To the extent practicable and appropriate, the specifications established by the Commission must be consistent with the specifications established by the Environmental Protection Agency, the Department of Energy and the California Air Resources Board for the vehicle category and year of manufacture.

3. The ~~[conversion of fleets to use alternative fuels if the]~~ acquisition of clean vehicles and motor vehicles that use alternative fuels by a fleet that is operated in a county whose population is 100,000 or more ~~[-~~.

~~3. Standards for alternative fuel injection systems for diesel motor vehicles.] , including, without limitation, recordkeeping and reporting requirements concerning such vehicles.~~

4. Standards for levels of emissions from motor vehicles that are converted to use alternative fuels.

5. The establishment of a procedure for approving *variances or* exemptions to the requirements of NRS 486A.010 to 486A.180, inclusive ~~[-~~.

~~6. Standards related to the use of dedicated alternative fuel motor vehicles.] , and section 1 of this act. The Commission may approve a variance or exemption based upon:~~

~~(a) A determination by the Commission that compliance with the requirements of NRS 486A.010 to 486A.180, inclusive, and section 1 of this act:~~

~~(1) Would void or reduce the coverage under a manufacturer's warranty for any vehicle or vehicle component;~~

~~(2) Would result in financial hardship to the owner or operator of a fleet; or~~

~~(3) Is impractical because of the lack of availability of clean vehicles, alternative fuel or motor vehicles that use alternative fuel; or~~

~~(b) Any other reason which the Commission determines is appropriate.~~

Sec. 9. NRS 486A.160 is hereby amended to read as follows:

486A.160 1. The Department shall:

(a) Make such determinations and issue such orders as may be necessary to carry out the provisions of NRS 486A.010 to 486A.180, inclusive ~~[-]~~, *and section 1 of this act;*

(b) Enforce the regulations adopted by the Commission pursuant to the provisions of NRS 486A.010 to 486A.180, inclusive ~~[-]~~, *and section 1 of this act;* and

(c) Conduct any investigation, research or study necessary to carry out the provisions of NRS 486A.010 to 486A.180, inclusive ~~[-]~~, *and section 1 of this act.*

2. Upon request, the Department of Motor Vehicles shall provide to the Department information contained in records of registration of motor vehicles.

Sec. 10. NRS 486A.170 is hereby amended to read as follows:

486A.170 1. An authorized representative of the Department may enter and inspect any fleet of ~~[10 or more]~~ motor vehicles that is subject to the requirements of NRS 486A.010 to 486A.180, inclusive, *and section 1 of this act* to ascertain compliance with the provisions of NRS 486A.010 to 486A.180, inclusive, *and section 1 of this act* and any regulations adopted pursuant thereto.

2. A person who owns or leases a fleet of ~~[10 or more]~~ motor vehicles shall not:

(a) Refuse entry or access to the motor vehicles to any authorized representative of the Department who requests entry for the purpose of inspection as provided in subsection 1.

(b) Obstruct, hamper or interfere with any such inspection.

3. If requested by the owner or lessor of a fleet of motor vehicles, the Department shall prepare a report of an inspection made pursuant to subsection 1 setting forth all facts determined which relate to the owner's or lessor's compliance with the provisions of NRS 486A.010 to 486A.180, inclusive, *and section 1 of this act* and any regulations adopted pursuant thereto.

Sec. 11. NRS 486A.180 is hereby amended to read as follows:

486A.180 1. Except as otherwise provided in subsection 4, any person who violates any provision of NRS 486A.010 to 486A.180, inclusive, *and section 1 of this act* or any regulation adopted pursuant thereto, is guilty of a civil offense and shall pay an administrative fine levied by the Commission of not more than \$5,000. Each day of violation constitutes a separate offense.

2. The Commission shall by regulation establish a schedule of administrative fines of not more than \$1,000 for lesser violations of any provision of NRS 486A.010 to 486A.180, inclusive, *and section 1 of this act* or any regulation ~~[in force]~~ adopted pursuant thereto.

3. Action pursuant to subsection 1 or 2 is not a bar to enforcement of the provisions of NRS 486A.010 to 486A.180, inclusive, *and section 1 of this act* and *any regulations* ~~[in force]~~ adopted pursuant thereto, by injunction or other appropriate remedy. The Commission or the Director of the Department may institute and maintain in the name of the State of Nevada any such enforcement proceeding.

4. A person who fails to pay a fine levied pursuant to subsection 1 or 2 within 30 days after the fine is imposed is guilty of a misdemeanor. The provisions of this subsection do not apply to a person found by the court to be indigent.

5. The Commission and the Department shall deposit all money collected pursuant to this section in the State General Fund. Money deposited in the State General Fund pursuant to this subsection must be accounted for separately and may only be expended upon legislative appropriation.

Sec. 12. NRS 486A.200 is hereby amended to read as follows:

486A.200 1. After consulting with the Department of Business and Industry, the Department may, within limits of legislative appropriations or authorizations or grants available for this purpose, develop and carry out a program to provide incentives to encourage those persons who are not otherwise required to do so pursuant to NRS 486A.010 to 486A.180, inclusive, *and section 1 of this act* to ~~[use clean burning fuel in motor vehicles]~~ *acquire clean vehicles and motor vehicles that use alternative*

fuels. The program may include, without limitation, a method of educating the members of the general public concerning:

- (a) The program administered by the Department; and
- (b) The benefits of using ~~{clean-burning-fuel in}~~ *clean vehicles and motor vehicles* ~~{-} that use alternative fuels~~.

2. The Department may adopt regulations to carry out the provisions of this section.

3. As used in this section:

- (a) ~~["Clean-burning fuel" has the meaning ascribed to alternative fuel in 40 C.F.R. § 490.2.]~~ *"Clean vehicle" has the meaning ascribed to it in section 1 of this act.*

(b) "Department" means the State Department of Conservation and Natural Resources.

(c) "Motor vehicle" has the meaning ascribed to it in NRS 365.050.

Sec. 13. (Deleted by amendment.)

Sec. 14. NRS 486A.040, 486A.060 and 486A.090 are hereby repealed.

Sec. 15. This act becomes effective on July 1, 2009.

TEXT OF REPEALED SECTIONS

486A.040 "Bi-fueled motor vehicle" defined. "Bi-fueled motor vehicle" means a motor vehicle that is capable of operating on either a clean-burning alternative fuel or a traditional fuel, including, but not limited to, gasoline or diesel fuel.

486A.060 "Dedicated alternative fuel motor vehicle" defined. "Dedicated alternative fuel motor vehicle" means a motor vehicle that:

- 1. Operates only on an alternative fuel; or
- 2. Regardless of the type of fuel on which it operates, has been certified by the United States Environmental Protection Agency as being in compliance with the standards for the control of emissions from an ultra low-emission vehicle, or more stringent standards, as set forth in 40 C.F.R. § 88.104-94 or 88.105-94.

486A.090 "Flexible fueled vehicle" defined. "Flexible fueled vehicle" means a motor vehicle that is capable of operating on any mixture of an alternative fuel and a traditional fuel, including, but not limited to, gasoline or diesel fuel.

Senator Carlton moved that the Senate concur in the Assembly amendment to Senate Bill No. 332.

Remarks by Senators Carlton and McGinness.

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

SENATOR CARLTON:

The amendment clarifies the definition of "fleet" as vehicles registered in the same county as which they are under common control, and it also lists the specifications for clean vehicles. It also specifies that the term "alternative fuel" does not include a fuel that is required for use in the State pursuant to a State implementation plan adopted under 42 U.S.C. § 7410.

SENATOR MCGINNESS:

On page 4 of the amendment, line 21, "specification established by the Commission must be consistent with the specifications established by the Environmental Protection Agency, the Department of Energy and the California Air Resources Board for the vehicle." Why are we looking at the California standards? Do they set a benchmark?

SENATOR CARLTON:

I do not know. I will move this bill to the next legislative day when the Chair of the Energy, Infrastructure and Transportation Committee will be in the Chamber to answer questions.

Senator Carlton moved that Senate Bill No. 332 be taken from Unfinished Business File and placed on Unfinished Business File for the next legislative day.

Motion carried.

Senate Bill No. 338.

The following Assembly amendment was read:

Amendment No. 785.

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

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

Legislative Counsel's Digest:

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

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

section 1 requires the vehicle to be disposed of in the manner provided in chapter 487 of NRS for abandoned vehicles.

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

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

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

1. ~~1.1~~ Except as otherwise provided in subsection 2, a landlord who leases or subleases any commercial premises under a rental agreement that has been terminated for any reason may, in accordance with the following provisions, dispose of any abandoned personal property, regardless of its character, left on the commercial premises without incurring any civil or criminal liability:

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

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

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

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

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

(2) The landlord has taken reasonable steps to:

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

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

↪ The landlord shall be deemed to have taken the reasonable steps required by subparagraph (2) if the landlord has reviewed the results of a current search of the records in which a financing statement must be filed in order to

perfect a lien or security interest pursuant to chapter 104 of NRS for a financing statement naming the tenant as the debtor of a debt secured by the abandoned personal property and, if such a financing statement is found, mailed, to any secured party named on the financing statement at the address indicated on the financing statement, by certified mail, return receipt requested, a written notice stating that the abandoned personal property has been left on the premises.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. A landlord or his agent who serves a notice to a tenant pursuant to paragraph (b) of subsection 1 shall attempt to deliver the notice in person in the manner set forth in paragraph (a) of subsection 1 of NRS 40.280. If the notice cannot be delivered in person, the landlord or his agent:

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

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

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

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

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

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

5. Upon noncompliance with the notice:

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

- (1) The date the tenancy commenced.
- (2) The amount of periodic rent reserved.
- (3) The amounts of any cleaning, security or rent deposits paid in advance, in excess of the first month's rent, by the tenant.
- (4) The date the rental payments became delinquent.
- (5) The length of time the tenant has remained in possession without paying rent.
- (6) The amount of rent claimed due and delinquent.
- (7) A statement that the written notice was served on the tenant in accordance with NRS 40.280.
- (8) A copy of the written notice served on the tenant.
- (9) A copy of the signed written rental agreement, if any.

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

6. Upon the filing by the tenant of the affidavit permitted in subsection 3, regardless of the information contained in the affidavit, and the filing by the landlord of the affidavit permitted by subsection 5, the Justice Court or the district court shall hold a hearing, after service of notice of the hearing upon the parties, to determine the truthfulness and sufficiency of any affidavit or notice provided for in this section. If the court determines that there is no legal defense as to the alleged unlawful detainer and the tenant is guilty of an unlawful detainer, the court may issue a summary order for removal of the tenant or an order providing for the nonadmittance of the tenant. If the court

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

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

- (a) The tenant has vacated or been removed from the premises; and
 - (b) A copy of those charges has been requested by or provided to the tenant,
- ↪ whichever is later.

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

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

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

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

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

Senator Amodei moved that the Senate concur in the Assembly amendment to Senate Bill No. 338.

Remarks by Senator Amodei.

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

SENATOR AMODEI:

On pages 3 and 4 of the bill, it talks about a procedure whereby a landlord of a commercial property must do one of two things to act upon the property of a tenant who has left that property behind after the conclusion of the lease. The landlord must determine that the property is the property of the tenant and must provide notice at the tenant's last known address. If he does not believe it is the tenant's property, he has to search the databases that contain financing statements similar to the Uniform Commercial Code 1 and 2 process. After those processes are taken care of, if he determines the items are the property of the tenant, then, he must provide actual notice of his intent in 14 days to allow that person to reclaim that property. If it is financed and there is a security interest held or perfected in the property, he must give 14 days' notice to the person who has perfected the security interest in the property before executing on it.

SENATOR RAGGIO:

Thank you for the answers to my questions on a previous day. I understand from the information I received that this applies only to a commercial property. It is a matter of searching for the UCC records. It is not an obstacle.

Conflict of interest declared by Senator Raggio.

Motion carried by a constitutional majority.

Bill ordered enrolled.

Senate Bill No. 246.

The following Assembly amendments were read:

Amendment No. 743.

"SUMMARY—Revises provisions governing the sale of vehicles. (BDR 43-989)"

"AN ACT relating to vehicles; prohibiting a manufacturer from requiring a dealer to alter substantially an existing facility of the dealer or construct a new facility except under certain circumstances; prohibiting a manufacturer from taking adverse action against a dealer relating to the exportation of a vehicle outside the United States except under certain circumstances; providing for the licensure of an agent of a broker; revising provisions governing the modification or replacement of a franchise; establishing fees; providing a penalty; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Section 2 of this bill prohibits a manufacturer from requiring a dealer to alter substantially an existing facility or to construct a new facility for any new vehicles that are handled by the dealer under certain circumstances. Section 2 also provides that such a requirement constitutes a modification of the franchise of the dealer.

Section 3 of this bill prohibits a manufacturer from taking adverse action against a dealer who sells a vehicle which is later exported outside the United States, unless the dealer had actual knowledge of or reasonably should have known of the exportation of the vehicle.

Sections 5 and 14 of this bill provide for the licensure of an agent for a broker of vehicles in this State. A person who violates the provisions governing the licensure of such agents is guilty of a misdemeanor.

Section 8 of this bill provides that if a manufacturer is purchased by another manufacturer or entity, a dealer must be offered a franchise agreement that is substantially similar to the franchise agreement offered to other dealers of the same line-make vehicles. Section 8 defines such vehicles as those vehicles which are offered for sale, lease or distribution under the same name, trademark, service mark or brand of the manufacturer of the vehicles. (NRS 482.36354)

~~§ Section 13 of this bill provides that the forms for the application for credit and contracts to be used in the sale of vehicles prescribed by the Commissioner of Financial Institutions must contain a provision that provides if the seller elects to rescind the contract, he must provide written notice to the buyer not more than 20 days after the date of the contract. (NRS 97.209)~~

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

Section 1. Chapter 482 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

Sec. 2. 1. *A manufacturer shall not require a dealer:*

- (a) *To alter substantially an existing facility of the dealer; or*
- (b) *To construct a new facility,*

↪ for any new vehicles that are handled by the dealer, unless the alteration or new construction constitutes a reasonable facility requirement in accordance with the franchise agreement.

2. *If a manufacturer requires a substantial alteration of an existing facility of the dealer or requires the dealer to construct a new facility, that requirement constitutes a modification of the franchise of the dealer for the purposes of this section, NRS 482.36311 to 482.36425, inclusive, and sections 3 and 4 of this act.*

Sec. 3. *A manufacturer shall not modify the franchise of a dealer or take any adverse action against a dealer that sells a vehicle which is later exported outside the United States, unless the dealer had actual knowledge of or reasonably should have known of the exportation of the vehicle.*

Sec. 4. (Deleted by amendment.)

Sec. 5. 1. *A person shall not engage in the activity of an agent for a broker, or act in the capacity of an agent in this State without first having received a license or temporary permit from the Department. Before issuing a license or temporary permit to engage in the activity of an agent, the Department shall require the applicant to submit to the Department:*

- (a) *An application, signed and verified by the applicant, stating:*
- (1) *That the applicant is to engage in the activity of an agent;*

(2) *The name, residence address and social security number of the applicant; and*

(3) *The name and address of the employer of the applicant.*

(b) *Proof of the employment of the applicant by a broker at the time the application is filed.*

(c) *A statement as to whether any previous application of the applicant has been denied or any previous license of the applicant has been revoked.*

(d) *Payment of a nonrefundable license fee of \$75. The license expires on December 31 of each calendar year and may be renewed annually upon the payment of a fee of \$40.*

(e) *For initial licensure, a complete set of his fingerprints and written permission authorizing the Department to forward those fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report.*

(f) *Any other information the Department determines necessary.*

2. *The Department may issue a 60-day temporary permit to an applicant who has submitted a complete application and paid the required fee.*

3. *A license to act as an agent of a broker issued pursuant to this section does not authorize a person to engage in the business of selling mobile homes.*

4. *The Department may deny an application for a license as an agent or suspend or revoke a license issued pursuant to this section upon any of the following grounds:*

(a) *Failure of the applicant to establish by proof satisfactory to the Department that he is employed by a broker.*

(b) *Conviction of a felony.*

(c) *Conviction of a gross misdemeanor.*

(d) *Conviction of a misdemeanor for a violation of any of the provisions of this chapter.*

(e) *Falsification of the application.*

(f) *Evidence of unfitness as described in NRS 482.3255.*

(g) *Failure of the applicant to provide any information determined necessary by the Department to process the application.*

(h) *Any reason determined by the Director to be in the best interests of the public.*

5. *An agent shall not engage in any activity, or act in any other capacity as an agent other than for the account of, or for and on behalf of, a single employer, at a specified place of business of that employer, who must be a broker.*

6. *If an application for a license as an agent is denied, the applicant may reapply for a license not less than 6 months after the denial.*

7. *An agent's license must be posted in a conspicuous place on the premises of the broker by whom the agent is employed.*

8. *If an agent ceases to be employed by a broker, his license to act as an agent is automatically suspended and his right to act as an agent*

immediately ceases, and he shall not engage in the activity of an agent until he has:

(a) Paid the Department a transfer fee of \$20 and submitted a certificate of employment indicating that he has been reemployed by a broker; and

(b) Presented a current temporary permit or new license to the broker by whom he is employed.

9. *If an agent changes his residential address, he shall submit a written notice of the change to the Department within 10 days after the change occurs.*

10. *If a person who holds a temporary permit to act as an agent ceases to be employed by a broker, his permit to act as an agent is automatically suspended, his right to act as an agent immediately ceases and his application for licensure must be denied until he has:*

(a) Paid the Department a transfer fee of \$20 and submitted a certificate of employment indicating that he has been reemployed by a broker; and

(b) Presented a current temporary permit or new license to the broker by whom he is employed.

11. *A broker who employs an agent shall notify the Department of the termination of employment of the agent not later than 10 days after the date of termination by forwarding the license of the agent to the Department.*

12. *Any person who fails to comply with the provisions of this section is guilty of a misdemeanor except as otherwise provided in NRS 482.555.*

13. *As used in this section, "agent" means a person who is employed by a broker and who, for a fee or any other consideration, assists the broker in offering to provide to another person the service of arranging, negotiating or assisting in the purchase of a new or used vehicle which has not been registered or for which an ownership interest has not been taken by the broker.*

Sec. 6. NRS 482.319 is hereby amended to read as follows:

482.319 1. Except as otherwise provided in subsection 5, a natural person who applies for the issuance or renewal of a license issued pursuant to the provisions of NRS 482.318 to 482.363105, inclusive, *and section 5 of this act* shall submit to the Department 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 Department 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 Department.

3. A license may not be issued or renewed by the Department pursuant to the provisions of NRS 482.318 to 482.363105, inclusive, *and section 5 of this act* if the applicant is a natural person who:

- (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 Department 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.

5. If a licensee renews an existing license electronically, the licensee shall keep the original of the statement required pursuant to subsection 1 at his place of business for not less than 3 years after submitting the electronic renewal. The statement must be available during business hours for inspection by any authorized agent of the Director or the State of Nevada.

Sec. 7. NRS 482.3195 is hereby amended to read as follows:

482.3195 1. If the Department 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 issued pursuant to NRS 482.318 to 482.363105, inclusive, *and section 5 of this act*, the Department 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 Department 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 Department shall reinstate a license issued pursuant to NRS 482.318 to 482.363105, inclusive, *and section 5 of this act* that has been suspended by a district court pursuant to NRS 425.540 if the Department 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. 7.5. NRS 482.36311 is hereby amended to read as follows:

482.36311 As used in NRS 482.36311 to 482.36425, inclusive, *and sections 2, 3 and 4 of this act*, unless the context otherwise requires, the words and terms defined in NRS 482.36318 to 482.36348, inclusive, have the meanings ascribed to them in those sections.

Sec. 8. NRS 482.36354 is hereby amended to read as follows:

482.36354 1. A manufacturer or distributor shall not modify the franchise of a dealer or replace the franchise with another franchise if the

modification or replacement would have a substantially adverse effect upon the dealer's investment or his obligations to provide sales and service, unless:

(a) The manufacturer or distributor has given written notice of its intention to the Director and the dealer affected by the intended modification or replacement; and

(b) Either of the following conditions occurs:

(1) The dealer does not file a protest with the Director within 30 days after receiving the notice; or

(2) After a protest has been filed with the Director and the Director has conducted a hearing, the Director issues an order authorizing the manufacturer or distributor to modify or replace the franchise.

2. The notice required by subsection 1 must be given to the dealer and to the Director at least 60 days before the date on which the intended action is to take place.

3. If a manufacturer or distributor changes the area of primary responsibility of a dealer, the change constitutes a modification of the franchise of the dealer for the purposes of NRS 482.36311 to 482.36425, inclusive ~~and~~, *and sections 2, 3 and 4 of this act*. As used in this subsection, "area of primary responsibility" means the geographic area in which a dealer, pursuant to a franchise agreement, is responsible for selling, servicing and otherwise representing the products of a manufacturer or distributor.

4. *Notwithstanding the provisions of this section, if a manufacturer is purchased by another manufacturer or entity, a dealer must be offered a franchise agreement that is substantially similar to the franchise agreement offered to other dealers of the same line-make vehicles.*

5. *As used in this section, "line-make vehicles" means those vehicles which are offered for sale, lease or distribution under the same name, trademark, service mark or brand of the manufacturer of the vehicles.*

Sec. 8.2. NRS 482.36366 is hereby amended to read as follows:

482.36366 1. Each witness, other than an officer or employee of the State or of a political subdivision of the State or an expert witness, who appears by order of the Director in a hearing pursuant to NRS 482.36311 to 482.36425, inclusive, *and sections 2, 3 and 4 of this act* is entitled to receive for his attendance the same fees allowed by law to witnesses in civil cases. Except as otherwise provided in subsection 2, the amount must be paid by the party at whose request the witness is ordered to appear.

2. The Director may assess other costs against the parties as he deems appropriate. After any hearing on a protest filed pursuant to NRS 482.36352, 482.36354 or 482.36357, if the Director determines that the manufacturer or distributor has failed to establish that there is good cause to terminate, refuse to continue, modify or replace a franchise, or to establish an additional dealership or relocate an existing dealership, the Director shall award to the dealer his attorney's fees and costs.

3. For the purposes of this section, "costs" includes:

(a) Except as otherwise provided in paragraph (b), any applicable cost set forth in NRS 18.005; and

(b) The actual amount of any fees paid by a dealer to an expert witness in connection with the hearing.

Sec. 8.4. NRS 482.3638 is hereby amended to read as follows:

482.3638 It is an unfair act or practice for any manufacturer, distributor or factory branch, directly or through any representative, to:

1. Require a dealer to agree to a release, assignment, novation, waiver or estoppel which purports to relieve any person from liability imposed by this chapter, or require any controversy between a dealer and a manufacturer, distributor or representative to be referred to any person or agency except as set forth in this chapter if that referral would be binding on the dealer, except that this section does not prevent the parties from mutually agreeing to arbitration pursuant to law.

2. Require a dealer to agree to the jurisdiction, venue or tribunal in which a controversy arising under the provisions of the franchise agreement may or may not be submitted for resolution, or prohibit a dealer from bringing an action in any forum allowed by Nevada law.

3. Require a dealer to agree to a term or condition of a franchise agreement which violates any provision of NRS 482.36311 to 482.36425, inclusive ~~{-}~~, and sections 2, 3 and 4 of this act.

4. Require a dealer to waive a trial by jury in actions involving the manufacturer, distributor or factory branch.

5. Increase prices of new vehicles which the dealer had ordered for private retail consumers before his receipt of the written official notification of a price increase. A sales contract signed by a retail consumer constitutes evidence of each order. Price changes applicable to new models or series of vehicles at the time of the introduction of the new models or series shall not be deemed a price increase. Price changes caused by:

(a) The addition to a vehicle of equipment formerly optional as standard or required equipment pursuant to state or federal law;

(b) Revaluation of the United States dollar in the case of foreign-made vehicles; or

(c) Transportation cost increases,
➡ are not subject to this subsection.

6. Deny the principal owner the opportunity to designate his spouse, a member of his family, a qualified manager, or a trust or other artificial person controlled by any of them as entitled to participate in the ownership of:

(a) The franchised dealership;

(b) A successor franchised dealership for 2 years or a longer reasonable time after the incapacity of the principal owner; or

(c) A successor franchised dealership after the death of the principal in accordance with NRS 482.36396 to 482.36414, inclusive.

7. Modify unilaterally, replace, enter into, relocate, terminate or refuse to renew a franchise in violation of law.

8. Terminate or refuse to approve a transfer of a franchise for a dealership, or honor the right of succession set forth in a franchise agreement or refuse to approve the transfer of a controlling interest in a dealership because the dealer has, before October 1, 1997, established an additional franchise to sell or service another line or make of new vehicles in the same facility as the existing dealership.

9. Prevent a dealer from establishing, on or after October 1, 1997, an additional franchise to sell or service another line or make of new vehicles in the same facility as the existing dealership if the dealer:

(a) Submits a written request for approval of the additional franchise to the manufacturer, distributor or factory branch of the existing dealership;

(b) Complies with the reasonable requirements for approval set forth in the franchise of the existing dealership; and

(c) Obtains the approval of the manufacturer, distributor or factory branch of the existing dealership.

➡ The manufacturer, distributor or factory branch shall notify the dealer in writing of its decision to approve or deny the request within 90 days after receipt of the request. The manufacturer, distributor or factory branch shall not unreasonably withhold its approval. If the request is denied, the material reasons for the denial must be stated. Failure to approve or deny the request, in writing, within 90 days has the effect of approval.

Sec. 8.6. NRS 482.36423 is hereby amended to read as follows:

482.36423 1. Whenever it appears that a person has violated, is violating or is threatening to violate any provision of NRS 482.36311 to 482.36425, inclusive, *and sections 2, 3 and 4 of this act*, any person aggrieved thereby may apply to the district court in the county where the defendant resides, or in the county where the violation or threat of violation occurs, for injunctive relief to restrain the person from continuing the violation or threat of violation.

2. In addition to any other judicial relief, any dealer or person who assumes the operation of a franchise pursuant to NRS 482.36396 to 482.36414, inclusive, who is injured in his business or property by reason of a violation of NRS 482.36311 to 482.36425, inclusive, *and sections 2, 3 and 4 of this act* may bring an action in the district court in which the dealership is located, and may recover three times the pecuniary loss sustained by him, and the cost of suit, including a reasonable attorney's fee. The amount of pecuniary loss sustained by a dealer, pursuant to subsection 7 of NRS 482.3638, is the fair market value of the franchised dealership at the time of notification of termination, refusal to continue or unilateral modification of a franchise.

3. Any artificial person created and existing under the laws of any other state, territory, foreign government or the government of the United States, or any person residing outside the State, who grants a franchise to any dealer in

this State may be served with any legal process in any action for injunctive relief or civil damages in the following manner:

- (a) By delivering a copy of the process to the Director; and
- (b) By mailing to the last known address of the manufacturer or distributor, by certified mail, return receipt requested, a copy of the summons and a copy of the complaint, together with copies of any petition or order for injunctive relief.

4. The defendant has 30 days, exclusive of the day of service, within which to answer or plead.

5. The method of service provided in this section is cumulative and may be utilized with, after or independently of all other methods of service.

Sec. 8.8. NRS 482.36425 is hereby amended to read as follows:

482.36425 1. Any manufacturer or distributor who willfully violates any provision of NRS 482.36311 to 482.36425, inclusive, *and sections 2, 3 and 4 of this act* is subject to a civil penalty of not less than \$50 nor more than \$1,000 for each day of violation and for each act of violation. All civil penalties recovered must be paid to the State of Nevada.

2. Whenever it appears that a manufacturer or distributor has violated, is violating or is threatening to violate any provision of NRS 482.36311 to 482.36425, inclusive, *and sections 2, 3 and 4 of this act*, the Attorney General may institute a civil suit in any district court of this State for injunctive relief to restrain the violation or threat of violation or, if the violation or threat is willful, for the assessment and recovery of the civil penalty, or both.

Sec. 9. (Deleted by amendment.)

Sec. 10. (Deleted by amendment.)

Sec. 11. (Deleted by amendment.)

Sec. 12. (Deleted by amendment.)

Sec. 13. ~~NRS 97.299 is hereby amended to read as follows:~~

~~97.299 1. The Commissioner of Financial Institutions shall prescribe, by regulation, forms for the application for credit and contracts to be used in the sale of vehicles if:~~

~~(a) The sale involves the taking of a security interest to secure all or a part of the purchase price of the vehicle;~~

~~(b) The application for credit is made to or through the seller of the vehicle;~~

~~(c) The seller is a dealer; and~~

~~(d) The sale is not a commercial transaction.~~

~~2. The forms prescribed pursuant to subsection 1 must meet the requirements of NRS 97.165, must be accepted and acted upon by any lender to whom the application for credit is made and, in addition to the information required in NRS 97.185 and required to be disclosed in such a transaction by federal law, must:~~

~~(a) Identify and itemize the items embodied in the cash sale price, including the amount charged for a contract to service the vehicle after it is purchased.~~

~~(b) In specifying the amount of the buyer's down payment, identify the amounts paid in money and allowed for property given in trade and the amount of any manufacturer's rebate applied to the down payment.~~

~~(c) Contain a description of any property given in trade as part of the down payment.~~

~~(d) Contain a description of the method for calculating the unearned portion of the finance charge upon prepayment in full of the unpaid total of payments as prescribed in NRS 97.225.~~

~~(e) Contain a provision which provides that if the seller elects to rescind the contract as a result of being unable to assign the contract to a financial institution with whom the seller regularly does business, the seller must provide written notice to the buyer not more than 20 days after the date of the contract.~~

~~(f) Include the following notice in at least 10-point bold type:~~

~~NOTICE TO BUYER~~

~~Do not sign this agreement before you read it or if it contains any blank spaces. You are entitled to a completed copy of this agreement. If you pay the amount due before the scheduled date of maturity of the indebtedness and you are not in default in the terms of the contract for more than 2 months, you are entitled to a refund of the unearned portion of the finance charge. If you fail to perform your obligations under this agreement, the vehicle may be repossessed and you may be liable for the unpaid indebtedness evidenced by this agreement.~~

~~3. The Commissioner shall arrange for or otherwise cause the translation into Spanish of the forms prescribed pursuant to subsection 1.~~

~~4. If a change in state or federal law requires the Commissioner to amend the forms prescribed pursuant to subsection 1, the Commissioner need not comply with the provisions of chapter 233B of NRS when making those amendments.~~

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

~~(a) "Commercial transaction" means any sale of a vehicle to a buyer who purchases the vehicle solely or primarily for commercial use or resale.~~

~~(b) "Dealer" has the meaning ascribed to it in NRS 482.020.1. (*Deleted by amendment.*)~~

Sec. 14. Section 5 of this act is hereby amended to read as follows:

Sec. 5. 1. A person shall not engage in the activity of an agent for a broker, or act in the capacity of an agent in this State without first having received a license or temporary permit from the Department. Before issuing a license or temporary permit to engage in the activity of an agent, the Department shall require the applicant to submit to the Department:

(a) An application, signed and verified by the applicant, stating:

- (1) That the applicant is to engage in the activity of an agent;
 - (2) The name ~~[]~~ and residence address ~~[and social security number]~~ of the applicant; and
 - (3) The name and address of the employer of the applicant.
- (b) Proof of the employment of the applicant by a broker at the time the application is filed.
- (c) A statement as to whether any previous application of the applicant has been denied or any previous license of the applicant has been revoked.
- (d) Payment of a nonrefundable license fee of \$75. The license expires on December 31 of each calendar year and may be renewed annually upon the payment of a fee of \$40.
- (e) For initial licensure, a complete set of his fingerprints and written permission authorizing the Department to forward those fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report.
- (f) Any other information the Department determines necessary.
2. The Department may issue a 60-day temporary permit to an applicant who has submitted a complete application and paid the required fee.
3. A license to act as an agent of a broker issued pursuant to this section does not authorize a person to engage in the business of selling mobile homes.
4. The Department may deny an application for a license as an agent or suspend or revoke a license issued pursuant to this section upon any of the following grounds:
- (a) Failure of the applicant to establish by proof satisfactory to the Department that he is employed by a broker.
 - (b) Conviction of a felony.
 - (c) Conviction of a gross misdemeanor.
 - (d) Conviction of a misdemeanor for a violation of any of the provisions of this chapter.
 - (e) Falsification of the application.
 - (f) Evidence of unfitness as described in NRS 482.3255.
 - (g) Failure of the applicant to provide any information determined necessary by the Department to process the application.
 - (h) Any reason determined by the Director to be in the best interests of the public.
5. An agent shall not engage in any activity, or act in any other capacity as an agent other than for the account of, or for and on behalf of, a single employer, at a specified place of business of that employer, who must be a broker.

6. If an application for a license as an agent is denied, the applicant may reapply for a license not less than 6 months after the denial.

7. An agent's license must be posted in a conspicuous place on the premises of the broker by whom the agent is employed.

8. If an agent ceases to be employed by a broker, his license to act as an agent is automatically suspended and his right to act as an agent immediately ceases, and he shall not engage in the activity of an agent until he has:

(a) Paid the Department a transfer fee of \$20 and submitted a certificate of employment indicating that he has been reemployed by a broker; and

(b) Presented a current temporary permit or new license to the broker by whom he is employed.

9. If an agent changes his residential address, he shall submit a written notice of the change to the Department within 10 days after the change occurs.

10. If a person who holds a temporary permit to act as an agent ceases to be employed by a broker, his permit to act as an agent is automatically suspended, his right to act as an agent immediately ceases and his application for licensure must be denied until he has:

(a) Paid the Department a transfer fee of \$20 and submitted a certificate of employment indicating that he has been reemployed by a broker; and

(b) Presented a current temporary permit or new license to the broker by whom he is employed.

11. A broker who employs an agent shall notify the Department of the termination of employment of the agent not later than 10 days after the date of termination by forwarding the license of the agent to the Department.

12. Any person who fails to comply with the provisions of this section is guilty of a misdemeanor except as otherwise provided in NRS 482.555.

13. As used in this section, "agent" means a person who is employed by a broker and who, for a fee or any other consideration, assists the broker in offering to provide to another person the service of arranging, negotiating or assisting in the purchase of a new or used vehicle which has not been registered or for which an ownership interest has not been taken by the broker.

Sec. 15. 1. This section and sections 1 to 4, inclusive, and 7.5 to 13, inclusive, of this act become effective upon passage and approval.

2. Sections 5, 6 and 7 of this act become effective on July 1, 2010.

3. Section 5 of this act expires by limitation 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.

4. Section 14 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 for the support of one or more children,
 ➔ are repealed by the Congress of the United States.

Amendment No. 802.

"SUMMARY—Revises provisions governing the sale of vehicles. (BDR 43-989)"

"AN ACT relating to vehicles; revising provisions governing the applicability of the implied warranty of merchantability to the sale of a used vehicle by a used vehicle dealer; providing remedies for a purchaser if a used vehicle does not conform with the implied warranty of merchantability; requiring a contract for the sale of a used vehicle by a used vehicle dealer to contain certain statements; prohibiting a manufacturer from requiring a dealer to alter substantially an existing facility of the dealer or construct a new facility except under certain circumstances; prohibiting a manufacturer from taking adverse action against a dealer relating to the exportation of a vehicle outside the United States except under certain circumstances; providing for the licensure of an agent of a broker; revising provisions governing the modification or replacement of a franchise; establishing fees; providing a penalty; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Section 1.3 of this bill provides that in a contract for the sale of a used vehicle by a used vehicle dealer, the implied warranty of merchantability codified in NRS 104.2314 expires at midnight on the 15th day after delivery of the used vehicle or upon the used vehicle being driven 500 miles, whichever occurs first. Section 1.3 also prohibits a used vehicle dealer from excluding, modifying, negating or limiting the implied warranty of merchantability or limiting any right or remedy of the purchaser for failure of the used vehicle to conform with the implied warranty of merchantability. Section 1.4 of this bill provides that a used vehicle conforms with the implied warranty of merchantability if the used vehicle functions substantially free of certain defects. Section 1.4 further provides certain remedies to the purchaser if the used vehicle does not conform with the implied warranty of

merchantability, including returning the used vehicle to the used vehicle dealer and receiving a refund of the full amount paid by the purchaser toward the purchase price of the used vehicle. These remedies are in addition to any other remedies provided by existing law.

Section 1.5 of this bill provides that a contract for the sale of a used vehicle by a used vehicle dealer must contain a statement providing that the used vehicle is fit for ordinary use for 15 days or 500 miles after delivery of the used vehicle to the purchaser, whichever occurs first. Section 1.6 of this bill provides that a purchaser may waive the implied warranty of merchantability for a particular defect under certain circumstances. Section 1.8 of this bill provides that if a used vehicle dealer violates certain provisions of this bill, the contract for the sale of a used vehicle is voidable by the purchaser. Section 1.7 of this bill provides that the provisions of sections 1.1-1.8 of this bill do not apply to the sale of a used vehicle which is covered by an express warranty of a manufacturer.

Section 2 of this bill prohibits a manufacturer from requiring a dealer to alter substantially an existing facility or to construct a new facility for any new vehicles that are handled by the dealer under certain circumstances. Section 2 also provides that such a requirement constitutes a modification of the franchise of the dealer.

Section 3 of this bill prohibits a manufacturer from taking adverse action against a dealer who sells a vehicle which is later exported outside the United States, unless the dealer had actual knowledge of or reasonably should have known of the exportation of the vehicle.

Sections 5 and 14 of this bill provide for the licensure of an agent for a broker of vehicles in this State. A person who violates the provisions governing the licensure of such agents is guilty of a misdemeanor.

Section 8 of this bill provides that if a manufacturer is purchased by another manufacturer or entity, a dealer must be offered a franchise agreement that is substantially similar to the franchise agreement offered to other dealers of the same line-make vehicles. Section 8 defines such vehicles as those vehicles which are offered for sale, lease or distribution under the same name, trademark, service mark or brand of the manufacturer of the vehicles. (NRS 482.36354)

Section 13.7 of this bill provides that the forms for the application for credit and contract to be used in the sale of a used vehicle prescribed by the Commissioner of Financial Institutions must contain statements substantially similar to the statements described in sections 1.5 and 1.6 of this bill.

Existing law provides various protections for a person who purchases a used vehicle which has been driven 75,000 miles or more. (NRS 482.36661-482.36667) Sections 13.2-13.5 of this bill make those provisions applicable to any used vehicle sold by a used vehicle dealer, regardless of the mileage of the used vehicle.

Section 14.5 of this bill repeals certain provisions governing express written warranties provided by a used vehicle dealer and the imposition of administrative fines.

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

Section 1. Chapter 482 of NRS is hereby amended by adding thereto the provisions set forth as sections ~~2~~ 1.1 to 5, inclusive, of this act.

Sec. 1.1. "Implied warranty of merchantability" means the implied warranty described in NRS 104.2314.

Sec. 1.2. To the extent of any conflict with the provisions of chapter 104 of NRS, the provisions of NRS 482.36655 to 482.36667, inclusive, and sections 1.1 to 1.8, inclusive, of this act control with respect to the sale in this State of a used vehicle by a used vehicle dealer.

Sec. 1.3. 1. The implied warranty of merchantability in a contract for the sale of a used vehicle by a used vehicle dealer expires:

(a) At midnight on the 15th calendar day after the date of delivery of the used vehicle to the purchaser; or

(b) Upon the used vehicle being driven 500 miles after its delivery to the purchaser.

↳ whichever occurs earlier.

2. A used vehicle dealer shall not exclude, modify, negate or limit the implied warranty of merchantability with respect to the sale of a used vehicle or limit any right or remedy of the purchaser for failure of the used vehicle to conform with the implied warranty of merchantability.

3. For the purposes of this section, the computation of:

(a) Days following the date of delivery of the used vehicle to the purchaser must not include any day on which the used vehicle fails to conform with the implied warranty of merchantability.

(b) Miles driven must not include miles driven to obtain or in connection with the repair, service or diagnostic testing of a used vehicle which fails to conform with the implied warranty of merchantability.

Sec. 1.4. 1. A used vehicle that is sold by a used vehicle dealer conforms with the implied warranty of merchantability if the used vehicle functions substantially free of any defect which:

(a) Significantly limits the use of the used vehicle on any public highway; and

(b) Is not the result of any damage that occurs after the sale of the used vehicle, including, without limitation, damage resulting from off-road use, racing, towing, abuse, misuse, neglect, failure to perform ordinary maintenance or failure to maintain adequate levels of oil, engine coolant or other required fluids or lubricants.

2. If, during the effective period of the warranty of merchantability, the purchaser of a used vehicle discovers a defect that constitutes the failure of the used vehicle to conform with the implied warranty of merchantability, the

purchaser shall notify the used vehicle dealer as soon as practicable, but not later than 30 days after the purchaser discovers the defect.

3. Before a purchaser may pursue the remedy prescribed in subsection 4:

(a) The purchaser must give the notice required by subsection 2;

(b) The used vehicle dealer must have a reasonable opportunity to repair the used vehicle; and

(c) The purchaser must pay one-half of the cost of the first two repairs that are necessary to bring the used vehicle into conformity with the implied warranty of merchantability, but not more than \$25 for each repair.

4. If, after a reasonable opportunity, the used vehicle dealer is unable to repair the used vehicle to conform with the implied warranty of merchantability, the purchaser may elect to return the used vehicle to the used vehicle dealer who shall:

(a) Accept the return of the used vehicle; and

(b) Not later than 5 business days after the return of the vehicle:

(1) Refund to the purchaser the full amount paid by the purchaser toward the purchase price of the used vehicle; and

(2) Satisfy any security interest taken in the used vehicle.

5. A used vehicle dealer is not liable under this section to the purchaser for any amount other than the amount described in subsection 4, unless the used vehicle dealer had actual knowledge of or should have known of a defect in the used vehicle as a result of the circumstances in which the used vehicle was acquired or sold and did not disclose the defect to the purchaser.

6. The remedy provided in this section is not exclusive and is intended to supplement existing law.

Sec. 1.5. 1. A contract for the sale of a used vehicle by a used vehicle dealer must contain the following conspicuous statement printed in boldface type and not less than 10-point font:

Nevada law requires that this used vehicle be fit for the ordinary purposes for which the used vehicle is used for 15 days or 500 miles after delivery of the used vehicle to you (the purchaser), whichever occurs earlier, except with regard to particular defects disclosed on the first page of this contract. You (the purchaser) will not have to pay more than \$25 for each of the first two repairs if this warranty is violated.

2. The statement required by subsection 1 does not create an express warranty in a contract for the sale of a used vehicle by a used vehicle dealer.

Sec. 1.6. A purchaser may waive the implied warranty of merchantability in a contract for the sale of a used vehicle only:

1. For a particular defect in the used vehicle; and

2. If the following conditions are satisfied:

(a) The used vehicle dealer fully and accurately discloses the particular defect to the purchaser;

(b) The purchaser agrees to purchase the used vehicle after the disclosure of the particular defect is made; and

(c) The purchaser, before taking delivery of the used vehicle, signs and dates the following conspicuous statement which must be printed on the first page of the contract in boldface type and not less than 10-point font:

Attention purchaser: Sign here only if the used vehicle dealer has disclosed to you that this used vehicle has the following particular defects and you agree to purchase the used vehicle after this disclosure:

1. _____
2. _____
3. _____

Sec. 1.7. The provisions of sections 1.1 to 1.8, inclusive, of this act do not apply to the sale by a used vehicle dealer of a used vehicle which is covered by an express warranty of a manufacturer.

Sec. 1.8. If a used vehicle dealer violates any provision of sections 1.1 to 1.8, inclusive, of this act, the contract for the sale of a used vehicle is voidable by the purchaser.

Sec. 2. 1. A manufacturer shall not require a dealer:

- (a) To alter substantially an existing facility of the dealer; or
- (b) To construct a new facility,

➔ for any new vehicles that are handled by the dealer, unless the alteration or new construction constitutes a reasonable facility requirement in accordance with the franchise agreement.

2. If a manufacturer requires a substantial alteration of an existing facility of the dealer or requires the dealer to construct a new facility, that requirement constitutes a modification of the franchise of the dealer for the purposes of this section, NRS 482.36311 to 482.36425, inclusive, and sections 3 and 4 of this act.

Sec. 3. A manufacturer shall not modify the franchise of a dealer or take any adverse action against a dealer that sells a vehicle which is later exported outside the United States, unless the dealer had actual knowledge of or reasonably should have known of the exportation of the vehicle.

Sec. 4. (Deleted by amendment.)

Sec. 5. 1. A person shall not engage in the activity of an agent for a broker, or act in the capacity of an agent in this State without first having received a license or temporary permit from the Department. Before issuing a license or temporary permit to engage in the activity of an agent, the Department shall require the applicant to submit to the Department:

(a) An application, signed and verified by the applicant, stating:

- (1) That the applicant is to engage in the activity of an agent;
- (2) The name, residence address and social security number of the applicant; and

(3) The name and address of the employer of the applicant.

(b) Proof of the employment of the applicant by a broker at the time the application is filed.

(c) A statement as to whether any previous application of the applicant has been denied or any previous license of the applicant has been revoked.

(d) Payment of a nonrefundable license fee of \$75. The license expires on December 31 of each calendar year and may be renewed annually upon the payment of a fee of \$40.

(e) For initial licensure, a complete set of his fingerprints and written permission authorizing the Department to forward those fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report.

(f) Any other information the Department determines necessary.

2. The Department may issue a 60-day temporary permit to an applicant who has submitted a complete application and paid the required fee.

3. A license to act as an agent of a broker issued pursuant to this section does not authorize a person to engage in the business of selling mobile homes.

4. The Department may deny an application for a license as an agent or suspend or revoke a license issued pursuant to this section upon any of the following grounds:

(a) Failure of the applicant to establish by proof satisfactory to the Department that he is employed by a broker.

(b) Conviction of a felony.

(c) Conviction of a gross misdemeanor.

(d) Conviction of a misdemeanor for a violation of any of the provisions of this chapter.

(e) Falsification of the application.

(f) Evidence of unfitness as described in NRS 482.3255.

(g) Failure of the applicant to provide any information determined necessary by the Department to process the application.

(h) Any reason determined by the Director to be in the best interests of the public.

5. An agent shall not engage in any activity, or act in any other capacity as an agent other than for the account of, or for and on behalf of, a single employer, at a specified place of business of that employer, who must be a broker.

6. If an application for a license as an agent is denied, the applicant may reapply for a license not less than 6 months after the denial.

7. An agent's license must be posted in a conspicuous place on the premises of the broker by whom the agent is employed.

8. If an agent ceases to be employed by a broker, his license to act as an agent is automatically suspended and his right to act as an agent immediately ceases, and he shall not engage in the activity of an agent until he has:

(a) Paid the Department a transfer fee of \$20 and submitted a certificate of employment indicating that he has been reemployed by a broker; and

(b) *Presented a current temporary permit or new license to the broker by whom he is employed.*

9. *If an agent changes his residential address, he shall submit a written notice of the change to the Department within 10 days after the change occurs.*

10. *If a person who holds a temporary permit to act as an agent ceases to be employed by a broker, his permit to act as an agent is automatically suspended, his right to act as an agent immediately ceases and his application for licensure must be denied until he has:*

(a) *Paid the Department a transfer fee of \$20 and submitted a certificate of employment indicating that he has been reemployed by a broker; and*

(b) *Presented a current temporary permit or new license to the broker by whom he is employed.*

11. *A broker who employs an agent shall notify the Department of the termination of employment of the agent not later than 10 days after the date of termination by forwarding the license of the agent to the Department.*

12. *Any person who fails to comply with the provisions of this section is guilty of a misdemeanor except as otherwise provided in NRS 482.555.*

13. *As used in this section, "agent" means a person who is employed by a broker and who, for a fee or any other consideration, assists the broker in offering to provide to another person the service of arranging, negotiating or assisting in the purchase of a new or used vehicle which has not been registered or for which an ownership interest has not been taken by the broker.*

Sec. 6. NRS 482.319 is hereby amended to read as follows:

482.319 1. Except as otherwise provided in subsection 5, a natural person who applies for the issuance or renewal of a license issued pursuant to the provisions of NRS 482.318 to 482.363105, inclusive, *and section 5 of this act* shall submit to the Department 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 Department 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 Department.

3. A license may not be issued or renewed by the Department pursuant to the provisions of NRS 482.318 to 482.363105, inclusive, *and section 5 of this act* if the applicant is a natural person who:

(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 Department 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.

5. If a licensee renews an existing license electronically, the licensee shall keep the original of the statement required pursuant to subsection 1 at his place of business for not less than 3 years after submitting the electronic renewal. The statement must be available during business hours for inspection by any authorized agent of the Director or the State of Nevada.

Sec. 7. NRS 482.3195 is hereby amended to read as follows:

482.3195 1. If the Department 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 issued pursuant to NRS 482.318 to 482.363105, inclusive, *and section 5 of this act*, the Department 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 Department 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 Department shall reinstate a license issued pursuant to NRS 482.318 to 482.363105, inclusive, *and section 5 of this act* that has been suspended by a district court pursuant to NRS 425.540 if the Department 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. 7.5. NRS 482.36311 is hereby amended to read as follows:

482.36311 As used in NRS 482.36311 to 482.36425, inclusive, *and sections 2, 3 and 4 of this act*, unless the context otherwise requires, the words and terms defined in NRS 482.36318 to 482.36348, inclusive, have the meanings ascribed to them in those sections.

Sec. 8. NRS 482.36354 is hereby amended to read as follows:

482.36354 1. A manufacturer or distributor shall not modify the franchise of a dealer or replace the franchise with another franchise if the modification or replacement would have a substantially adverse effect upon the dealer's investment or his obligations to provide sales and service, unless:

(a) The manufacturer or distributor has given written notice of its intention to the Director and the dealer affected by the intended modification or replacement; and

(b) Either of the following conditions occurs:

(1) The dealer does not file a protest with the Director within 30 days after receiving the notice; or

(2) After a protest has been filed with the Director and the Director has conducted a hearing, the Director issues an order authorizing the manufacturer or distributor to modify or replace the franchise.

2. The notice required by subsection 1 must be given to the dealer and to the Director at least 60 days before the date on which the intended action is to take place.

3. If a manufacturer or distributor changes the area of primary responsibility of a dealer, the change constitutes a modification of the franchise of the dealer for the purposes of NRS 482.36311 to 482.36425, inclusive ~~[]~~, and sections 2, 3 and 4 of this act. As used in this subsection, "area of primary responsibility" means the geographic area in which a dealer, pursuant to a franchise agreement, is responsible for selling, servicing and otherwise representing the products of a manufacturer or distributor.

4. *Notwithstanding the provisions of this section, if a manufacturer is purchased by another manufacturer or entity, a dealer must be offered a franchise agreement that is substantially similar to the franchise agreement offered to other dealers of the same line-make vehicles.*

5. *As used in this section, "line-make vehicles" means those vehicles which are offered for sale, lease or distribution under the same name, trademark, service mark or brand of the manufacturer of the vehicles.*

Sec. 8.2. NRS 482.36366 is hereby amended to read as follows:

482.36366 1. Each witness, other than an officer or employee of the State or of a political subdivision of the State or an expert witness, who appears by order of the Director in a hearing pursuant to NRS 482.36311 to 482.36425, inclusive, and sections 2, 3 and 4 of this act is entitled to receive for his attendance the same fees allowed by law to witnesses in civil cases. Except as otherwise provided in subsection 2, the amount must be paid by the party at whose request the witness is ordered to appear.

2. The Director may assess other costs against the parties as he deems appropriate. After any hearing on a protest filed pursuant to NRS 482.36352, 482.36354 or 482.36357, if the Director determines that the manufacturer or distributor has failed to establish that there is good cause to terminate, refuse to continue, modify or replace a franchise, or to establish an additional dealership or relocate an existing dealership, the Director shall award to the dealer his attorney's fees and costs.

3. For the purposes of this section, "costs" includes:

(a) Except as otherwise provided in paragraph (b), any applicable cost set forth in NRS 18.005; and

(b) The actual amount of any fees paid by a dealer to an expert witness in connection with the hearing.

Sec. 8.4. NRS 482.3638 is hereby amended to read as follows:

482.3638 It is an unfair act or practice for any manufacturer, distributor or factory branch, directly or through any representative, to:

1. Require a dealer to agree to a release, assignment, novation, waiver or estoppel which purports to relieve any person from liability imposed by this chapter, or require any controversy between a dealer and a manufacturer, distributor or representative to be referred to any person or agency except as set forth in this chapter if that referral would be binding on the dealer, except that this section does not prevent the parties from mutually agreeing to arbitration pursuant to law.

2. Require a dealer to agree to the jurisdiction, venue or tribunal in which a controversy arising under the provisions of the franchise agreement may or may not be submitted for resolution, or prohibit a dealer from bringing an action in any forum allowed by Nevada law.

3. Require a dealer to agree to a term or condition of a franchise agreement which violates any provision of NRS 482.36311 to 482.36425, inclusive ~~and~~, *and sections 2, 3 and 4 of this act.*

4. Require a dealer to waive a trial by jury in actions involving the manufacturer, distributor or factory branch.

5. Increase prices of new vehicles which the dealer had ordered for private retail consumers before his receipt of the written official notification of a price increase. A sales contract signed by a retail consumer constitutes evidence of each order. Price changes applicable to new models or series of vehicles at the time of the introduction of the new models or series shall not be deemed a price increase. Price changes caused by:

(a) The addition to a vehicle of equipment formerly optional as standard or required equipment pursuant to state or federal law;

(b) Revaluation of the United States dollar in the case of foreign-made vehicles; or

(c) Transportation cost increases,

➔ are not subject to this subsection.

6. Deny the principal owner the opportunity to designate his spouse, a member of his family, a qualified manager, or a trust or other artificial person controlled by any of them as entitled to participate in the ownership of:

(a) The franchised dealership;

(b) A successor franchised dealership for 2 years or a longer reasonable time after the incapacity of the principal owner; or

(c) A successor franchised dealership after the death of the principal in accordance with NRS 482.36396 to 482.36414, inclusive.

7. Modify unilaterally, replace, enter into, relocate, terminate or refuse to renew a franchise in violation of law.

8. Terminate or refuse to approve a transfer of a franchise for a dealership, or honor the right of succession set forth in a franchise agreement

or refuse to approve the transfer of a controlling interest in a dealership because the dealer has, before October 1, 1997, established an additional franchise to sell or service another line or make of new vehicles in the same facility as the existing dealership.

9. Prevent a dealer from establishing, on or after October 1, 1997, an additional franchise to sell or service another line or make of new vehicles in the same facility as the existing dealership if the dealer:

(a) Submits a written request for approval of the additional franchise to the manufacturer, distributor or factory branch of the existing dealership;

(b) Complies with the reasonable requirements for approval set forth in the franchise of the existing dealership; and

(c) Obtains the approval of the manufacturer, distributor or factory branch of the existing dealership.

➡ The manufacturer, distributor or factory branch shall notify the dealer in writing of its decision to approve or deny the request within 90 days after receipt of the request. The manufacturer, distributor or factory branch shall not unreasonably withhold its approval. If the request is denied, the material reasons for the denial must be stated. Failure to approve or deny the request, in writing, within 90 days has the effect of approval.

Sec. 8.6. NRS 482.36423 is hereby amended to read as follows:

482.36423 1. Whenever it appears that a person has violated, is violating or is threatening to violate any provision of NRS 482.36311 to 482.36425, inclusive, *and sections 2, 3 and 4 of this act*, any person aggrieved thereby may apply to the district court in the county where the defendant resides, or in the county where the violation or threat of violation occurs, for injunctive relief to restrain the person from continuing the violation or threat of violation.

2. In addition to any other judicial relief, any dealer or person who assumes the operation of a franchise pursuant to NRS 482.36396 to 482.36414, inclusive, who is injured in his business or property by reason of a violation of NRS 482.36311 to 482.36425, inclusive, *and sections 2, 3 and 4 of this act* may bring an action in the district court in which the dealership is located, and may recover three times the pecuniary loss sustained by him, and the cost of suit, including a reasonable attorney's fee. The amount of pecuniary loss sustained by a dealer, pursuant to subsection 7 of NRS 482.3638, is the fair market value of the franchised dealership at the time of notification of termination, refusal to continue or unilateral modification of a franchise.

3. Any artificial person created and existing under the laws of any other state, territory, foreign government or the government of the United States, or any person residing outside the State, who grants a franchise to any dealer in this State may be served with any legal process in any action for injunctive relief or civil damages in the following manner:

(a) By delivering a copy of the process to the Director; and

(b) By mailing to the last known address of the manufacturer or distributor, by certified mail, return receipt requested, a copy of the summons and a copy of the complaint, together with copies of any petition or order for injunctive relief.

4. The defendant has 30 days, exclusive of the day of service, within which to answer or plead.

5. The method of service provided in this section is cumulative and may be utilized with, after or independently of all other methods of service.

Sec. 8.8. NRS 482.36425 is hereby amended to read as follows:

482.36425 1. Any manufacturer or distributor who willfully violates any provision of NRS 482.36311 to 482.36425, inclusive, *and sections 2, 3 and 4 of this act* is subject to a civil penalty of not less than \$50 nor more than \$1,000 for each day of violation and for each act of violation. All civil penalties recovered must be paid to the State of Nevada.

2. Whenever it appears that a manufacturer or distributor has violated, is violating or is threatening to violate any provision of NRS 482.36311 to 482.36425, inclusive, *and sections 2, 3 and 4 of this act*, the Attorney General may institute a civil suit in any district court of this State for injunctive relief to restrain the violation or threat of violation or, if the violation or threat is willful, for the assessment and recovery of the civil penalty, or both.

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. 13.1. NRS 482.36655 is hereby amended to read as follows:

482.36655 As used in NRS 482.36655 to 482.36667, inclusive, *and sections 1.1 to 1.8, inclusive, of this act*, unless the context otherwise requires, the words and terms defined in NRS 482.3666 and 482.366605 *and section 1.1 of this act* have the meanings ascribed to them in those sections.

Sec. 13.2. NRS 482.36661 is hereby amended to read as follows:

482.36661 Before a used vehicle dealer may sell to a retail customer a used vehicle ~~the odometer of which registers 75,000 miles or more,~~ the used vehicle dealer must conduct a reasonably thorough inspection of the soundness and safety of the vehicle's engine and drivetrain and disclose in writing any defects in the engine or drivetrain known to him or which he reasonably should have known after he conducts the inspection.

Sec. 13.3. NRS 482.36664 is hereby amended to read as follows:

482.36664 1. A retail customer who purchases a used vehicle ~~the odometer of which registers 75,000 miles or more,~~ may submit to the Department a written complaint regarding the used vehicle dealer ~~the~~ *only after making a good faith attempt to resolve the complaint with the used vehicle dealer.* The Department shall, within 10 days after it receives a

complaint pursuant to this section, provide a copy of the complaint to the used vehicle dealer who is the subject of the complaint.

2. A complaint submitted by the retail customer pursuant to subsection 1 must include:

- (a) A clear and concise statement of the complaint and the facts relating to the complaint;
- (b) Copies of any documents relating to the complaint; and
- (c) A statement of the manner in which the retail customer wishes to have the complaint resolved.

3. Upon receipt of a complaint pursuant to this section, the Department shall investigate the complaint and determine whether the used vehicle dealer who is the subject of the complaint has violated the provisions of NRS 482.36655 to 482.36667, inclusive, and sections 1.1 to 1.8, inclusive, of this act or the regulations adopted by the Department pursuant thereto.

4. If the Department determines that a used vehicle dealer has violated the provisions of NRS 482.36655 to 482.36667, inclusive, and sections 1.1 to 1.8, inclusive, of this act or the regulations adopted by the Department pursuant thereto, the Department shall notify the used vehicle dealer of that determination and recommend to the dealer the actions that he may take to resolve the complaint.

5. A retail customer or used vehicle dealer who is aggrieved by the decision of the Department may appeal the decision to the Director.

Sec. 13.4. NRS 482.36665 is hereby amended to read as follows:

482.36665 The Department shall maintain a record of the complaints submitted to the Department pursuant to NRS 482.36664. The record must include a statement of whether the dealer was found to have violated the provisions of NRS 482.36655 to 482.36667, inclusive, and sections 1.1 to 1.8, inclusive, of this act or the regulations adopted pursuant thereto, and if so, whether the used vehicle dealer resolved the complaint in the manner recommended by the Department or in any other manner acceptable to the Department and the retail customer who filed the complaint.

Sec. 13.5. NRS 482.36667 is hereby amended to read as follows:

482.36667 The Department may adopt regulations to carry out the provisions of NRS 482.36655 to 482.36667, inclusive ~~and~~, and sections 1.1 to 1.8, inclusive, of this act.

Sec. 13.6. NRS 41.600 is hereby amended to read as follows:

41.600 1. An action may be brought by any person who is a victim of consumer fraud.

2. As used in this section, "consumer fraud" means:

- (a) An unlawful act as defined in NRS 119.330;
- (b) An unlawful act as defined in NRS 205.2747;
- (c) An act prohibited by NRS 482.36655 to 482.36667, inclusive ~~and~~, and sections 1.1 to 1.8, inclusive, of this act;
- (d) An act prohibited by NRS 482.351; or

(e) A deceptive trade practice as defined in NRS 598.0915 to 598.0925, inclusive.

3. If the claimant is the prevailing party, the court shall award him:

- (a) Any damages that he has sustained; and
- (b) His costs in the action and reasonable attorney's fees.

4. Any action brought pursuant to this section is not an action upon any contract underlying the original transaction.

Sec. 13.7. NRS 97.299 is hereby amended to read as follows:

97.299 1. The Commissioner of Financial Institutions shall prescribe, by regulation, forms for the application for credit and contracts to be used in the sale of vehicles if:

- (a) The sale involves the taking of a security interest to secure all or a part of the purchase price of the vehicle;
- (b) The application for credit is made to or through the seller of the vehicle;
- (c) The seller is a dealer; and
- (d) The sale is not a commercial transaction.

2. The forms prescribed pursuant to subsection 1 must meet the requirements of NRS 97.165, must be accepted and acted upon by any lender to whom the application for credit is made and, in addition to the information required in NRS 97.185 and required to be disclosed in such a transaction by federal law, must:

- (a) Identify and itemize the items embodied in the cash sale price, including the amount charged for a contract to service the vehicle after it is purchased.
- (b) In specifying the amount of the buyer's down payment, identify the amounts paid in money and allowed for property given in trade and the amount of any manufacturer's rebate applied to the down payment.
- (c) Contain a description of any property given in trade as part of the down payment.
- (d) Contain a description of the method for calculating the unearned portion of the finance charge upon prepayment in full of the unpaid total of payments as prescribed in NRS 97.225.
- (e) Include the following notice in at least 10-point bold type:

NOTICE TO BUYER

Do not sign this agreement before you read it or if it contains any blank spaces. You are entitled to a completed copy of this agreement. If you pay the amount due before the scheduled date of maturity of the indebtedness and you are not in default in the terms of the contract for more than 2 months, you are entitled to a refund of the unearned portion of the finance charge. If you fail to perform your obligations under this agreement, the vehicle may be repossessed and you may be liable for the unpaid indebtedness evidenced by this agreement.

3. The Commissioner shall arrange for or otherwise cause the translation into Spanish of the forms prescribed pursuant to subsection 1.

4. If a change in state or federal law requires the Commissioner to amend the forms prescribed pursuant to subsection 1, the Commissioner need not comply with the provisions of chapter 233B of NRS when making those amendments.

5. The form for the application for credit and the contract to be used in the sale of a used vehicle prescribed by the Commissioner pursuant to subsection 1 must contain statements that are substantially similar to the statements described in subsection 1 of section 1.5 of this act and paragraph (c) of subsection 2 of section 1.6 of this act.

6. As used in this section:

(a) "Commercial transaction" means any sale of a vehicle to a buyer who purchases the vehicle solely or primarily for commercial use or resale.

(b) "Dealer" has the meaning ascribed to it in NRS 482.020.

(c) "Used vehicle" has the meaning ascribed to it in NRS 482.132.

Sec. 14. Section 5 of this act is hereby amended to read as follows:

Sec. 5. 1. A person shall not engage in the activity of an agent for a broker, or act in the capacity of an agent in this State without first having received a license or temporary permit from the Department. Before issuing a license or temporary permit to engage in the activity of an agent, the Department shall require the applicant to submit to the Department:

(a) An application, signed and verified by the applicant, stating:

(1) That the applicant is to engage in the activity of an agent;

(2) The name ~~{,}~~ and residence address ~~{and social security number}~~ of the applicant; and

(3) The name and address of the employer of the applicant.

(b) Proof of the employment of the applicant by a broker at the time the application is filed.

(c) A statement as to whether any previous application of the applicant has been denied or any previous license of the applicant has been revoked.

(d) Payment of a nonrefundable license fee of \$75. The license expires on December 31 of each calendar year and may be renewed annually upon the payment of a fee of \$40.

(e) For initial licensure, a complete set of his fingerprints and written permission authorizing the Department to forward those fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report.

(f) Any other information the Department determines necessary.

2. The Department may issue a 60-day temporary permit to an applicant who has submitted a complete application and paid the required fee.

3. A license to act as an agent of a broker issued pursuant to this section does not authorize a person to engage in the business of selling mobile homes.

4. The Department may deny an application for a license as an agent or suspend or revoke a license issued pursuant to this section upon any of the following grounds:

(a) Failure of the applicant to establish by proof satisfactory to the Department that he is employed by a broker.

(b) Conviction of a felony.

(c) Conviction of a gross misdemeanor.

(d) Conviction of a misdemeanor for a violation of any of the provisions of this chapter.

(e) Falsification of the application.

(f) Evidence of unfitness as described in NRS 482.3255.

(g) Failure of the applicant to provide any information determined necessary by the Department to process the application.

(h) Any reason determined by the Director to be in the best interests of the public.

5. An agent shall not engage in any activity, or act in any other capacity as an agent other than for the account of, or for and on behalf of, a single employer, at a specified place of business of that employer, who must be a broker.

6. If an application for a license as an agent is denied, the applicant may reapply for a license not less than 6 months after the denial.

7. An agent's license must be posted in a conspicuous place on the premises of the broker by whom the agent is employed.

8. If an agent ceases to be employed by a broker, his license to act as an agent is automatically suspended and his right to act as an agent immediately ceases, and he shall not engage in the activity of an agent until he has:

(a) Paid the Department a transfer fee of \$20 and submitted a certificate of employment indicating that he has been reemployed by a broker; and

(b) Presented a current temporary permit or new license to the broker by whom he is employed.

9. If an agent changes his residential address, he shall submit a written notice of the change to the Department within 10 days after the change occurs.

10. If a person who holds a temporary permit to act as an agent ceases to be employed by a broker, his permit to act as an agent is automatically suspended, his right to act as an agent immediately ceases and his application for licensure must be denied until he has:

(a) Paid the Department a transfer fee of \$20 and submitted a certificate of employment indicating that he has been reemployed by a broker; and

(b) Presented a current temporary permit or new license to the broker by whom he is employed.

11. A broker who employs an agent shall notify the Department of the termination of employment of the agent not later than 10 days after the date of termination by forwarding the license of the agent to the Department.

12. Any person who fails to comply with the provisions of this section is guilty of a misdemeanor except as otherwise provided in NRS 482.555.

13. As used in this section, "agent" means a person who is employed by a broker and who, for a fee or any other consideration, assists the broker in offering to provide to another person the service of arranging, negotiating or assisting in the purchase of a new or used vehicle which has not been registered or for which an ownership interest has not been taken by the broker.

Sec. 14.5. ~~NRS 482.36662, 482.36663 and 482.36666 are hereby repealed.~~

Sec. 15. 1. This section and sections 1 ~~(to 4, inclusive), 2, 3~~ and 7.5 to 13, inclusive, of this act become effective upon passage and approval.

2. Sections 1.1 to 1.8, inclusive, 13.1 to 13.7, inclusive, and 14.5 of this act become effective upon passage and approval for the purpose of adopting regulations and on October 1, 2009, for all other purposes.

3. Sections 5, 6 and 7 of this act become effective on July 1, 2010.

~~4.4.~~ Section 5 of this act expires by limitation 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.

~~4.5.~~ Section 14 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 for the support of one or more children,
 ➤ are repealed by the Congress of the United States.

TEXT OF REPEALED SECTIONS

482.36662 Written warranty required under certain circumstances; contents of warranty.

1. A used vehicle dealer who sells to a retail customer a used vehicle the odometer of which registers 75,000 miles or more shall provide to that retail customer an express written warranty which complies with the requirements set forth in subsection 2 and is valid for the period set forth in the schedule of warranties created pursuant to NRS 482.36663, if the used vehicle dealer is the subject of more than three substantiated complaints filed against him with the Department of Motor Vehicles during a 12-month period.

2. An express written warranty required pursuant to subsection 1 must contain a statement that, in the event the operation of the used vehicle becomes impaired as a result of a defect in a component or system of the vehicle's engine or drivetrain, the used vehicle dealer shall, with reasonable promptness, correct the defect or cause the defect to be corrected.

482.36663 Duration of warranty. If an express written warranty is provided to a retail customer for a used vehicle pursuant to NRS 482.36662, the duration of the warranty must be determined pursuant to this section. If, on the date the vehicle was purchased from the used vehicle dealer, the odometer in the used vehicle registers:

1. At least 75,000 but less than 80,001 miles, the warranty is valid for a period of 30 days therefrom or until the odometer in the vehicle registers 1,000 miles more than on the date the vehicle was purchased from the used vehicle dealer, whichever occurs earlier.

2. At least 80,001 but less than 85,001 miles, the warranty is valid for a period of 20 days therefrom or until the odometer in the vehicle registers 600 miles more than on the date the vehicle was purchased from the used vehicle dealer, whichever occurs earlier.

3. At least 85,001 but less than 90,001 miles, the warranty is valid for a period of 10 days therefrom or until the odometer in the vehicle registers 300 miles more than on the date the vehicle was purchased from the used vehicle dealer, whichever occurs earlier.

4. At least 90,001 but less than 100,001 miles, the warranty is valid for a period of 5 days therefrom or until the odometer in the vehicle registers 150 miles more than on the date the vehicle was purchased from the used vehicle dealer, whichever occurs earlier.

5. At least 100,001 miles, the warranty is valid for a period of 2 days therefrom or until the odometer in the vehicle registers 100 miles more than on the date the vehicle was purchased from the used vehicle dealer, whichever occurs earlier.

➤ The period for which a warranty is valid pursuant to this section must be tolled during any period in which the dealer has possession of the vehicle or the operation of the vehicle is impaired and the vehicle is inoperable due to a defect in the vehicle's engine or drivetrain.

482.36666 Administrative fines; opportunity for hearing; deposit of fines; injunctions and other remedies.

1. If the Department determines from the record maintained pursuant to NRS 482.36665 that on more than three occasions a used vehicle dealer has:

(a) Been found to have violated the provisions of NRS 482.36655 to 482.36667, inclusive, or the regulations adopted pursuant thereto; and

(b) Failed to resolve those complaints in the manner recommended by the Department pursuant to NRS 482.36664 or in any other manner acceptable to the Department and the retail customer who filed the complaint.

the Department may impose an administrative fine, not to exceed \$2,500, for each additional violation of the provisions of NRS 482.36655 to 482.36667, inclusive. The Department shall afford to any person so fined an opportunity for a hearing pursuant to the provisions of NRS 233B.121.

2. All administrative fines collected by the Department pursuant to subsection 1 must be deposited with the State Treasurer to the credit of the Account for Regulation of Used Vehicle Dealers, which is hereby created in the State Highway Fund. Money in the Account may be used only for the administration of NRS 481.048 and NRS 482.36655 to 482.36667, inclusive.

3. In addition to any other remedy provided by law, the Department may compel compliance with NRS 482.36655 to 482.36667, inclusive, and any regulation adopted pursuant thereto, by injunction or other appropriate remedy, and the Department may institute and maintain in the name of the State of Nevada any such enforcement proceedings.

Amendment No. 843.

"SUMMARY—Revises provisions governing the sale of vehicles. (BDR 43-989)"

"AN ACT relating to vehicles; prohibiting a manufacturer from requiring a dealer to alter substantially an existing facility of the dealer or construct a new facility except under certain circumstances; prohibiting a manufacturer from taking adverse action against a dealer relating to the exportation of a vehicle outside the United States except under certain circumstances; providing for the licensure of an agent of a broker; revising provisions governing the modification or replacement of a franchise; revising provisions governing the termination of a franchise agreement with a manufacturer or distributor of motor vehicles; establishing fees; providing a penalty; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Section 2 of this bill prohibits a manufacturer from requiring a dealer to alter substantially an existing facility or to construct a new facility for any new vehicles that are handled by the dealer under certain circumstances. Section 2 also provides that such a requirement constitutes a modification of the franchise of the dealer.

Section 3 of this bill prohibits a manufacturer from taking adverse action against a dealer who sells a vehicle which is later exported outside the United

States, unless the dealer had actual knowledge of or reasonably should have known of the exportation of the vehicle.

Sections 5 and 14 of this bill provide for the licensure of an agent for a broker of vehicles in this State. A person who violates the provisions governing the licensure of such agents is guilty of a misdemeanor.

Under existing law, when a franchise agreement is terminated by a manufacturer or distributor of motor vehicles, the manufacturer or distributor is required to compensate the new vehicle dealer for the dealer's inventory of new vehicles and certain inventory of parts and accessories of the dealer. (NRS 482.363521) Sections 7.1-7.7 of this bill provide that, if the franchise agreement is terminated due to the bankruptcy of the manufacturer or distributor, the dealer may elect instead to retain the inventory of new vehicles and certain parts and accessories, and is authorized for a specified period to sell the vehicles at retail and thereafter to sell the vehicles as used vehicles. The dealer is further authorized to sell the inventory of the retained parts and accessories.

Section 8 of this bill provides that if a manufacturer is purchased by another manufacturer or entity, a dealer must be offered a franchise agreement that is substantially similar to the franchise agreement offered to other dealers of the same line-make vehicles. Section 8 defines such vehicles as those vehicles which are offered for sale, lease or distribution under the same name, trademark, service mark or brand of the manufacturer of the vehicles. (NRS 482.36354)

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

Section 1. Chapter 482 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

Sec. 2. 1. A manufacturer shall not require a dealer:

(a) To alter substantially an existing facility of the dealer; or

(b) To construct a new facility,

↪ for any new vehicles that are handled by the dealer, unless the alteration or new construction constitutes a reasonable facility requirement in accordance with the franchise agreement.

2. If a manufacturer requires a substantial alteration of an existing facility of the dealer or requires the dealer to construct a new facility, that requirement constitutes a modification of the franchise of the dealer for the purposes of this section, NRS 482.36311 to 482.36425, inclusive, and sections 3 and 4 of this act.

Sec. 3. A manufacturer shall not modify the franchise of a dealer or take any adverse action against a dealer that sells a vehicle which is later exported outside the United States, unless the dealer had actual knowledge of or reasonably should have known of the exportation of the vehicle.

Sec. 4. (Deleted by amendment.)

Sec. 5. 1. A person shall not engage in the activity of an agent for a broker, or act in the capacity of an agent in this State without first having

received a license or temporary permit from the Department. Before issuing a license or temporary permit to engage in the activity of an agent, the Department shall require the applicant to submit to the Department:

(a) An application, signed and verified by the applicant, stating:

(1) That the applicant is to engage in the activity of an agent;

(2) The name, residence address and social security number of the applicant; and

(3) The name and address of the employer of the applicant.

(b) Proof of the employment of the applicant by a broker at the time the application is filed.

(c) A statement as to whether any previous application of the applicant has been denied or any previous license of the applicant has been revoked.

(d) Payment of a nonrefundable license fee of \$75. The license expires on December 31 of each calendar year and may be renewed annually upon the payment of a fee of \$40.

(e) For initial licensure, a complete set of his fingerprints and written permission authorizing the Department to forward those fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report.

(f) Any other information the Department determines necessary.

2. The Department may issue a 60-day temporary permit to an applicant who has submitted a complete application and paid the required fee.

3. A license to act as an agent of a broker issued pursuant to this section does not authorize a person to engage in the business of selling mobile homes.

4. The Department may deny an application for a license as an agent or suspend or revoke a license issued pursuant to this section upon any of the following grounds:

(a) Failure of the applicant to establish by proof satisfactory to the Department that he is employed by a broker.

(b) Conviction of a felony.

(c) Conviction of a gross misdemeanor.

(d) Conviction of a misdemeanor for a violation of any of the provisions of this chapter.

(e) Falsification of the application.

(f) Evidence of unfitness as described in NRS 482.3255.

(g) Failure of the applicant to provide any information determined necessary by the Department to process the application.

(h) Any reason determined by the Director to be in the best interests of the public.

5. An agent shall not engage in any activity, or act in any other capacity as an agent other than for the account of, or for and on behalf of, a single employer, at a specified place of business of that employer, who must be a broker.

6. *If an application for a license as an agent is denied, the applicant may reapply for a license not less than 6 months after the denial.*

7. *An agent's license must be posted in a conspicuous place on the premises of the broker by whom the agent is employed.*

8. *If an agent ceases to be employed by a broker, his license to act as an agent is automatically suspended and his right to act as an agent immediately ceases, and he shall not engage in the activity of an agent until he has:*

(a) Paid the Department a transfer fee of \$20 and submitted a certificate of employment indicating that he has been reemployed by a broker; and

(b) Presented a current temporary permit or new license to the broker by whom he is employed.

9. *If an agent changes his residential address, he shall submit a written notice of the change to the Department within 10 days after the change occurs.*

10. *If a person who holds a temporary permit to act as an agent ceases to be employed by a broker, his permit to act as an agent is automatically suspended, his right to act as an agent immediately ceases and his application for licensure must be denied until he has:*

(a) Paid the Department a transfer fee of \$20 and submitted a certificate of employment indicating that he has been reemployed by a broker; and

(b) Presented a current temporary permit or new license to the broker by whom he is employed.

11. *A broker who employs an agent shall notify the Department of the termination of employment of the agent not later than 10 days after the date of termination by forwarding the license of the agent to the Department.*

12. *Any person who fails to comply with the provisions of this section is guilty of a misdemeanor except as otherwise provided in NRS 482.555.*

13. *As used in this section, "agent" means a person who is employed by a broker and who, for a fee or any other consideration, assists the broker in offering to provide to another person the service of arranging, negotiating or assisting in the purchase of a new or used vehicle which has not been registered or for which an ownership interest has not been taken by the broker.*

Sec. 6. NRS 482.319 is hereby amended to read as follows:

482.319 1. Except as otherwise provided in subsection 5, a natural person who applies for the issuance or renewal of a license issued pursuant to the provisions of NRS 482.318 to 482.363105, inclusive, *and section 5 of this act* shall submit to the Department 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 Department 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 Department.

3. A license may not be issued or renewed by the Department pursuant to the provisions of NRS 482.318 to 482.363105, inclusive, *and section 5 of this act* if the applicant is a natural person who:

(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 Department 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.

5. If a licensee renews an existing license electronically, the licensee shall keep the original of the statement required pursuant to subsection 1 at his place of business for not less than 3 years after submitting the electronic renewal. The statement must be available during business hours for inspection by any authorized agent of the Director or the State of Nevada.

Sec. 7. NRS 482.3195 is hereby amended to read as follows:

482.3195 1. If the Department 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 issued pursuant to NRS 482.318 to 482.363105, inclusive, *and section 5 of this act*, the Department 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 Department 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 Department shall reinstate a license issued pursuant to NRS 482.318 to 482.363105, inclusive, *and section 5 of this act* that has been suspended by a district court pursuant to NRS 425.540 if the Department 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. 7.1. NRS 482.322 is hereby amended to read as follows:

482.322 1. Except as otherwise provided in subsection 2 and NRS 482.3225, a person shall not engage in the activities of a new vehicle dealer, used vehicle dealer, manufacturer, distributor or rebuilder in this State until he has been issued:

(a) A new vehicle dealer's, used vehicle dealer's, manufacturer's, distributor's, rebuilder's or lessor's license certificate or similar license or permit by every city within whose corporate limits he maintains an established place of business and by every county in which he maintains an established place of business outside the corporate limits of a city; and

(b) A license by the Department. The Department shall not issue a license to the person until he has been issued all certificates, licenses and permits required by paragraph (a).

2. ~~1A~~ Except as otherwise provided in NRS 482.363521, a person licensed as a dealer pursuant to this chapter shall not engage in the activities of a new vehicle dealer until he has provided the Department with satisfactory proof that he is authorized by a manufacturer to display and offer for sale vehicles produced or distributed by that manufacturer.

3. A vehicle dealer's, manufacturer's or rebuilder's license issued pursuant to this chapter does not permit a person to engage in the business of a new or used mobile home dealer, manufacturer or rebuilder.

4. The Department shall investigate any applicant for a dealer's, manufacturer's, distributor's, rebuilder's or lessor's license certificate or license and complete an investigation report on a form provided by the Department.

5. A person who violates subsection 1 or 2 is guilty of:

(a) For a first offense, a misdemeanor.

(b) For a second offense, a gross misdemeanor.

(c) For a third and any subsequent offense, a category D felony and shall be punished as provided in NRS 193.130.

Sec. 7.3. NRS 482.350 is hereby amended to read as follows:

482.350 1. A new vehicle dealer's license shall not be furnished to any dealer in new vehicles, trailers or semitrailers unless the dealer first furnishes the Department an instrument executed by or on behalf of the manufacturer certifying that he is an authorized franchised dealer for the make or makes of vehicle concerned. ~~New~~ Except as otherwise provided in NRS 482.363521, new vehicle dealers are authorized to sell at retail only those new vehicles for which they are certified as franchised dealers by the manufacturer.

2. In addition to selling used vehicles, a used vehicle dealer may:

(a) Sell at wholesale a new vehicle taken in trade or acquired as a result of a sales contract to a new vehicle dealer who is licensed and authorized to sell that make of vehicle;

(b) Sell at wholesale a new vehicle through a wholesale vehicle auction provided that the wholesale vehicle auctioneer:

(1) Does not take an ownership interest in the vehicle; and

(2) Auctions the vehicle to a vehicle dealer who is licensed and authorized to sell that make of vehicle or to an automobile wrecker who is licensed in this State or any other state; or

(c) Sell a new vehicle on consignment from a person not licensed as a vehicle dealer, rebuilder or a long-term or short-term lessor.

Sec. 7.5. NRS 482.36311 is hereby amended to read as follows:

482.36311 As used in NRS 482.36311 to 482.36425, inclusive, *and sections 2, 3 and 4 of this act*, unless the context otherwise requires, the words and terms defined in NRS 482.36318 to 482.36348, inclusive, have the meanings ascribed to them in those sections.

Sec. 7.7. NRS 482.363521 is hereby amended to read as follows:

482.363521 1. ~~Upon~~ Except as otherwise provided in subsection 6, upon the termination or refusal to continue a franchise, the manufacturer or distributor shall compensate the dealer for:

(a) The dealer's inventory of new vehicles, including new vehicles not of the current model year if delivered to the dealer during the 18-month period immediately preceding the effective date of the termination or refusal to continue the franchise. ~~[As used in this paragraph, a "new vehicle" is one which has not been damaged, materially altered or registered with the Department or with the appropriate agency of authority of any other state, the District of Columbia, any territory or possession of the United States or any foreign state, province or country.]~~

(b) The dealer's inventory of parts and accessories which:

(1) Have been purchased by the dealer from the manufacturer or distributor; and

(2) Are listed in a current parts catalog of the manufacturer or distributor.

(c) Any special tools purchased by the dealer from the manufacturer or distributor, less a reasonable allowance for depreciation.

(d) Any equipment, furnishings or signs purchased by the dealer from the manufacturer or distributor, less a reasonable allowance for depreciation.

(e) Except as otherwise provided in subsection 4, the fair rental value for 90 days, and any additional period allowed by the Director after considering the difficulty of finding a new tenant for the dealer's premises affected, after the effective date of the termination or refusal to continue of the portion of the dealer's place of business that was used by the dealer to sell or service vehicles or other products of the manufacturer or distributor.

2. Compensation paid pursuant to paragraphs (a) to (d), inclusive, of subsection 1 must be paid in an amount at least equal to the greater of:

(a) The amount actually paid by the dealer for the vehicles, parts, tools and equipment; or

(b) The amount currently paid by other dealers in this State for the vehicles, parts, tools and equipment.

3. If compensation is paid pursuant to paragraph (e) of subsection 1, the dealer shall allow the manufacturer or distributor paying the compensation the use and possession of the premises affected.

4. The manufacturer or distributor is not required to pay compensation pursuant to paragraph (e) of subsection 1 if the dealer has been convicted of a crime involving fraud in connection with his application for or operation of the franchise.

5. This section does not relieve a dealer of his obligation to mitigate damages resulting from the termination or refusal to continue the franchise.

6. If a franchise agreement is terminated by or on behalf of the manufacturer or distributor as a result of a reorganization of the business of the manufacturer or distributor pursuant to an order of a federal bankruptcy court, the dealer may elect to retain the inventory of new vehicles, parts and accessories, special tools and equipment, furnishing or signs which meet the requirements of paragraphs (a) to (d), inclusive, of subsection 1. A dealer that makes such an election must inform the manufacturer or distributor and the Director in writing not later than 30 days after the effective date of the termination of the franchise agreement of that election.

7. A dealer that elects to retain the inventory pursuant to subsection 6:
(a) Forfeits any right to seek compensation pursuant to subsection 1; and
(b) Does not forfeit the right to protest the termination of the franchise agreement pursuant to NRS 482.36352.

8. A dealer that elects to retain an inventory of new vehicles pursuant to subsection 6 may sell those vehicles at retail for 6 months after the date on which the manufacturer or distributor and the Director are notified of the dealer's election pursuant to subsection 6, provided that the dealer retains a license as a new vehicle dealer. Any such sale:

(a) Is subject to all applicable provisions of this chapter; and
(b) Must include a written disclosure by the dealer to the customer that clearly states:

(1) The terms of the manufacturer's warranty, if any;
(2) The terms of any express warranty made by the dealer; or
(3) That the vehicle is being sold without any express or implied warranty.

9. After the period set forth in subsection 8, if the dealer is licensed as a used vehicle dealer, the dealer may sell any remaining vehicles as used vehicles, subject to all applicable provisions of this chapter.

10. A dealer who elects to retain his inventory of parts and accessories, special tools and equipment, furnishing or signs pursuant to subsection 6 may retain, sell or otherwise dispose of the parts and accessories, special tools and equipment, furnishing or signs.

11. As used in this section, "new vehicle" means a vehicle which has not been damaged, materially altered or registered with the Department or with the appropriate agency of authority of any other state, the District of

Columbia, any territory or possession of the United States or any foreign state, province or country.

Sec. 8. NRS 482.36354 is hereby amended to read as follows:

482.36354 1. A manufacturer or distributor shall not modify the franchise of a dealer or replace the franchise with another franchise if the modification or replacement would have a substantially adverse effect upon the dealer's investment or his obligations to provide sales and service, unless:

(a) The manufacturer or distributor has given written notice of its intention to the Director and the dealer affected by the intended modification or replacement; and

(b) Either of the following conditions occurs:

(1) The dealer does not file a protest with the Director within 30 days after receiving the notice; or

(2) After a protest has been filed with the Director and the Director has conducted a hearing, the Director issues an order authorizing the manufacturer or distributor to modify or replace the franchise.

2. The notice required by subsection 1 must be given to the dealer and to the Director at least 60 days before the date on which the intended action is to take place.

3. If a manufacturer or distributor changes the area of primary responsibility of a dealer, the change constitutes a modification of the franchise of the dealer for the purposes of NRS 482.36311 to 482.36425, inclusive ~~{-}~~, and sections 2, 3 and 4 of this act. As used in this subsection, "area of primary responsibility" means the geographic area in which a dealer, pursuant to a franchise agreement, is responsible for selling, servicing and otherwise representing the products of a manufacturer or distributor.

4. *Notwithstanding the provisions of this section, if a manufacturer is purchased by another manufacturer or entity, a dealer must be offered a franchise agreement that is substantially similar to the franchise agreement offered to other dealers of the same line-make vehicles.*

5. *As used in this section, "line-make vehicles" means those vehicles which are offered for sale, lease or distribution under the same name, trademark, service mark or brand of the manufacturer of the vehicles.*

Sec. 8.2. NRS 482.36366 is hereby amended to read as follows:

482.36366 1. Each witness, other than an officer or employee of the State or of a political subdivision of the State or an expert witness, who appears by order of the Director in a hearing pursuant to NRS 482.36311 to 482.36425, inclusive, and sections 2, 3 and 4 of this act is entitled to receive for his attendance the same fees allowed by law to witnesses in civil cases. Except as otherwise provided in subsection 2, the amount must be paid by the party at whose request the witness is ordered to appear.

2. The Director may assess other costs against the parties as he deems appropriate. After any hearing on a protest filed pursuant to NRS 482.36352, 482.36354 or 482.36357, if the Director determines that the manufacturer or distributor has failed to establish that there is good cause to terminate, refuse

to continue, modify or replace a franchise, or to establish an additional dealership or relocate an existing dealership, the Director shall award to the dealer his attorney's fees and costs.

3. For the purposes of this section, "costs" includes:

(a) Except as otherwise provided in paragraph (b), any applicable cost set forth in NRS 18.005; and

(b) The actual amount of any fees paid by a dealer to an expert witness in connection with the hearing.

Sec. 8.4. NRS 482.3638 is hereby amended to read as follows:

482.3638 It is an unfair act or practice for any manufacturer, distributor or factory branch, directly or through any representative, to:

1. Require a dealer to agree to a release, assignment, novation, waiver or estoppel which purports to relieve any person from liability imposed by this chapter, or require any controversy between a dealer and a manufacturer, distributor or representative to be referred to any person or agency except as set forth in this chapter if that referral would be binding on the dealer, except that this section does not prevent the parties from mutually agreeing to arbitration pursuant to law.

2. Require a dealer to agree to the jurisdiction, venue or tribunal in which a controversy arising under the provisions of the franchise agreement may or may not be submitted for resolution, or prohibit a dealer from bringing an action in any forum allowed by Nevada law.

3. Require a dealer to agree to a term or condition of a franchise agreement which violates any provision of NRS 482.36311 to 482.36425, inclusive ~~and~~, *and sections 2, 3 and 4 of this act.*

4. Require a dealer to waive a trial by jury in actions involving the manufacturer, distributor or factory branch.

5. Increase prices of new vehicles which the dealer had ordered for private retail consumers before his receipt of the written official notification of a price increase. A sales contract signed by a retail consumer constitutes evidence of each order. Price changes applicable to new models or series of vehicles at the time of the introduction of the new models or series shall not be deemed a price increase. Price changes caused by:

(a) The addition to a vehicle of equipment formerly optional as standard or required equipment pursuant to state or federal law;

(b) Revaluation of the United States dollar in the case of foreign-made vehicles; or

(c) Transportation cost increases,

↪ are not subject to this subsection.

6. Deny the principal owner the opportunity to designate his spouse, a member of his family, a qualified manager, or a trust or other artificial person controlled by any of them as entitled to participate in the ownership of:

(a) The franchised dealership;

(b) A successor franchised dealership for 2 years or a longer reasonable time after the incapacity of the principal owner; or

(c) A successor franchised dealership after the death of the principal in accordance with NRS 482.36396 to 482.36414, inclusive.

7. Modify unilaterally, replace, enter into, relocate, terminate or refuse to renew a franchise in violation of law.

8. Terminate or refuse to approve a transfer of a franchise for a dealership, or honor the right of succession set forth in a franchise agreement or refuse to approve the transfer of a controlling interest in a dealership because the dealer has, before October 1, 1997, established an additional franchise to sell or service another line or make of new vehicles in the same facility as the existing dealership.

9. Prevent a dealer from establishing, on or after October 1, 1997, an additional franchise to sell or service another line or make of new vehicles in the same facility as the existing dealership if the dealer:

(a) Submits a written request for approval of the additional franchise to the manufacturer, distributor or factory branch of the existing dealership;

(b) Complies with the reasonable requirements for approval set forth in the franchise of the existing dealership; and

(c) Obtains the approval of the manufacturer, distributor or factory branch of the existing dealership.

➡ The manufacturer, distributor or factory branch shall notify the dealer in writing of its decision to approve or deny the request within 90 days after receipt of the request. The manufacturer, distributor or factory branch shall not unreasonably withhold its approval. If the request is denied, the material reasons for the denial must be stated. Failure to approve or deny the request, in writing, within 90 days has the effect of approval.

Sec. 8.6. NRS 482.36423 is hereby amended to read as follows:

482.36423 1. Whenever it appears that a person has violated, is violating or is threatening to violate any provision of NRS 482.36311 to 482.36425, inclusive, *and sections 2, 3 and 4 of this act*, any person aggrieved thereby may apply to the district court in the county where the defendant resides, or in the county where the violation or threat of violation occurs, for injunctive relief to restrain the person from continuing the violation or threat of violation.

2. In addition to any other judicial relief, any dealer or person who assumes the operation of a franchise pursuant to NRS 482.36396 to 482.36414, inclusive, who is injured in his business or property by reason of a violation of NRS 482.36311 to 482.36425, inclusive, *and sections 2, 3 and 4 of this act* may bring an action in the district court in which the dealership is located, and may recover three times the pecuniary loss sustained by him, and the cost of suit, including a reasonable attorney's fee. The amount of pecuniary loss sustained by a dealer, pursuant to subsection 7 of NRS 482.3638, is the fair market value of the franchised dealership at the time of notification of termination, refusal to continue or unilateral modification of a franchise.

3. Any artificial person created and existing under the laws of any other state, territory, foreign government or the government of the United States, or any person residing outside the State, who grants a franchise to any dealer in this State may be served with any legal process in any action for injunctive relief or civil damages in the following manner:

- (a) By delivering a copy of the process to the Director; and
- (b) By mailing to the last known address of the manufacturer or distributor, by certified mail, return receipt requested, a copy of the summons and a copy of the complaint, together with copies of any petition or order for injunctive relief.

4. The defendant has 30 days, exclusive of the day of service, within which to answer or plead.

5. The method of service provided in this section is cumulative and may be utilized with, after or independently of all other methods of service.

Sec. 8.8. NRS 482.36425 is hereby amended to read as follows:

482.36425 1. Any manufacturer or distributor who willfully violates any provision of NRS 482.36311 to 482.36425, inclusive, *and sections 2, 3 and 4 of this act* is subject to a civil penalty of not less than \$50 nor more than \$1,000 for each day of violation and for each act of violation. All civil penalties recovered must be paid to the State of Nevada.

2. Whenever it appears that a manufacturer or distributor has violated, is violating or is threatening to violate any provision of NRS 482.36311 to 482.36425, inclusive, *and sections 2, 3 and 4 of this act*, the Attorney General may institute a civil suit in any district court of this State for injunctive relief to restrain the violation or threat of violation or, if the violation or threat is willful, for the assessment and recovery of the civil penalty, or both.

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. Section 5 of this act is hereby amended to read as follows:

Sec. 5. 1. A person shall not engage in the activity of an agent for a broker, or act in the capacity of an agent in this State without first having received a license or temporary permit from the Department. Before issuing a license or temporary permit to engage in the activity of an agent, the Department shall require the applicant to submit to the Department:

- (a) An application, signed and verified by the applicant, stating:
 - (1) That the applicant is to engage in the activity of an agent;
 - (2) The name ~~and~~ residence address ~~and social security number~~ of the applicant; and
 - (3) The name and address of the employer of the applicant.

(b) Proof of the employment of the applicant by a broker at the time the application is filed.

(c) A statement as to whether any previous application of the applicant has been denied or any previous license of the applicant has been revoked.

(d) Payment of a nonrefundable license fee of \$75. The license expires on December 31 of each calendar year and may be renewed annually upon the payment of a fee of \$40.

(e) For initial licensure, a complete set of his fingerprints and written permission authorizing the Department to forward those fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report.

(f) Any other information the Department determines necessary.

2. The Department may issue a 60-day temporary permit to an applicant who has submitted a complete application and paid the required fee.

3. A license to act as an agent of a broker issued pursuant to this section does not authorize a person to engage in the business of selling mobile homes.

4. The Department may deny an application for a license as an agent or suspend or revoke a license issued pursuant to this section upon any of the following grounds:

(a) Failure of the applicant to establish by proof satisfactory to the Department that he is employed by a broker.

(b) Conviction of a felony.

(c) Conviction of a gross misdemeanor.

(d) Conviction of a misdemeanor for a violation of any of the provisions of this chapter.

(e) Falsification of the application.

(f) Evidence of unfitness as described in NRS 482.3255.

(g) Failure of the applicant to provide any information determined necessary by the Department to process the application.

(h) Any reason determined by the Director to be in the best interests of the public.

5. An agent shall not engage in any activity, or act in any other capacity as an agent other than for the account of, or for and on behalf of, a single employer, at a specified place of business of that employer, who must be a broker.

6. If an application for a license as an agent is denied, the applicant may reapply for a license not less than 6 months after the denial.

7. An agent's license must be posted in a conspicuous place on the premises of the broker by whom the agent is employed.

8. If an agent ceases to be employed by a broker, his license to act as an agent is automatically suspended and his right to act as an agent immediately ceases, and he shall not engage in the activity of an agent until he has:

(a) Paid the Department a transfer fee of \$20 and submitted a certificate of employment indicating that he has been reemployed by a broker; and

(b) Presented a current temporary permit or new license to the broker by whom he is employed.

9. If an agent changes his residential address, he shall submit a written notice of the change to the Department within 10 days after the change occurs.

10. If a person who holds a temporary permit to act as an agent ceases to be employed by a broker, his permit to act as an agent is automatically suspended, his right to act as an agent immediately ceases and his application for licensure must be denied until he has:

(a) Paid the Department a transfer fee of \$20 and submitted a certificate of employment indicating that he has been reemployed by a broker; and

(b) Presented a current temporary permit or new license to the broker by whom he is employed.

11. A broker who employs an agent shall notify the Department of the termination of employment of the agent not later than 10 days after the date of termination by forwarding the license of the agent to the Department.

12. Any person who fails to comply with the provisions of this section is guilty of a misdemeanor except as otherwise provided in NRS 482.555.

13. As used in this section, "agent" means a person who is employed by a broker and who, for a fee or any other consideration, assists the broker in offering to provide to another person the service of arranging, negotiating or assisting in the purchase of a new or used vehicle which has not been registered or for which an ownership interest has not been taken by the broker.

Sec. 15. 1. This section and sections 1 to 4, inclusive, and ~~7-5~~ 7.1 to 13, inclusive, of this act become effective upon passage and approval.

2. Sections 5, 6 and 7 of this act become effective on July 1, 2010.

3. Section 5 of this act expires by limitation 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.

4. Section 14 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 for the support of one or more children,

↪ are repealed by the Congress of the United States.

Senator Carlton moved that the Senate do not concur in the Assembly amendments to Senate Bill No. 246.

Conflict of interest declared by Senator Raggio.

Motion carried.

Bill ordered transmitted to the Assembly.

SECOND READING AND AMENDMENT

Assembly Bill No. 482.

Bill read second time.

The following amendment was proposed by the Committee on Energy, Infrastructure and Transportation:

Amendment No. 942.

"SUMMARY—Makes various changes relating to the repair of motor vehicles. (BDR 43-1124)"

"AN ACT relating to motor vehicles; transferring the authority for the regulation of trade practices of garages, garagemen and body shops from the Commissioner of Consumer Affairs to the Department of Motor Vehicles; providing a penalty; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Existing law provides for regulation of garages, garagemen and body shops by the Commissioner of Consumer Affairs and for their registration or licensure with the Department of Motor Vehicles. (NRS 487.530-487.570, 487.600-487.690, 597.480-597.590) Sections 2-21 of this bill transfer authority for regulation to the Department and provide for enforcement of those provisions by the Director of the Department.

Section 1 of this bill allows the Department of Motor Vehicles to fine a person who engages in certain deceptive trade practices relating to the sale or lease of a vehicle regardless of whether the person has been fined for that act under the provisions of NRS 598.0903 to 598.0999, inclusive. (NRS 482.554)

Section 29.3 of this bill creates a revolving account for the Bureau of Consumer Protection, overseen by the Consumer's Advocate, to be used for the undercover investigation of alleged violations of sections 4-21 of this bill or deceptive trade practices.

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

Section 1. NRS 482.554 is hereby amended to read as follows:

482.554 1. The Department may impose an administrative fine of not more than \$10,000 against any person who engages in a deceptive trade practice. The Department shall afford to any person so fined an opportunity for a hearing pursuant to the provisions of NRS 233B.121.

2. For the purposes of this section, a person shall be deemed to be engaged in a "deceptive trade practice" if, in the course of his business or occupation, he:

(a) Enters into a contract for the sale of a vehicle on credit with a customer, exercises a valid option to cancel the vehicle sale and then, after the customer returns the vehicle with no damage other than reasonable wear and tear, the seller:

(1) Fails to return any down payment or other consideration in full, including, returning a vehicle accepted in trade;

(2) Knowingly makes a false representation to the customer that the customer must sign another contract for the sale of the vehicle on less favorable terms; or

(3) Fails to use the disclosure as required in subsection 3.

(b) Uses a contract for the sale of the vehicle or a security agreement that materially differs from the form prescribed by law.

(c) Engages in any deceptive trade practice, as defined in NRS 598.0915 to 598.0925, inclusive, that involves the purchase and sale or lease of a motor vehicle.

(d) Engages in any other acts prescribed by the Department by regulation as a deceptive trade practice.

3. If a seller of a vehicle exercises a valid option to cancel the sale of a vehicle to a customer, the seller must provide a disclosure, and the customer must sign that disclosure, before the seller and customer may enter into a new agreement for the sale of the same vehicle on different terms, or for the sale of a different vehicle. The Department shall prescribe the form of the disclosure by regulation.

4. All administrative fines collected by the Department pursuant to this section must be deposited with the State Treasurer to the credit of the State Highway Fund.

5. ~~{Except as otherwise provided in this subsection, the}~~ The administrative remedy provided in this section is not exclusive and is intended to supplement existing law. ~~{The Department may not impose a fine pursuant to this section against any person who engages in a deceptive trade practice if a fine has previously been imposed against that person pursuant to NRS 598.0903 to 598.0999, inclusive, for the same act.}~~ The provisions of this section do not deprive a person injured by a deceptive trade practice from resorting to any other legal remedy.

Sec. 1.5. Chapter 487 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 21, inclusive, of this act.

Sec. 2. *"Body shop" means any place where the body of a motor vehicle is painted, fixed, repaired or replaced for compensation.*

Sec. 3. *"Person authorizing repairs" means a person who uses the services of a garage. The term includes an insurance company, its agents or its representatives authorizing repairs to motor vehicles under a policy of insurance.*

Sec. 4. 1. *Each garageman shall display conspicuously in those areas of his place of business frequented by persons seeking repairs on motor vehicles a sign, not less than 22 inches by 28 inches in size, setting forth in boldface letters the following:*

STATE OF NEVADA

REGISTERED GARAGE

THIS GARAGE IS REGISTERED WITH THE DEPARTMENT OF MOTOR
VEHICLES

NEVADA AUTOMOTIVE REPAIR CUSTOMER BILL OF RIGHTS

AS A CUSTOMER IN NEVADA:

YOU have the right to receive repairs from a business that is REGISTERED with the Department of Motor Vehicles that will ensure the proper repair of your vehicle. (cite to this section of this act)

YOU have the right to receive a WRITTEN ESTIMATE of charges for repairs made to your vehicle which exceed \$50. (cite to section 6 of this act)

YOU have the right to read and understand all documents and warranties BEFORE YOU SIGN THEM. (cite to this section of this act)

YOU have the right to INSPECT ALL REPLACED PARTS and accessories that are covered by a warranty and for which a charge is made. (cite to section 11 of this act)

YOU have the right to request that all replaced parts and accessories that are not covered by a warranty BE RETURNED TO YOU AT THE TIME OF SERVICE. (cite to section 11 of this act)

YOU have the right to require authorization BEFORE any additional repairs are made to your vehicle if the charges for those repairs exceed 20% of the original estimate or \$100, whichever is less. (cite to section 7 of this act)

YOU have the right to receive a COMPLETED STATEMENT OF CHARGES for repairs made to your vehicle. (cite to section 18 of this act)

FOR MORE INFORMATION PLEASE CONTACT:

THE DEPARTMENT OF MOTOR VEHICLES

2. *Each body shop shall display conspicuously in those areas of its place of business frequented by persons seeking repairs on motor vehicles a sign, not less than 22 inches by 28 inches in size, setting forth in boldface letters the following:*

STATE OF NEVADA
LICENSED BODY SHOP

THIS BODY SHOP IS LICENSED BY THE DEPARTMENT OF MOTOR
VEHICLES

NEVADA AUTOMOTIVE REPAIR CUSTOMER BILL OF RIGHTS
AS A CUSTOMER IN NEVADA:

YOU have the right to receive repairs from a business that is LICENSED with the Department of Motor Vehicles that will ensure the proper repair of your vehicle. (cite to this section of this act)

YOU have the right to receive a WRITTEN ESTIMATE of charges for repairs made to your vehicle which exceed \$50. (cite to section 6 of this act)

YOU have the right to read and understand all documents and warranties BEFORE YOU SIGN THEM. (cite to this section of this act)

YOU have the right to INSPECT ALL REPLACED PARTS and accessories that are covered by a warranty and for which a charge is made. (cite to section 11 of this act)

YOU have the right to request that all replaced parts and accessories that are not covered by a warranty BE RETURNED TO YOU AT THE TIME OF SERVICE. (cite to section 11 of this act)

YOU have the right to require authorization BEFORE any additional repairs are made to your vehicle if the charges for those repairs exceed 20% of the original estimate or \$100, whichever is less. (cite to section 7 of this act)

YOU have the right to receive a COMPLETED STATEMENT OF CHARGES for repairs made to your vehicle. (cite to section 18 of this act)

FOR MORE INFORMATION PLEASE CONTACT:

THE DEPARTMENT OF MOTOR VEHICLES

3. The sign required pursuant to the provisions of subsection 1 or 2 must include a replica of the Great Seal of the State of Nevada. The Seal must be 2 inches in diameter and be centered on the face of the sign directly above the words "STATE OF NEVADA."

4. Any person who violates the provisions of this section is guilty of a misdemeanor.

Sec. 5. Whenever any body shop or garageman accepts or assumes control of a motor vehicle for the purpose of making or completing any repair, the body shop or garageman shall comply with the provisions of sections 6 to 19, inclusive, of this act.

Sec. 6. 1. Except as otherwise provided in section 8 of this act, a person requesting or authorizing the repair of a motor vehicle that is more than \$50 must be furnished a written estimate or statement signed by the person making the estimate or statement on behalf of the body shop or garageman indicating the total charge for the performance of the work necessary to accomplish the repair, including the charge for labor and all parts and accessories necessary to perform the work.

2. If the estimate is for the purpose of diagnosing a malfunction, the estimate must include the cost of:

- (a) Diagnosis and disassembly; and*
- (b) Reassembly, if the person does not authorize the repair.*

3. *The provisions of this section do not require a body shop or garageman to reassemble a motor vehicle if the body shop or garageman determines that the reassembly of the motor vehicle would render the vehicle unsafe to operate.*

Sec. 7. *Except as otherwise provided in section 8 of this act, if it is determined that additional charges are required to perform the repair authorized, and those additional charges exceed, by 20 percent or \$100, whichever is less, the amount set forth in the estimate or statement required to be furnished pursuant to the provisions of section 6 of this act, the body shop or garageman shall notify the owner and insurer of the motor vehicle of the amount of those additional charges.*

Sec. 8. *The person authorizing the repairs may waive the estimate or statement required pursuant to the provisions of section 6 of this act or the notification required by section 7 of this act by executing a written waiver of that requirement or notification. The waiver must be executed by the person authorizing the repairs at the time he authorizes those repairs.*

Sec. 9. *If a body shop or garage performs repairs on a motor vehicle, the body shop or garage shall perform the repairs in accordance with any specifications of the manufacturer of the motor vehicle and the written estimate or statement of the cost of the repairs that is most recently agreed upon by the body shop or garage and the person authorizing repairs.*

Sec. 10. 1. *An owner and the insurer of a motor vehicle who have been notified of additional charges pursuant to section 7 of this act shall:*

- (a) Authorize the performance of the repair at the additional expense; or*
- (b) Without delay, and upon payment of the authorized charges, take possession of the motor vehicle.*

2. *Until the election provided for in subsection 1 has been made, the body shop or garageman shall not undertake any repair which would involve such additional charges.*

3. *If the owner or insurer of the motor vehicle elects to take possession of the motor vehicle but fails to take possession within a 24-hour period after the election, the body shop or garageman may charge for storage of the vehicle.*

Sec. 11. 1. *Whenever the repair work performed on a motor vehicle requires the replacement of any parts or accessories, the body shop or garageman shall, at the request of the person authorizing the repairs or any person entitled to possession of the motor vehicle, deliver to the person all parts and accessories replaced as a result of the work done.*

2. *The provisions of subsection 1 do not apply to parts or accessories which must be returned to a manufacturer or distributor under a warranty arrangement or which are subject to exchange, but the customer, on request, is entitled to be shown the warranty parts for which a charge is made.*

Sec. 12. *The body shop or garageman shall retain copies of any estimate, statement or waiver required by sections 6 to 19, inclusive, of this act as an ordinary business record of the body shop or garage, for a period of not less than 1 year after the date the estimate, statement or waiver is signed.*

Sec. 13. *In every instance where charges are made for the repair of a motor vehicle by a garageman, the garageman making the repairs shall comply with the provisions of sections 6 to 19, inclusive, of this act. A garageman is not entitled to detain a motor vehicle by virtue of any common law or statutory lien, or otherwise enforce such a lien, or to sue on any contract for repairs made by him unless he has complied with the requirements of sections 6 to 19, inclusive, of this act.*

Sec. 14. *A person shall be deemed to be engaged in a "deceptive trade practice" if, in the course of his business or occupation, he:*

1. *Engages in any deceptive trade practice, as defined in NRS 598.0915 to 598.0925, inclusive, that involves the repair of a motor vehicle; or*

2. *Engages in any other acts prescribed by the Director by regulation as a deceptive trade practice.*

Sec. 15. *(Deleted by amendment.)*

Sec. 16. 1. *The Director may request an undercover investigation of a person who is allegedly engaging in a deceptive trade practice or violating the provisions of sections 4 to 21, inclusive, of this act.*

2. *The Bureau of Consumer Protection in the Office of the Attorney General may conduct an undercover investigation of a person who is allegedly engaging in a deceptive trade practice or violating the provisions of sections 4 to 21, inclusive, of this act on its own motion or upon a request received pursuant to subsection 1. Nothing in this subsection requires the Bureau to conduct an undercover investigation.*

Sec. 17. 1. *In addition to any other penalty, the Director may impose an administrative fine of not more than \$10,000 against any person who engages in a deceptive trade practice as set forth in section 14 of this act. The Director shall provide to any person so fined an opportunity for a hearing pursuant to the provisions of NRS 233B.121.*

2. *All administrative fines collected by the Director pursuant to this section must be deposited with the State Treasurer to the credit of the State Highway Fund.*

3. *The administrative remedy provided in this section is not exclusive and is intended to supplement existing law. The provisions of this section do not deprive a person injured by a deceptive trade practice from resorting to any other legal remedy.*

Sec. 18. 1. *If charges are made for the repair of a motor vehicle, the garageman or body shop making the charges shall present to the person authorizing repairs or the person entitled to possession of the motor vehicle a statement of the charges setting forth the following information:*

(a) *The name and signature of the person authorizing repairs;*

- (b) A statement of the total charges;*
- (c) An itemization and description of all parts used to repair the motor vehicle indicating the charges made for labor; and*
- (d) A description of all other charges.*

2. Any person violating this section is guilty of a misdemeanor.

3. In the case of a motor vehicle registered in this State, no lien for labor or materials provided under NRS 108.265 to 108.367, inclusive, may be enforced by sale or otherwise unless a statement as described in subsection 1 has been given by delivery in person or by certified mail to the last known address of the registered and the legal owner of the motor vehicle. In all other cases, the notice must be made to the last known address of the registered owner and any other person known to have or to claim an interest in the motor vehicle.

Sec. 19. 1. On or before January 1 of each year, the Director of the Department shall prepare a report concerning garages, garagemen and body shops. The report must include:

(a) The number of complaints relating to garages, garagemen and body shops made to and acted upon by the Department during the year for which the report is prepared;

(b) The number of investigations conducted during that year by the Department relating to garages, garagemen and body shops; and

(c) The outcome of each investigation specified in paragraph (b) and the extent to which any information relating to each investigation is subject to disclosure to the members of the public.

2. On or before January 1 of each even-numbered year, the Director of the Department shall submit the report required pursuant to subsection 1 to the Legislative Commission. On or before January 1 of each odd-numbered year, the Director of the Department shall submit the report to the Director of the Legislative Counsel Bureau for transmittal to:

(a) The Senate Standing Committee on Energy, Infrastructure and Transportation; and

(b) The Assembly Standing Committee on Transportation.

Sec. 20. The Attorney General or any district attorney may bring an action in any court of competent jurisdiction in the name of the State of Nevada on the complaint of the Director, or of any person allegedly aggrieved by a violation of the provisions of sections 6 to 19, inclusive, of this act, to enjoin any violation of the provisions of sections 6 to 19, inclusive, of this act.

Sec. 21. Any person who knowingly violates any provision of sections 5 to 19, inclusive, of this act is liable, in addition to any other penalty or remedy which may be provided by law, to a civil penalty of not more than \$500 for each offense, which may be recovered by civil action on complaint of the Director or the district attorney.

Sec. 21.5. NRS 487.002 is hereby amended to read as follows:

487.002 1. The Advisory Board on Automotive Affairs, consisting of seven members appointed by the Governor, is hereby created within the Department.

2. The Governor shall appoint to the Board:

- (a) One representative of the Department;
- (b) One representative of licensed operators of body shops;
- (c) One representative of licensed automobile wreckers;
- (d) One representative of registered garagemen;
- (e) One representative of licensed operators of salvage pools; and
- (f) Two representatives of the general public.

3. After the initial terms, each member of the Board serves a term of 4 years. The members of the Board shall annually elect from among their number a Chairman and a Vice Chairman. The Department shall provide secretarial services for the Board.

4. The Board shall meet regularly at least twice each year and may meet at other times upon the call of the Chairman. Each member of the Board is entitled to the per diem allowance and travel expenses provided for state officers and employees generally.

5. The Board shall:

(a) Study the regulation of garagemen, automobile wreckers and operators of body shops and salvage pools, including, without limitation, the registration or licensure of such persons and the methods of disciplinary action against such persons;

(b) Analyze and advise the Department relating to any consumer complaints ~~provided to the Department by the Consumer Affairs Division of the Department of Business and Industry pursuant to NRS 598.985 or otherwise~~ received by the Department concerning garagemen, automobile wreckers or operators of body shops or salvage pools;

(c) Make recommendations to the Department for any necessary regulations or proposed legislation pertaining to paragraph (a) or (b);

(d) On or before January 15 of each odd-numbered year, prepare and submit a report concerning its activities and recommendations to the Governor and to the Director of the Legislative Counsel Bureau for transmission to the Legislature; and

(e) Perform any other duty assigned by the Department.

Sec. 22. NRS 487.530 is hereby amended to read as follows:

487.530 As used in NRS 487.530 to ~~{487.570,}~~ 487.690, inclusive, *and sections 2 to 21, inclusive, of this act*, unless the context otherwise requires, the words and terms defined in NRS ~~{487.535}~~ 487.540 to 487.550, inclusive, *and sections 2 and 3 of this act* have the meanings ascribed to them in those sections.

Sec. 23. NRS 487.555 is hereby amended to read as follows:

487.555 The provisions of NRS 487.530 to ~~{487.570,}~~ 487.690, inclusive, *and sections 2 to 21, inclusive, of this act* do not apply to a service

station that is exclusively engaged in the business of selling motor vehicle fuel, lubricants or goods unrelated to the repair of motor vehicles.

Sec. 24. NRS 487.563 is hereby amended to read as follows:

487.563 1. Each person who submits an application for registration pursuant to the provisions of NRS 487.560 shall file with the Department a bond in the amount of \$5,000, with a corporate surety for the bond that is licensed to do business in this State. The form of the bond must be approved by the Attorney General and be conditioned upon whether the applicant conducts his business as an owner or operator of a garage without fraud or fraudulent representation and in compliance with the provisions of *sections 4 to 21, inclusive, of this act and NRS 487.530 to [487.570,] 487.567, inclusive . [, and 597.480 to 597.590, inclusive.]*

2. The bond must be continuous in form and the total aggregate liability on the bond must be limited to the payment of the total amount of the bond.

3. The bond must provide that any person injured by the action of the garageman may:

(a) Apply to the Director for compensation from the bond. The Director, for good cause shown and after notice and opportunity for hearing, may determine the amount of compensation and the person to whom it is to be paid. The surety shall then make payment.

(b) Present to the Director an order of a court requiring the Director to pay to the person an amount of compensation from the bond. The Director shall inform the surety, and the surety shall then make payment.

4. In lieu of a bond required to be filed pursuant to the provisions of subsection 1, a person may deposit with the Department, pursuant to the terms prescribed by the Department:

(a) A like amount of money or bonds of the United States or of the State of Nevada of an actual market value of not less than the amount fixed by the Department; or

(b) A savings certificate of a bank or savings and loan association located in this State, which must indicate an account of an amount equal to the amount of the bond that would otherwise be required pursuant to this section and that the amount is unavailable for withdrawal except upon order of the Department. Interest earned on the certificate accrues to the account of the applicant.

5. A deposit made pursuant to subsection 4 may be disbursed by the Director, for good cause shown and after notice and opportunity for hearing, in an amount determined by him to compensate a person injured by an action of the garageman or released upon receipt of:

(a) An order of a court requiring the Director to release all or a specified portion of the deposit; or

(b) A statement signed by the person under whose name the deposit is made and acknowledged before any person authorized to take acknowledgments in this State, requesting that the Director release the

deposit, or a specified portion thereof, and stating the purpose for which the release is requested.

6. If a person fails to comply with an order of a court that relates to the repair of a motor vehicle, or fails to pay or otherwise discharge any final judgment rendered and entered against him or any court order issued and arising out of the repair of a motor vehicle in the operation of a garage, the Department shall revoke or refuse to renew the certificate of registration of the person who failed to comply with the order or satisfy the judgment.

7. The Department may reinstate or renew a certificate of registration that is revoked pursuant to the provisions of subsection 6 if the person whose certificate of registration is revoked complies with the order of the court.

8. A garageman whose registration has been revoked pursuant to the provisions of subsection 6 shall furnish to the Department a bond in the amount specified in subsection 1 before the reinstatement of his registration.

Sec. 25. NRS 487.564 is hereby amended to read as follows:

487.564 1. The Department may refuse to issue a registration or may suspend, revoke or refuse to renew a registration to operate a garage upon any of the following grounds:

(a) A false statement of a material fact in a certification for a salvage vehicle required pursuant to NRS 487.800.

(b) A false statement or certification for an inspection pursuant to NRS 487.800 which attests to the mechanical fitness or safety of a salvage vehicle.

(c) The Director determines that the garage or garageman has engaged in a deceptive trade practice or violated the provisions of ~~NRS 597.480 to 597.590, inclusive.~~ *sections 4 to 21, inclusive, of this act.*

(d) Evidence of unfitness of the applicant or registrant pursuant to NRS 487.165.

(e) A violation of any regulation adopted by the Department governing the operation of a garage.

(f) A violation of any statute or regulation that constitutes fraud in conjunction with the repair of a motor vehicle or operation of a garage.

2. A person for whom a certificate of registration has been suspended or revoked pursuant to the provisions of this section, subsection 6 of NRS 487.563 or similar provisions of the laws of any other state or territory of the United States shall not be employed by, or in any manner affiliated with, the operation of a garage subject to registration in this State.

3. As used in this section, "salvage vehicle" has the meaning ascribed to it in NRS 487.770.

Sec. 26. NRS 487.600 is hereby amended to read as follows:

487.600 As used in NRS 487.600 to ~~487.690,~~ 487.687, inclusive, unless the context otherwise requires, the words and terms defined in NRS ~~487.602~~ 487.604 to 487.608, inclusive, have the meanings ascribed to them in those sections.

Sec. 27. NRS 487.640 is hereby amended to read as follows:

487.640 1. No license may be issued to an operator of a body shop until he procures and files with the Department a good and sufficient bond in the amount of \$10,000, with a corporate surety thereon licensed to do business in the State of Nevada, approved as to form by the Attorney General, and conditioned that the applicant shall conduct his business as an operator of a body shop without fraud or fraudulent representation, and in compliance with the provisions of *sections 4 to 21, inclusive, of this act and NRS 487.600 to ~~487.690,~~ 487.687, inclusive . ~~[-, and 597.480 to 597.590, inclusive.]~~* The Department may, by agreement with any operator of a body shop who has been licensed by the Department for 5 years or more, allow a reduction in the amount of the bond of the operator, if the business of the operator has been conducted satisfactorily for the preceding 5 years, but no bond may be in an amount less than \$1,000.

2. The bond may be continuous in form and the total aggregate liability on the bond must be limited to the payment of the total amount of the bond.

3. The bond must provide that any person injured by the action of the operator of the body shop in violation of any of the provisions of *sections 4 to 21, inclusive, of this act and NRS 487.600 to ~~487.690,~~ 487.687, inclusive, ~~and 597.480 to 597.590, inclusive,~~* may apply to the Director for compensation from the bond. The Director, for good cause shown and after notice and opportunity for hearing, may determine the amount of compensation and the person to whom it is to be paid. The surety shall then make the payment.

4. In lieu of a bond an operator of a body shop may deposit with the Department, under the terms prescribed by the Department:

(a) A like amount of money or bonds of the United States or of the State of Nevada of an actual market value of not less than the amount fixed by the Department; or

(b) A savings certificate of a bank, credit union or savings and loan association situated in Nevada, which must indicate an account of an amount equal to the amount of the bond which would otherwise be required by this section and that this amount is unavailable for withdrawal except upon order of the Department. Interest earned on the certificate accrues to the account of the applicant.

5. A deposit made pursuant to subsection 4 may be disbursed by the Director, for good cause shown and after notice and opportunity for hearing, in an amount determined by him to compensate a person injured by an action of the licensee, or released upon receipt of:

(a) An order of a court requiring the Director to release all or a specified portion of the deposit; or

(b) A statement signed by the person under whose name the deposit is made and acknowledged before any person authorized to take acknowledgments in this State, requesting the Director to release the deposit,

or a specified portion thereof, and stating the purpose for which the release is requested.

6. When a deposit is made pursuant to subsection 4, liability under the deposit is in the amount prescribed by the Department. If the amount of the deposit is reduced or there is an outstanding judgment of a court for which the licensee is liable under the deposit, the license is automatically suspended. The license must be reinstated if the licensee:

- (a) Files an additional bond pursuant to subsection 1;
- (b) Restores the deposit with the Department to the original amount required under this section; or
- (c) Satisfies the outstanding judgment for which he is liable under the deposit.

7. A deposit made pursuant to subsection 4 may be refunded:

- (a) By order of the Director, 3 years after the date the licensee ceases to be licensed by the Department, if the Director is satisfied that there are no outstanding claims against the deposit; or
- (b) By order of court, at any time within 3 years after the date the licensee ceases to be licensed by the Department, upon evidence satisfactory to the court that there are no outstanding claims against the deposit.

8. Any money received by the Department pursuant to subsection 4 must be deposited with the State Treasurer for credit to the Motor Vehicle Fund.

Sec. 28. NRS 487.650 is hereby amended to read as follows:

487.650 1. The Department may refuse to issue a license or may suspend, revoke or refuse to renew a license to operate a body shop upon any of the following grounds:

- (a) Failure of the applicant or licensee to have or maintain an established place of business in this State.
- (b) Conviction of the applicant or licensee or an employee of the applicant or licensee of a felony, or of a misdemeanor or gross misdemeanor for a violation of a provision of this chapter.
- (c) Any material misstatement in the application for the license.
- (d) Willful failure of the applicant or licensee to comply with the motor vehicle laws of this State and *sections 4 to 21, inclusive, of this act or NRS 487.600 to [487.690,] 487.687, inclusive . [, or 597.480 to 597.590, inclusive.]*

(e) Failure or refusal by the licensee to pay or otherwise discharge any final judgment against him arising out of the operation of the body shop.

(f) Failure or refusal to provide to the Department an authorization for the disclosure of financial records for the business as required pursuant to subsection 2.

(g) A finding of guilty or guilty but mentally ill by a court of competent jurisdiction in a case involving a fraudulent inspection, purchase, sale or transfer of a salvage vehicle by the applicant or licensee or an employee of the applicant or licensee.

(h) An improper, careless or negligent inspection of a salvage vehicle pursuant to NRS 487.800 by the applicant or licensee or an employee of the applicant or licensee.

(i) A false statement of material fact in a certification of a salvage vehicle pursuant to NRS 487.800 or a record regarding a salvage vehicle by the applicant or licensee or an employee of the applicant or licensee.

(j) The display of evidence of unfitness for a license pursuant to NRS 487.165.

2. Upon the receipt of any report or complaint alleging that an applicant or a licensee has engaged in financial misconduct or has failed to satisfy financial obligations related to the operation of a body shop, the Department may require the applicant or licensee to submit to the Department an authorization for the disclosure of financial records for the business as provided in NRS 239A.090. The Department may use any information obtained pursuant to such an authorization only to determine the suitability of the applicant or licensee for initial or continued licensure. Information obtained pursuant to such an authorization may be disclosed only to those employees of the Department who are authorized to issue a license to an applicant pursuant to NRS 487.600 to ~~487.690,~~ 487.687, inclusive, or to determine the suitability of an applicant or a licensee for licensure.

3. As used in this section, "salvage vehicle" has the meaning ascribed to it in NRS 487.770.

Sec. 29. NRS 487.690 is hereby amended to read as follows:

487.690 Any person who violates any of the provisions of *sections 4 to 21, inclusive, of this act or NRS ~~487.600~~ 487.530 to 487.680, inclusive*, is guilty of a misdemeanor.

Sec. 29.3. Chapter 228 of NRS is hereby amended by adding thereto a new section to read as follows:

1. *There is hereby created a revolving account for the Bureau of Consumer Protection in the sum of \$7,500, which must be used for the payment of expenses relating to conducting an undercover investigation of a person who is allegedly engaging in a deceptive trade practice or violating the provisions of sections 4 to 21, inclusive, of this act.*

2. *The Consumer's Advocate shall deposit the money in the revolving account in a bank or credit union qualified to receive deposits of public money as provided by law, and the deposit must be secured by a depository bond satisfactory to the State Board of Examiners.*

3. *The Consumer's Advocate or his designee may:*

(a) *Sign all checks drawn upon the revolving account; and*

(b) *Make withdrawals of cash from the revolving account.*

4. *Payments made from the revolving account must be promptly reimbursed from the legislative appropriation, if any, to the Consumer's Advocate for the expenses relating to conducting an undercover investigation of a person who is allegedly engaging in a deceptive trade practice or violating the provisions of sections 4 to 21, inclusive, of this act. The claim*

for reimbursement must be processed and paid as other claims against the State are paid.

5. *The Consumer's Advocate shall:*

(a) *Approve any disbursement from the revolving account; and*

(b) *Maintain records of any such disbursement.*

Sec. 29.7. NRS 228.300 is hereby amended to read as follows:

228.300 As used in NRS 228.300 to 228.390, inclusive, *and section 29.3 of this act*, unless the context otherwise requires, the words and terms defined in NRS 228.302 to 228.308, inclusive, have the meanings ascribed to them in those sections.

Sec. 30. (Deleted by amendment.)

Sec. 31. (Deleted by amendment.)

Sec. 32. NRS 686A.300 is hereby amended to read as follows:

686A.300 1. An insurer who issues insurance covering damage to a motor vehicle shall not delay making payment for any claim involving damage to a motor vehicle after receiving a statement of charges, pursuant to the provisions of ~~[NRS 597.5705,]~~ *section 18 of this act*, from any garage or licensed body shop previously authorized by the insured to perform the repairs required by that claim.

2. A delay, within the meaning of this section, is failure to issue a check or draft, payable to the garage or licensed body shop or jointly to the insured and the garage or licensed body shop, within 30 days after the insurer's receipt of the statement of charges for repairs which have been satisfactorily completed.

3. If the damaged vehicle is subject to a security interest or the legal owner of the damaged vehicle is different from the registered owner, the vehicle must be repaired by a garage or licensed body shop unless:

(a) The insurer has declared the vehicle a total loss; or

(b) The total charge for the repair of the vehicle, as set forth in the statement of charges presented pursuant to ~~[NRS 597.5705,]~~ *section 18 of this act*, is \$300 or less.

4. Except as otherwise provided in subsection 3, nothing in this section shall be deemed to prohibit an insurer and insured from settling a claim involving damage to a motor vehicle without providing for the repair of the vehicle.

5. As used in this section, "licensed body shop" means a body shop for which a license has been issued pursuant to chapter 487 of NRS.

Sec. 33. NRS 487.535, 487.568, 487.570, 487.602, 597.480, 597.490, 597.500, 597.510, 597.520, 597.530, 597.535, 597.540, 597.550, 597.560, 597.570, 597.5701, 597.5702, 597.5703, 597.5704, 597.5705, 597.5706, 597.580, 597.590, 598.971, 598.975, 598.981, 598.985 and 598.990 are hereby repealed.

Sec. 34. *This act becomes effective on July 1, 2009.*

LEADLINES OF REPEALED SECTIONS

- 487.535 "Division" defined.
- 487.568 Penalty.
- 487.570 Garageman to comply with certain provisions relating to trade practices.
- 487.602 "Body shop" defined.
- 597.480 Definitions.
- 597.490 Display of sign required; contents of sign; penalty.
- 597.500 Duties of body shop or garageman on acceptance of vehicle for repair.
- 597.510 Estimate of costs required for certain repairs.
- 597.520 Notice of additional charges over estimate required in certain cases.
- 597.530 Waiver of estimate of costs or notice of additional charges; execution of waiver.
- 597.535 Duty of body shop and garage to repair vehicle in accordance with manufacturer's specifications and estimate of costs required for repair.
- 597.540 Duties of owner and insurer upon receipt of notice of additional charges.
- 597.550 Replaced parts to be delivered to person authorizing repairs if requested; exception.
- 597.560 Records to be retained by body shop or garageman.
- 597.570 Compliance with NRS 597.510 to 597.5706, inclusive; enforcement of liens and contracts.
- 597.5701 Certain acts deemed to be deceptive trade practice.
- 597.5702 Revolving account for Bureau of Consumer Protection: Creation; use; deposits; claims.
- 597.5703 Commissioner or Director authorized to request undercover investigation of alleged deceptive trade practice; Bureau of Consumer Protection authorized to conduct such investigation.
- 597.5704 Administrative fine for engaging in deceptive trade practice; deposit and use of money collected as administrative fine.
- 597.5705 Statement of charges required for repair of vehicle; violation constitutes misdemeanor; statement required for enforcement of lien.
- 597.5706 Submission of annual report by Commissioner to Legislative Commission.
- 597.580 Violations: Injunctive relief.
- 597.590 Violations: Civil penalties.
- 598.971 Definitions.
- 598.975 "Department" defined.
- 598.981 "Division" defined.
- 598.985 Division and Department to cooperate to protect persons who authorize repair of motor vehicles.

598.990 Division to establish and maintain toll-free telephone number concerning alleged violations and develop program to provide certain information to public.

Senator Carlton moved the adoption of the amendment.

Remarks by Senator Carlton.

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

Amendment No. 942 to Assembly Bill No. 482 merely changes the effective date from October 1, 2009, to July 1, 2009.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Care moved that Assembly Bill No. 65 be taken from the General File and placed on the General File for the next legislative day.

Motion carried.

Mr. President announced that if there were no objections, the Senate would recess subject to the call of the Chair.

Senate in recess at 12:14 p.m.

SENATE IN SESSION

At 12:17 p.m.

President Krolicki presiding.

Quorum present.

GENERAL FILE AND THIRD READING

Senate Bill No. 435.

Bill read third time.

Remarks by Senator Raggio.

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

Senate Bill No. 435 corrects two technical errors. After we processed Senate Bill No. 429, it was found that two corrections needed to be made. This bill corrects the provision dealing with the existing contracts that would be exempt from the increases. It also corrects the sunset provision for the Business License Fee. That was not properly stated in the reprint of the bill and in the portal bill, which involved Business License Fees. Our Legislative Counsel says this bill needs to be passed to correct those errors.

Roll call on Senate Bill No. 435:

YEAS—18.

NAYS—Amodei, Cegavske—2.

EXCUSED—Schneider.

Senate Bill No. 435 having received a two-thirds majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 81.

Bill read third time.

Roll call on Assembly Bill No. 81:

YEAS—20.

NAYS—None.

EXCUSED—Schneider.

Assembly Bill No. 81 having received a constitutional majority,
Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 279.

Bill read third time.

Roll call on Assembly Bill No. 279:

YEAS—20.

NAYS—None.

EXCUSED—Schneider.

Assembly Bill No. 279 having received a constitutional majority,
Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 554.

Bill read third time.

Roll call on Assembly Bill No. 554:

YEAS—20.

NAYS—None.

EXCUSED—Schneider.

Assembly Bill No. 554 having received a constitutional majority,
Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Mr. President announced that if there were no objections, the Senate would
recess subject to the call of the Chair.

Senate in recess at 12:21 p.m.

SENATE IN SESSION

At 12:31 p.m.

President Krolicki presiding.

Quorum present.

Assembly Bill No. 482.

Bill read third time.

Remarks by Senators Nolan, Carlton, Coffin and Townsend.

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

SENATOR NOLAN:

I am not familiar with the portion of the amendment we have in the second reprint of this bill
where it states, "Under existing law, the Consumer Affairs Division of the Department of
Business and Industry has the authority over a revolving account that is used for undercover

investigations of alleged violations of certain deceptive trade practices." It appears as though the most recent reprint abolishes that account. Why is that?

SENATOR CARLTON:

It does not abolish it; it moves it, removing the Department from one area to another so it will be under the jurisdiction of the Director of the Department of Motor Vehicles.

SENATOR NOLAN:

The Legislative Counsel's Digest says the bill abolishes the account, then, creates a revolving account. If the explanation is that we are just moving the account along with the authority, I am fine with the answer.

SENATOR CARLTON:

The correct account is listed on page 15, line 32, under section 29.3.

SENATOR NOLAN:

Thank you, Mr. President. That will suffice.

SENATOR COFFIN:

I would like to point out that this is one of many contortions that have to be made in our budget because the Governor refused to continue the existence of the Commissioner of Consumer Affairs. Those duties were spread out to different areas in such a way as to try to minimize the damage caused by the Governor's budget. It will not be totally satisfactory in any form. I objected to this throughout the Session. We have it, and we are going to have to live with it. This is going to be a problem for the consumers of Nevada. There is not a lot we can do about it now.

SENATOR TOWNSEND:

I must respectfully disagree with the previous statement. I have been trying to move the responsibilities of Consumer Affairs to the Attorney General for a number of years for one simple reason. If I as a businessperson get a letter from Consumer Affairs or the Attorney General, it is easy to understand which letter I will open first and which letter I will take the most seriously. This is the most appropriate way to deal with consumer needs. If there is a business out there that is misbehaving, we want to know about it and we want action taken. That business should either behave properly or get out of business. That is not the way we treat people in the State of Nevada. This move is appropriate, and I am glad it is being done. If it does not work, then, we will develop another plan.

Roll call on Assembly Bill No. 482:

YEAS—20.

NAYS—None.

EXCUSED—Schneider.

Assembly Bill No. 482 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

UNFINISHED BUSINESS

CONSIDERATION OF ASSEMBLY AMENDMENTS

Senate Bill No. 89.

The following Assembly amendment was read:

Amendment No. 719.

"SUMMARY—Makes various changes to the provisions governing manufactured housing. (BDR 43-427)"

"AN ACT relating to manufactured housing; providing for the licensure of distributors of manufactured homes, mobile homes, manufactured buildings,

commercial coaches or factory-built housing for resale; providing for the regulation of dealers, manufacturers, salesmen, general servicemen and specialty servicemen with respect to manufactured buildings and factory-built housing; authorizing the auditing of the financial accounts of dealers and distributors; requiring the adoption of regulations concerning continuing education requirements for dealers and distributors; revising the procedure for determining the fair market value of manufactured homes under certain circumstances; providing a penalty; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Sections 2, 29-32 and 37-40 of this bill provide for the licensure of distributors of manufactured homes, mobile homes, manufactured buildings, commercial coaches or factory-built housing by the Manufactured Housing Division of the Department of Business and Industry.

Section 12 of this bill authorizes the Division to audit the financial accounts of a dealer or distributor of manufactured housing to investigate insolvency or to administer or enforce any law.

Sections 16-23, 35, 36 and 55-57 of this bill provide for the regulation of dealers, manufacturers, salesmen, general servicemen and specialty servicemen with respect to manufactured buildings and factory-built housing.

Section 28 of this bill requires the Division to adopt regulations concerning continuing education requirements for dealers and distributors.

Sections 41-43 of this bill expand the grounds for disciplinary actions against persons licensed by the Division.

Section 46 of this bill requires the Division to adopt regulations establishing a fee for the issuance of a license as a distributor. Section 47 of this bill requires a distributor to pay an additional fee upon the issuance or renewal of his license. This additional fee is currently imposed on dealers and manufacturers and is required to be deposited in the Account for Education and Recovery Relating to Manufactured Housing in the Fund for Manufactured Housing and to be used to satisfy the claims of purchasers of manufactured housing against licensees for fraud, misrepresentation or deceit.

Sections 59-62 of this bill revise provisions governing the financial and fiduciary duties of dealers.

Sections 63, 75 and 82 of this bill provide limitations on actions against the Division and its officers and employees.

Section 70 of this bill provides that a dealer is guilty of a gross misdemeanor if: (1) he fails to cooperate or comply with or knowingly impedes or interferes with an investigation or audit conducted by the Division; or (2) he acts as a dealer while insolvent or engages in any financial practice which creates a substantial risk of insolvency.

Sections 72-74.5 and 78-81 of this bill revise the procedure for determining the fair market value of manufactured homes under certain circumstances.

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

Section 1. Chapter 489 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 13, inclusive, of this act.

Sec. 2. *"Distributor" means any person who engages in the sale and distribution of manufactured homes, mobile homes, manufactured buildings, commercial coaches or factory-built housing for resale.*

Sec. 3. (Deleted by amendment.)

Sec. 4. (Deleted by amendment.)

Sec. 5. (Deleted by amendment.)

Sec. 6. *"Factory-built housing" has the meaning ascribed to it in NRS 461.080.*

Sec. 7. *"Franchise" means a written agreement between a franchisor and franchisee which establishes that the franchisee will sell or distribute new or used manufactured homes, mobile homes, manufactured buildings, commercial coaches, factory-built housing or related goods or services under, or operate using, the systems, trademark, service mark, trade name, logo or other commercial symbol of the franchisor.*

Sec. 8. *"Franchisee" means any natural person or entity that, pursuant to a franchise, sells or distributes new or used manufactured homes, mobile homes, manufactured buildings, commercial coaches, factory-built housing or related goods or services under, or operates using, the systems, trademark, service mark, trade name, logo or other commercial symbol of the franchisor.*

Sec. 9. *"Franchisor" means any natural person or entity that owns the overall rights to the systems, trademark, service mark, trade name, logo or other commercial symbol of the franchisor and grants a franchise for their use by a franchisee.*

Sec. 10. *"Manufactured building" has the meaning ascribed to it in NRS 461.132.*

Sec. 10.5. *"Modular component" has the meaning ascribed to it in NRS 461.145.*

Sec. 11. (Deleted by amendment.)

Sec. 12. 1. *The Division may investigate and audit any financial account, including, without limitation, any trust account, related to the business of a dealer or distributor if:*

(a) *The Division has reasonable cause to believe that the dealer or distributor is using or has used the account to carry on the business of the dealer or distributor; and*

(b) *The Division:*

(1) *Has reasonable cause to believe or has received a credible complaint that the dealer or distributor is insolvent or is in a financial condition, or has engaged in a financial practice, which creates a substantial risk of insolvency; or*

(2) *Determines that the investigation and audit are reasonably necessary to assist the Division in administering or enforcing any provision of law.*

2. *The Administrator shall adopt regulations prescribing the scope of an audit conducted pursuant to this section.*

3. *As used in this section, "insolvency" or "insolvent" means a condition under which a dealer or distributor is unable to meet the liabilities of his business as they become due in the regular course of business and which creates a substantial risk of harm to the public or a consumer.*

Sec. 13. *As used in this section and NRS 489.4971 to 489.4989, inclusive, "Account" means the Account for Education and Recovery Relating to Manufactured Housing created by NRS 489.4971.*

Sec. 14. NRS 489.021 is hereby amended to read as follows:

489.021 1. The Legislature finds that the construction, assembly and use of manufactured homes, mobile homes, travel trailers [and] , *manufactured buildings*, commercial coaches *and factory-built housing* and their systems, components and appliances, and the alteration, transportation and installation of manufactured homes, mobile homes ~~and~~ , *manufactured buildings*, commercial coaches ~~and~~ *and factory-built housing*, like other products having concealed vital parts, may present hazards to the health, life and safety of persons and the safety of property unless they are properly manufactured, altered, transported and installed.

2. In the sale of manufactured homes, mobile homes, travel trailers ~~and~~ , *manufactured buildings*, commercial coaches ~~and~~ *and factory-built housing*, there is also the possibility of unascertained defects in them even though they are inspected by purchasers.

3. It is the policy and purpose of this State to protect the public against these hazards and to prohibit the manufacture, sale, *distribution*, alteration, transportation and installation in this State of manufactured homes, mobile homes, travel trailers ~~and~~ , *manufactured buildings*, commercial coaches *and factory-built housing* which are not constructed in a manner which provides reasonable safety and protection to owners and users.

4. The Legislature further intends to provide a procedure to ~~assure~~ *ensure* that this State assumes the fullest responsibility for the administration and enforcement of federal safety and construction standards for manufactured homes in Nevada in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974 , ~~42 U.S.C. §§ 5401 et seq. and~~

Sec. 15. NRS 489.031 is hereby amended to read as follows:

489.031 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 489.036 to 489.155, inclusive, *and sections 2 to 10.5, inclusive, of this act* have the meanings ascribed to them in those sections.

Sec. 16. NRS 489.043 is hereby amended to read as follows:

489.043 "Brokerage agreement" means a contract between a dealer and a client in which the dealer agrees to accept compensation to:

1. Assist, solicit or negotiate the sale or exchange of an interest in a manufactured home, mobile home , *manufactured building* or commercial coach ~~{or}~~ *or factory-built housing*; or

2. Induce any person to buy or exchange an interest in a manufactured home, mobile home , *manufactured building* or commercial coach ~~{or}~~ *or factory-built housing*.

Sec. 17. NRS 489.076 is hereby amended to read as follows:

489.076 1. "Dealer" means any person who:

(a) For compensation, money or any other thing of value, sells, exchanges, buys or offers for sale, negotiates or attempts to negotiate a sale or exchange of an interest in a manufactured home, mobile home , *manufactured building* or commercial coach *or factory-built housing* subject to the requirements of this chapter, or induces or attempts to induce any person to buy or exchange an interest in a manufactured home, mobile home , *manufactured building* or commercial coach ~~{or}~~ *or factory-built housing*;

(b) For compensation, money or any other thing of value, leases or rents, offers for lease or rental, negotiates or attempts to negotiate the lease or rental of an interest in a manufactured home, mobile home , *manufactured building* or commercial coach *or factory-built housing* subject to the requirements of this chapter, or induces or attempts to induce any person to lease or rent an interest in a manufactured home, mobile home , *manufactured building* or commercial coach ~~{or}~~ *or factory-built housing*;

(c) Receives or expects to receive a commission, money, brokerage fees, profit or any other thing of value from either the seller or purchaser of any manufactured home, mobile home ~~{or}~~ , *manufactured building*, commercial coach ~~{or}~~ *or factory-built housing*;

(d) Is engaged wholly or in part in the business of:

(1) Selling, renting or leasing manufactured homes, mobile homes ~~{or}~~ , *manufactured buildings*, commercial coaches ~~{or}~~ *or factory-built housing*;

(2) Buying or taking manufactured homes, mobile homes ~~{or}~~ , *manufactured buildings*, commercial coaches *or factory-built housing* in trade for the purpose of resale, selling ~~{or}~~ or offering them for sale or consignment to be sold;

(3) Buying or taking manufactured homes, mobile homes ~~{or}~~ , *manufactured buildings*, commercial coaches *or factory-built housing* in trade to rent, lease or offer them for rent or lease; or

(4) Otherwise dealing in manufactured homes, mobile homes ~~{or}~~ , *manufactured buildings*, commercial coaches ~~{or}~~ *or factory-built housing*; or

(e) Acts as a reposessor or liquidator concerning manufactured homes, mobile homes ~~{or}~~ , *manufactured buildings*, commercial coaches ~~{or}~~ *or factory-built housing*,

↪ whether or not they are owned by such persons.

2. The term does not include:

- (a) Receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under the order of any court;
- (b) Public officers while performing their official duties;
- (c) Banks, savings and loan associations, credit unions, thrift companies or other financial institutions proceeding as repossessioners or liquidators of their own security;
- (d) A person who rents or leases his manufactured home, mobile home ~~for~~, *manufactured building*, commercial coach ~~for~~ or *factory-built housing*;
- (e) An owner selling his private residence; or
- (f) A real estate broker, real estate broker-salesman or real estate salesman who is licensed pursuant to chapter 645 of NRS and who, for another and for compensation or with the intention or expectation of receiving compensation, sells, exchanges, options, purchases, rents or leases, or negotiates or offers, attempts or agrees to negotiate the sale, exchange, option, purchase, rental or lease of, or lists or solicits prospective purchasers, lessees or renters of, used manufactured homes or used mobile homes in connection with the sale of a fee simple interest in real property and the used manufactured home or used mobile home is situated on the real property sold.

Sec. 18. NRS 489.102 is hereby amended to read as follows:

489.102 1. "General serviceman" means a person who owns or is the responsible managing employee of a business which:

- (a) Installs or repairs the awnings, roofing, skirting, plumbing, heating or electrical systems of a manufactured home, mobile home , *manufactured building* or commercial coach ~~for~~ or *factory-built housing*;
- (b) Installs ~~for~~ removes or ~~takes down~~ prepares for transport a manufactured home, mobile home , *manufactured building* or commercial coach or *factory-built housing* at the site where it will be or has been used for occupancy; or
- (c) Reconstructs a manufactured home, mobile home , *manufactured building* or commercial coach or *factory-built housing* by the alteration, addition or substitution of substantial or essential parts.

2. The term does not include:

- (a) A licensed manufacturer engaged in the installation, repair or service of a manufactured home, mobile home , *manufactured building* or commercial coach or *factory-built housing* that was manufactured by the licensed manufacturer;
- (b) The owner or purchaser of a manufactured home , ~~for~~ mobile home or *manufactured building* or *factory-built housing* who uses the manufactured home , ~~for~~ mobile home or *manufactured building* or *factory-built housing* as his private residence; or
- (c) The owner or purchaser of a commercial coach who uses the commercial coach for his own industrial, professional or commercial purposes.

Sec. 19. NRS 489.115 is hereby amended to read as follows:

489.115 "Manufacturer" means every person , *including, without limitation, a partnership, limited partnership, limited-liability partnership, limited-liability limited partnership or limited-liability company, or a corporation*, engaged in the business of manufacturing manufactured homes, mobile homes, travel trailers ~~{or}~~ , *manufactured buildings*, commercial coaches ~~{or}~~ *or factory-built housing*.

Sec. 20. NRS 489.125 is hereby amended to read as follows:

489.125 "New manufactured home," "new mobile home," "new travel trailer" ~~{or}~~ , *"new manufactured building," "new commercial coach" or "new factory-built housing"* means a manufactured home, mobile home, travel trailer , *manufactured building* or commercial coach ~~{or}~~ *or factory-built housing*, respectively, which has never been sold at retail or occupied either ~~{prior to}~~ *before* or after sale for the purpose intended by the manufacturer and has never been registered with or been the subject of a certificate of title issued by the appropriate agency of authority of any other state, the District of Columbia, any territory or possession of the United States or *any* foreign state, province or country.

Sec. 21. NRS 489.137 is hereby amended to read as follows:

489.137 "Salesman" means any person employed by a dealer *or distributor* under any form of contract or arrangement to sell, *distribute*, rent, lease, exchange or buy, or offer for sale, *distribution*, rental, lease or exchange, an interest in a manufactured home, mobile home , *manufactured building* or commercial coach *or factory-built housing* to any person, and who receives or expects to receive a commission, fee or any other consideration from his employer.

Sec. 22. NRS 489.147 is hereby amended to read as follows:

489.147 1. "Specialty serviceman" means a person who owns or is the *designated* responsible managing employee of a business which is limited in the scope of the work it may perform on or in a manufactured home, mobile home , *manufactured building, modular component* or commercial coach *or factory-built housing* in accordance with NRS 489.325.

2. The term does not include:

(a) A licensed manufacturer engaged in the repair or service of a manufactured home, mobile home , *manufactured building* or commercial coach *or factory-built housing* that was manufactured by the licensed manufacturer;

(b) The owner or purchaser of a manufactured home , ~~{or}~~ mobile home *or manufactured building or factory-built housing* who uses the manufactured home , ~~{or}~~ mobile home *or manufactured building or factory-built housing* as his private residence; or

(c) The owner or purchaser of a commercial coach who uses the commercial coach for his own industrial, professional or commercial purposes.

Sec. 23. NRS 489.155 is hereby amended to read as follows:

489.155 "Used manufactured home," "used mobile home," "used travel trailer" ~~{or}~~ , "used manufactured building," "used commercial coach" or "used factory-built housing" means a manufactured home, mobile home, travel trailer , *manufactured building* or commercial coach ~~{,}~~ or *factory-built housing*, respectively, which has been:

1. Sold, rented or leased and occupied ~~{prior to}~~ before or after the sale, rental or lease; or

2. Registered with or been the subject of a certificate of title issued by the appropriate agency of authority of any other state, the District of Columbia, or any territory or possession of the United States or *any* foreign state, province or country.

Sec. 24. NRS 489.211 is hereby amended to read as follows:

489.211 The Administrator : ~~{shall:}~~

1. ~~{Possess}~~ *Must possess* a broad knowledge of generally accepted management practices and be reasonably well informed on laws governing manufactured homes, mobile homes, travel trailers , *manufactured buildings*, *factory-built housing* and commercial coaches.

2. ~~{Hold no}~~ *Shall not hold an* interest in any firm which sells, distributes, manufactures, rebuilds or services any manufactured home, mobile home, travel trailer ~~{or}~~ , *manufactured building*, commercial coach or *factory-built housing* or which installs any manufactured home, mobile home ~~{or}~~ , *manufactured building*, commercial coach ~~{, nor may he}~~ or *factory-built housing*, or act as agent for any of them.

Sec. 25. NRS 489.221 is hereby amended to read as follows:

489.221 ~~{No}~~ An employee of the Division ~~{may}~~ *shall not* hold an interest in any firm which sells, *distributes*, manufactures, rebuilds or services any manufactured home, mobile home, travel trailer ~~{or}~~ , *manufactured building*, commercial coach or *factory-built housing* or which installs any manufactured home, mobile home ~~{or}~~ , *manufactured building*, commercial coach ~~{, nor}~~ or *factory-built housing*, or act as an agent for any of them.

Sec. 26. NRS 489.231 is hereby amended to read as follows:

489.231 1. ~~{In order to}~~ To carry out the provisions of this chapter, the Administrator may:

(a) Issue subpoenas for the attendance of witnesses or the production of books, papers and documents; and

(b) Conduct hearings.

2. The Administrator may apply for and receive grants from the Secretary of Housing and Urban Development for developing and carrying out a plan for enforcement and administration of federal standards of safety and construction respecting manufactured homes offered for sale or lease in this State.

3. The Administrator may adopt regulations to ensure acceptance by the Secretary of Housing and Urban Development of the state plan for administration and enforcement of federal standards of safety and

construction respecting manufactured homes in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974 , ~~{ 42 U.S.C. §§ 5401 et seq. }~~

4. The Administrator may:

- (a) Make inspections;
- (b) Approve plans and specifications;
- (c) Provide technical services;
- (d) Issue licenses, *permits*, certificates of ownership and certificates and labels of compliance and installation;
- (e) Enter into reciprocal agreements with other states or private organizations that adopt and maintain standards reasonably consistent with this chapter;
- (f) Collect the fees provided for in this chapter; and
- (g) Adopt regulations necessary to carry out his duties under this chapter.

5. The Administrator or his representative may enter, at reasonable times and without notice, any mobile home park or place of business or any factory, warehouse or establishment in which manufactured homes, mobile homes , ~~for~~ travel trailers , *manufactured buildings or factory-built housing* are manufactured, stored or held for sale *or distribution* and inspect at reasonable times in a reasonable manner the premises and books, papers, records and documents which are relevant to the manufacture , *distribution* and sale of manufactured homes, mobile homes , ~~for~~ travel trailers , *manufactured buildings or factory-built housing* and compliance with the National Manufactured Housing Construction and Safety Standards Act of 1974 , ~~{ 42 U.S.C. §§ 5401 et seq. }~~ , *this chapter and chapter 461 of NRS, and any regulations adopted pursuant thereto*, and to compliance by landlords of mobile home parks with the prohibition in NRS 118B.140 against charging or receiving any entrance or exit fee. A magistrate shall issue a warrant to permit an inspection if the Administrator has shown:

(a) Evidence that a violation of a provision of this chapter or of the prohibition in NRS 118B.140 against charging or receiving any entrance or exit fee has been committed or is being committed; or

(b) That the business has been chosen for an inspection on the basis of a general administrative plan for the enforcement of the provisions of this chapter.

Sec. 27. NRS 489.263 is hereby amended to read as follows:

489.263 1. The Administrator may adopt regulations establishing a system for the issuance ~~{and renewal}~~ of permits for the installation, design, approval , *repair* or modification of manufactured homes, mobile homes ~~for~~ , *manufactured buildings*, commercial coaches ~~{ }~~ *or factory-built housing*.

2. The regulations may include, without limitation:

(a) The requirements and procedures for applying for ~~{and renewing}~~ a permit;

(b) The criteria for determining whether to issue ~~{or renew}~~ a permit;

(c) The grounds for revocation and the requirements for reinstatement of a permit; and

(d) The procedures for the enforcement of a system for issuing ~~and renewing~~ permits.

Sec. 28. NRS 489.285 is hereby amended to read as follows:

489.285 1. The Division shall adopt regulations concerning continuing education requirements for *dealers, distributors, general servicemen*, ~~and specialty servicemen, of manufactured homes, mobile homes or commercial coaches, and~~ responsible managing employees and salesmen. The regulations must include the:

(a) Criteria for determining what qualifies as continuing education;

(b) Criteria for approving educational and training programs;

(c) Requirements for submitting evidence of completion; and

(d) Grounds and procedures for granting an extension of time within which to comply with continuing education requirements.

2. In adopting regulations pursuant to subsection 1, the Division shall:

(a) Allow for alternative subjects, instructors, schools and sources of programs, with consideration for specialized areas of practice, availability and proximity of resources to the licensees and applicants, and the time and expense required to participate in the programs.

(b) Approve courses offered by generally accredited educational institutions and private vocational schools if those courses otherwise qualify as continuing education.

(c) Approve training and educational programs and seminars offered by:

(1) Individual sponsors;

(2) Manufactured housing firms and businesses such as dealers, *distributors, general servicemen, specialty servicemen, manufacturers* ~~of manufactured homes, mobile homes or commercial coaches,~~ and suppliers of the various components for constructing such homes or coaches, including heating and air-conditioning systems, material for roofing and siding, skirting, awnings and other components;

(3) Professional and industry-related organizations; and

(4) Other organized educational programs concerning technical or specialized subjects, including in-house training programs offered by an employer for his employees and participation in meetings and conferences of industry-related organizations.

(d) Solicit advice and assistance from persons and organizations that are knowledgeable in the construction, sale, *distribution*, installation, rebuilding and servicing of manufactured homes, mobile homes ~~for~~, *manufactured buildings, commercial coaches or factory-built housing* and the method of educating licensees.

3. The Division is not responsible for the costs of any continuing education program, but may participate in the funding of those programs subject to legislative appropriations.

4. As used in this section, "industry-related organizations" includes, without limitation, the:

- (a) Manufactured Housing Institute;
- (b) Manufactured Home Community Owners ; ~~{Association;}~~
- (c) Nevada Association of Manufactured Home Owners, Inc.;
- (d) Nevada Association of Realtors; ~~{and}~~
- (e) Nevada Housing Alliance;
- (f) Modular Building Institute; and
- (g) Any other organization approved by the Division.

Sec. 29. NRS 489.305 is hereby amended to read as follows:

489.305 To open a branch office, a dealer, *distributor*, general serviceman or specialty serviceman ~~{, as the case may be,}~~ must:

- 1. Obtain a license from the Division to operate the branch office; and
- 2. Provide for direct supervision of the branch office, either by himself or by employing a responsible managing employee.

Sec. 30. NRS 489.311 is hereby amended to read as follows:

489.311 1. Except as otherwise provided by NRS 489.331, no person may engage or offer to engage in the business of a dealer, *distributor*, manufacturer, general serviceman or specialty serviceman in this State, or be entitled to any other license or permit required by this chapter, until he has applied for and has been issued a license by the Division.

2. For the purposes of this section, a person engages in the business of a dealer, *distributor*, manufacturer, general serviceman or specialty serviceman in this State if he, without limitation, submits a bid to perform any activity requiring a license pursuant to this section.

Sec. 31. NRS 489.321 is hereby amended to read as follows:

489.321 1. An application for a manufacturer's, dealer's, *distributor's*, general serviceman's or specialty serviceman's license must be filed upon forms supplied by the Division and include the social security number of the applicant. The applicant must furnish:

(a) Any proof the Division may deem necessary that the applicant is a manufacturer, dealer, *distributor*, general serviceman or specialty serviceman.

(b) Any proof the Division may require that the applicant has an established place of business.

(c) Any proof the Division may require of the applicant's good character and reputation and of his fitness to engage in the activities for which the license is sought.

(d) A complete set of his fingerprints and written permission authorizing the Administrator to forward those fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report. The Administrator may exchange with the Central Repository and the Federal Bureau of Investigation any information relating to the fingerprints of an applicant under this section.

(e) In the case of a dealer in new manufactured homes, an instrument in the form prescribed by the Division executed by or on behalf of the manufacturer certifying that the applicant is an authorized franchise dealer for the make or makes concerned.

(f) A reasonable fee fixed by regulation.

(g) In the case of a dealer, *distributor* or general serviceman, proof of passing the examination required under subsection 1 of NRS 489.351.

(h) In the case of a specialty serviceman, proof of passing the examination required under subsection 1 of NRS 489.351 or proof that the examination has been waived pursuant to subsection 2 of NRS 489.351.

(i) Any additional requirements the Division may from time to time prescribe by regulation.

2. Within 60 days after the receipt of a complete application, the Division shall issue or deny the license.

3. The Administrator may issue a provisional license pending receipt of the report from the Federal Bureau of Investigation. Upon receipt of the report and a determination by the Administrator that the applicant is qualified, the Division shall issue to the applicant a dealer's, manufacturer's, *distributor's*, general serviceman's or specialty serviceman's license containing the applicant's name and the address of his fixed place of business.

4. Each license is valid for a period of 2 years after the date of issuance and may be renewed for like consecutive periods upon application to and approval by the Division.

Sec. 32. NRS 489.321 is hereby amended to read as follows:

489.321 1. Applications for a manufacturer's, dealer's, *distributor's*, general serviceman's or specialty serviceman's license must be filed upon forms supplied by the Division, and the applicant shall furnish:

(a) Any proof the Division may deem necessary that the applicant is a manufacturer, dealer, *distributor*, general serviceman or specialty serviceman.

(b) Any proof the Division may require that the applicant has an established place of business.

(c) Any proof the Division may require of the applicant's good character and reputation and of his fitness to engage in the activities for which the license is sought.

(d) A complete set of his fingerprints and written permission authorizing the Administrator to forward those fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report. The Administrator may exchange with the Central Repository and the Federal Bureau of Investigation any information respecting the fingerprints of an applicant under this section.

(e) In the case of a dealer in new manufactured homes, an instrument in the form prescribed by the Division executed by or on behalf of the

manufacturer certifying that the applicant is an authorized franchise dealer for the make or makes concerned.

(f) A reasonable fee fixed by regulation.

(g) In the case of a dealer, *distributor* or general serviceman, proof of passing the examination required under subsection 1 of NRS 489.351.

(h) In the case of a specialty serviceman, proof of passing the examination required under subsection 1 of NRS 489.351 or proof that the examination has been waived pursuant to subsection 2 of NRS 489.351.

(i) Any additional requirements the Division may from time to time prescribe by regulation.

2. Within 60 days after receipt of a complete application, the Division shall issue or deny the license.

3. The Administrator may issue a provisional license pending receipt of the report from the Federal Bureau of Investigation. Upon receipt of the report and a determination by the Administrator that the applicant is qualified, the Division shall issue to the applicant a dealer's, manufacturer's, *distributor's*, general serviceman's or specialty serviceman's license certificate containing the applicant's name and the address of his fixed place of business.

4. Each license is valid for a period of 2 years after the date of issuance and may be renewed for like consecutive periods upon application to and approval by the Division.

Sec. 33. NRS 489.323 is hereby amended to read as follows:

489.323 If a licensee is a *dealer, distributor*, general serviceman, ~~for~~ specialty serviceman, ~~for manufactured homes, mobile homes or commercial coaches, or a~~ responsible managing employee or salesman, the Division shall not renew a license issued to that licensee until the licensee has submitted proof satisfactory to the Division that he has, during the 2-year period immediately preceding the renewal of the license, completed at least 8 hours of continuing education approved by the Division pursuant to NRS 489.285.

Sec. 34. NRS 489.336 is hereby amended to read as follows:

489.336 1. The Division shall adopt regulations for the issuance of limited *lien* resale licenses *and permits* authorizing a landlord or manager to sell a used mobile home ~~[. Regulations adopted pursuant to this section] if:~~

(a) *The mobile home is located in a mobile home park that the landlord or manager owns, leases or manages; and*

(b) *The landlord or manager purchased the mobile home at a sale to enforce a lien pursuant to NRS 108.270 to 108.367, inclusive.*

2. *The regulations must specify the requirements for* ~~[licensure,] the issuance of a license or permit~~, including, without limitation, any educational requirements.

~~[2.]~~ 3. A person who is ~~[licensed]~~ issued a license or permit pursuant to the regulations ~~[described in subsection 1]~~ may sell a used mobile home ~~if:~~

~~(a) The mobile home is located in a mobile home park that the landlord or manager owns, leases or manages; and~~

~~(b) The landlord or manager purchased the mobile home at a sale to enforce a lien pursuant to NRS 108.270 to 108.367, inclusive.~~

~~3.] in accordance with the license or permit.~~

4. As used in this section:

(a) "Landlord" has the meaning ascribed to it in NRS 118B.014.

(b) "Manager" has the meaning ascribed to it in NRS 118B.0145.

(c) "Mobile home park" has the meaning ascribed to "manufactured home park" in NRS 118B.017.

Sec. 35. NRS 489.341 is hereby amended to read as follows:

489.341 1. A person shall not act as a salesman in this State or as a responsible managing employee for a person who sells, leases, *distributes*, reconstructs, improves, repairs or installs any manufactured home, mobile home ~~for~~ , *manufactured building*, commercial coach *or factory-built housing* subject to the provisions of this chapter without first having received a license from the Division. Before issuing such a license, the Division shall require:

(a) An application, signed and verified by the applicant, stating that he desires to act as a salesman or responsible managing employee and providing his residential address, his social security number and the name and address of his employer.

(b) Proof of the employment of the applicant at the time the application is filed. An applicant for a license as a responsible managing employee shall submit proof of 2 years' experience within the previous 4 years in the business in which the applicant is seeking to be licensed as a responsible managing employee.

(c) Proof of the applicant's good character and reputation and of his fitness to act as a salesman or responsible managing employee.

(d) A complete set of his fingerprints and written permission authorizing the Administrator to forward those fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report. The Administrator may exchange with the Central Repository and the Federal Bureau of Investigation any information relating to the fingerprints of an applicant.

(e) A statement as to whether any previous application of the applicant has been denied or license revoked.

(f) Payment of a reasonable license fee established by regulation.

(g) The applicant to have passed the examination required by NRS 489.351.

(h) Any other information the Division deems necessary.

2. Within 60 days after the receipt of a complete application, the Division shall issue or deny the license.

3. The Administrator may issue a provisional license pending receipt of the report from the Federal Bureau of Investigation. Upon receipt of the

report and a determination by the Administrator that the applicant is qualified, the Administrator shall issue to the applicant a license as a salesman or a responsible managing employee. The license must contain the licensee's name and the address of his employer's place of business.

4. Each license is valid for 2 years after the date of issuance and may be renewed for like consecutive periods upon application to and approval by the Division.

5. A person licensed pursuant to this section shall not engage in sales activity other than for the account of, or for and in behalf of, a single employer who is a licensed dealer ~~[-]~~ or *distributor*.

6. A license issued pursuant to this section may be transferred to another licensed employer upon application and the payment of a transfer fee of \$10. When a salesman or responsible managing employee holding a current license leaves the employment of one dealer, *distributor*, general serviceman or specialty serviceman for that of another, the new employer may employ the salesman or responsible managing employee pending the transfer of the license if the transfer is completed within 10 days.

7. A license issued pursuant to this section must be posted in a conspicuous place on the premises of the employer for whom the holder of the license is licensed.

8. If a salesman or responsible managing employee ceases to be employed by a licensed dealer, *distributor*, general serviceman or specialty serviceman, his license to act as a salesman or responsible managing employee is automatically suspended and his right to act in that capacity immediately ceases, and he shall not engage in such an activity until reemployed by a licensed dealer, *distributor*, general serviceman or specialty serviceman. Every licensed salesman and responsible managing employee shall report in writing to the Division every change in his place of employment or termination of employment within 5 days after the date of making the change.

Sec. 36. NRS 489.341 is hereby amended to read as follows:

489.341 1. A person shall not act as a salesman in this State or as a responsible managing employee for a person who sells, leases, *distributes*, reconstructs, improves, repairs or installs any manufactured home, mobile home ~~[-]~~, *manufactured building*, commercial coach or *factory-built housing* subject to the provisions of this chapter without first having received a license from the Division. Before issuing such a license, the Division shall require:

(a) An application, signed and verified by the applicant, stating that he desires to act as a salesman or responsible managing employee and providing his residential address and the name and address of his employer.

(b) Proof of the employment of the applicant at the time the application is filed. An applicant for a license as a responsible managing employee shall submit proof of 2 years' experience within the previous 4 years in the

business in which the applicant is seeking to be licensed as a responsible managing employee.

(c) Proof of the applicant's good character and reputation and of his fitness to act as a salesman or responsible managing employee.

(d) A complete set of his fingerprints and written permission authorizing the Administrator to forward those fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report. The Administrator may exchange with the Central Repository and the Federal Bureau of Investigation any information respecting the fingerprints of an applicant.

(e) A statement as to whether any previous application of the applicant has been denied or license revoked.

(f) Payment of a reasonable license fee established by regulation.

(g) The applicant to have passed the examination required by NRS 489.351.

(h) Any other information the Division deems necessary.

2. Within 60 days after receipt of a complete application, the Division shall issue or deny the license.

3. The Administrator may issue a provisional license pending receipt of the report from the Federal Bureau of Investigation. Upon receipt of the report and a determination by the Administrator that the applicant is qualified, the Administrator shall issue to the applicant a license as a salesman or a responsible managing employee. The license must contain the licensee's name and the address of his employer's place of business.

4. Each license is valid for 2 years after the date of issuance and may be renewed for like consecutive periods upon application to and approval by the Division.

5. A person licensed pursuant to this section shall not engage in sales activity other than for the account of or for and in behalf of a single employer who is a licensed dealer ~~or~~ *distributor*.

6. A license issued pursuant to this section may be transferred to another licensed employer upon application and the payment of a transfer fee of \$10. When a salesman or responsible managing employee holding a current license leaves the employment of one dealer, *distributor*, general serviceman or specialty serviceman for that of another, the new employer may employ the salesman or responsible managing employee pending the transfer of the license if the transfer is completed within 10 days.

7. A license issued pursuant to this section must be posted in a conspicuous place on the premises of the employer for whom the holder of the license is licensed.

8. If a salesman or responsible managing employee ceases to be employed by a licensed dealer, *distributor*, general serviceman or specialty serviceman, his license to act as a salesman or responsible managing employee is automatically suspended and his right to act in that capacity immediately ceases, and he shall not engage in such an activity until

reemployed by a licensed dealer, *distributor*, general serviceman or specialty serviceman. Every licensed salesman and responsible managing employee shall report in writing to the Division every change in his place of employment or termination of employment within 5 days after the date of making the change.

Sec. 37. NRS 489.342 is hereby amended to read as follows:

489.342 1. A natural person who applies for the issuance or renewal of a manufacturer's, dealer's, *distributor's*, general serviceman's, specialty serviceman's, salesman's or *responsible* managing employee's license shall submit to the Division 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 Division 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 Division.

3. A manufacturer's, dealer's, *distributor's*, general serviceman's, specialty serviceman's, salesman's or *responsible* managing employee's license may not be issued or renewed by the Division if the applicant is a natural person who:

(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 Division 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. 38. NRS 489.343 is hereby amended to read as follows:

489.343 1. Every partnership, *limited partnership, limited-liability partnership, limited-liability limited partnership or limited-liability company* doing business as a manufacturer, dealer, *distributor*, general serviceman or specialty serviceman in this State shall designate one of its members, and every corporation doing business as a manufacturer, dealer, *distributor*, general serviceman or specialty serviceman in this State shall designate one of its officers, to submit an application for a manufacturer's, dealer's, *distributor's*, general serviceman's or specialty serviceman's license.

2. The Division shall issue a manufacturer's, dealer's, *distributor's*, general serviceman's or specialty serviceman's license to the member or officer on behalf of the corporation, *company* or partnership upon:

(a) The designated member or officer, in the case of a dealer, *distributor*, general serviceman or specialty serviceman, successfully passing the examination required pursuant to subsection 1 of NRS 489.351 unless, in the case of a specialty serviceman, the examination is waived pursuant to subsection 2 of NRS 489.351; and

(b) Compliance with all other requirements of law or any other additional requirements the Division may from time to time prescribe by regulation by the partnership, *limited partnership*, *limited-liability partnership*, *limited-liability limited partnership* or *limited-liability company*, or corporation, as well as by the designated member or officer.

3. Upon receipt of the license, the designated member or officer is entitled to perform all the acts authorized by a license issued by the Division, except:

(a) That the license issued entitles the designated member or officer to act pursuant to the terms and conditions of the license issued by the Division only as officer or agent of the partnership, *limited partnership*, *limited-liability partnership*, *limited-liability limited partnership* or *limited-liability company*, or corporation, and not on his own behalf; and

(b) That if the person designated by the partnership, *limited partnership*, *limited-liability partnership*, *limited-liability limited partnership* or *limited-liability company*, or corporation:

(1) Is refused a license by the Division; or

(2) Ceases to be connected with the partnership, *limited partnership*, *limited-liability partnership*, *limited-liability limited partnership*, *limited-liability company* or corporation,

↪ the partnership, *limited partnership*, *limited-liability partnership*, *limited-liability limited partnership*, *limited-liability company*, or corporation may designate another person who shall make application and qualify as in the first instance.

Sec. 39. NRS 489.344 is hereby amended to read as follows:

489.344 Each member or officer of a partnership, *limited partnership*, *limited-liability partnership*, *limited-liability limited partnership* or *limited-liability company*, or a corporation who will perform or engage in any of the acts specified in NRS 489.076, 489.102, 489.115 or 489.147, or section 2 of this act, other than the member or officer designated for that purpose by the partnership, *limited partnership*, *limited-liability partnership*, *limited-liability limited partnership*, *limited-liability company*, or the corporation, in the manner provided in NRS 489.343, must apply for and take out a separate manufacturer's, dealer's, *distributor's*, general serviceman's or specialty serviceman's license in his own name. The license issued to any such member or officer of a partnership, *company* or corporation entitles the member or officer to act as a manufacturer, dealer,

distributor, general serviceman or specialty serviceman only as an officer or agent of the partnership , *limited partnership*, *limited-liability partnership*, *limited-liability limited partnership*, *limited-liability company*, or corporation and not on his own behalf.

Sec. 40. NRS 489.351 is hereby amended to read as follows:

489.351 1. Except as otherwise provided in subsection 2, the Administrator shall require an oral or written examination of each applicant for a license as a dealer, *distributor*, responsible managing employee, salesman, general serviceman or specialty serviceman.

2. The Administrator may waive the examination required pursuant to subsection 1 for an applicant for a license as a specialty serviceman if:

- (a) The applicant holds another valid license issued by this State; and
- (b) The services performed by the applicant pursuant to that license are substantially similar to the services to be performed by the applicant as a specialty serviceman.

Sec. 41. NRS 489.401 is hereby amended to read as follows:

489.401 The following grounds, among others, constitute grounds for disciplinary action pursuant to NRS 489.381:

1. The intentional publication, circulation or display of any advertising which constitutes a deceptive trade practice as that term is defined in NRS 598.0915 to 598.0925, inclusive.

2. Failure to include in any advertising the name of the licensed dealer, *distributor*, general serviceman or specialty serviceman, or the name under which he is doing business.

3. Making any substantial misrepresentation or false promise which is likely to influence, persuade or induce, or continually failing to fulfill promises to sell, breaching agreements or contracts or making false promises by any means.

4. Failure to disclose all terms and conditions of a sale, purchase or lease or offer to sell, purchase or lease a manufactured home, mobile home , *manufactured building* or commercial coach ~~[-]~~ or *factory-built housing*.

5. Failure to disclose to a person with whom the licensed dealer *or distributor* is dealing with regard to the sale, *distribution*, purchase or lease of a manufactured home any material facts, structural defects or other material information which the licensed dealer *or distributor* knew, or which by the exercise of reasonable care and diligence should have known, concerning the manufactured home or concerning the sale, *distribution*, purchase or lease of the manufactured home.

6. Failure to comply with the provisions of NRS 489.595.

7. Representing to any lender, guaranteeing agency or other interested party, orally or through the preparation of false documents:

- (a) An amount in excess of the actual sales price;
- (b) A false amount as the down payment, earnest money deposit or other valuable consideration;
- (c) Terms differing from those actually agreed upon; or

(d) False information on a credit application.

8. Inducing an applicant to falsify his credit application.

9. Failure to obtain from the holder of any lien or security interest in a manufactured home, mobile home, *manufactured building* or commercial coach ~~or factory-built housing~~ within 10 days before the closure of a sale ~~of the manufactured home, mobile home or commercial coach,~~ a written acknowledgment that the holder of the lien or security interest has received written notification of the sale.

Sec. 42. NRS 489.411 is hereby amended to read as follows:

489.411 The following grounds, among others, constitute grounds for disciplinary action under NRS 489.381:

1. Claiming, demanding or receiving a fee, compensation or commission under any exclusive agreement, authorizing or employing a licensee to sell, *distribute*, buy or exchange a manufactured home, mobile home, *manufactured building* or commercial coach *or factory-built housing* for compensation or commission, where the agreement does not contain a definite specified date of final and complete termination, does not set forth the terms and conditions of the exclusive agreement or is not signed by both the licensee and the owner.

2. While the employee, agent or fiduciary of a licensee, soliciting, accepting or agreeing to accept any benefit, fee, commission or compensation for the performance of any of the acts specified in this chapter from any person except the licensee with whom he is associated or employed.

3. Paying a commission or other compensation to any person or employing any person for performing the services of a person required to be licensed under this chapter who has not first secured his license pursuant to this chapter.

4. Commingling the money or other property of his principals with his own or converting the money of others to his own use.

5. Knowingly permitting a person whose license has been revoked or suspended or who does not hold a valid license to engage on behalf of the licensed dealer *or distributor* in acts that require a license.

6. In the case of a salesman, failing to give to the licensed dealer *or distributor* by whom the salesman is employed, as soon as practicable after receipt, a deposit or other money or consideration entrusted to him by a person dealing with the salesman as a representative of the licensed dealer ~~or distributor~~.

7. Failing within a reasonable time to account for or to remit any money coming into his possession which belongs to others.

8. Failure or refusal by a licensee to pay or otherwise discharge any final judgment rendered and entered against him which arises out of the conduct of his business licensed under this chapter.

9. Acting in the dual capacity of agent and undisclosed principal in a transaction.

Sec. 43. NRS 489.416 is hereby amended to read as follows:

489.416 The following grounds, among others, constitute grounds for disciplinary action under NRS 489.381:

1. Workmanship which:

(a) Is not commensurate with standards of the trade in general;

(b) Is below standards adopted by the Division or the *codes and standards* ~~[determined by the edition of the Uniform Building Code, Uniform Plumbing Code or the National Electrical Code, respectively, in effect on July 1, 1983;]~~ *adopted pursuant to this chapter and chapter 461 or NRS, and any regulations adopted pursuant thereto;* or

(c) Endangers the life and safety of an occupant of a manufactured home, mobile home , *manufactured building* or commercial coach ~~{ }~~ *or factory-built housing.*

2. Failure to honor any warranty or other guarantee given by a licensee for workmanship or material as a condition of securing a contract, or of selling, *distributing*, leasing, reconstructing, improving, repairing or installing any manufactured home, mobile home, *manufactured building*, commercial coach , *factory-built housing* or accessory structure.

3. Gross negligence or incompetence in performing an act for which a license is required pursuant to this chapter.

Sec. 44. NRS 489.423 is hereby amended to read as follows:

489.423 1. Upon a finding that a licensed dealer *or distributor* knew, or by the exercise of reasonable care and diligence should have known, of any unlawful act or violation of a provision of this chapter by a salesman, general serviceman , ~~{or}~~ specialty serviceman *or any other person* who is employed by or associated with the licensed dealer ~~{ }~~ *or distributor*, the Administrator may suspend or revoke the license of the licensed dealer *or distributor* and impose an administrative fine upon him of not more than \$1,000.

2. Upon a finding that a licensed dealer *or distributor* failed to maintain adequate supervision of a salesman, general serviceman or specialty serviceman who, while employed by or associated with the licensed dealer ~~{ }~~ *or distributor*, committed any unlawful act or violated a provision of this chapter, the Administrator may suspend or revoke the license of a licensed dealer *or distributor* and impose an administrative fine upon him of not more than \$1,000.

3. *Upon a finding that a licensed general serviceman or specialty serviceman knew, or by the exercise of reasonable care and diligence should have known, of any unlawful act or violation of a provision of this chapter by any person who is employed by or associated with the licensed general serviceman or specialty serviceman, the Administrator may suspend or revoke the license of the licensed general serviceman or specialty serviceman and impose an administrative fine upon him of not more than \$1,000.*

Sec. 45. NRS 489.425 is hereby amended to read as follows:

489.425 1. If the Division 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 manufacturer's, dealer's, *distributor's*, general serviceman's, specialty serviceman's, salesman's or *responsible* managing employee's license, the Division 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 Division 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 Division shall reinstate a manufacturer's, dealer's, *distributor's*, general serviceman's, specialty serviceman's, salesman's or *responsible* managing employee's license that has been suspended by a district court pursuant to NRS 425.540 if the Division 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. 46. NRS 489.481 is hereby amended to read as follows:

489.481 The Division shall adopt regulations providing fees for:

1. Certificates of installation;
2. Labels of installation;
3. Certificates of compliance;
4. Labels of compliance;
5. Certificates of ownership;
6. Licenses of manufacturers, dealers, *distributors*, salesmen, responsible managing employees, general servicemen and specialty servicemen;
7. Licenses for branch offices; and
8. Any other services provided by the Division.

Sec. 47. NRS 489.4971 is hereby amended to read as follows:

489.4971 1. The Account for Education and Recovery Relating to Manufactured Housing is hereby created within the Fund for Manufactured Housing to satisfy the claims of purchasers of manufactured homes, mobile homes ~~for~~ , *manufactured buildings*, commercial coaches *or factory-built housing* against persons licensed pursuant to the provisions of this chapter. Any balance in the Account over \$500,000 at the end of any fiscal year must be set aside and used by the Administrator for education relating to manufactured homes, mobile homes, travel trailers ~~for~~ , *manufactured buildings*, commercial coaches ~~for~~ *or factory-built housing*.

2. Upon the issuance or renewal of the following licenses by the Division, the licensee must pay, in addition to the original or renewal license fee, a fee:

(a) For a dealer's , *distributor's* or manufacturer's original license, or for any original limited dealer's license ~~for~~ *which authorizes a limited dealer to act as a reposessor or liquidator*, of \$1,000.

(b) For a dealer's , *distributor's* or manufacturer's renewal license, or a renewal of any limited dealer's license ~~[-]~~ *which authorizes a limited dealer to act as a reposessor or liquidator*, of \$600.

(c) For an original or renewal license for:

- (1) A general serviceman or specialty serviceman, of \$150.
- (2) A salesman, of \$75.
- (3) A responsible managing employee, of \$100.

➔ Except as otherwise provided in NRS 489.265, fees collected pursuant to this section must be deposited in the State Treasury for credit to the Account.

3. A payment from the Account to satisfy the claim of a purchaser specified in subsection 1 against a person who is licensed pursuant to this chapter must be made only upon an appropriate court order that is issued in an action for fraud, misrepresentation or deceit relating to an act for which a license is required pursuant to this chapter.

4. If a purchaser specified in subsection 1 commences an action specified in subsection 3 against a person who is licensed pursuant to this chapter, the purchaser must serve a copy of the complaint upon the Administrator within 30 days after the action is commenced.

Sec. 48. NRS 489.4975 is hereby amended to read as follows:

489.4975 1. If a purchaser of a manufactured home, mobile home , *manufactured building* or commercial coach *or factory-built housing* obtains a final judgment in any court of competent jurisdiction against any licensee under this chapter in an action specified in subsection 3 of NRS 489.4971, the judgment creditor may, upon the termination of all proceedings, including appeals in connection with any judgment, file a verified petition in the court in which the judgment was entered for an order directing payment from the Account in the amount of actual damages included in the judgment and unpaid, but not more than \$25,000 per judgment and the liability of the Account may not exceed \$100,000 for any licensee.

2. A copy of the petition must be served upon the Administrator and an affidavit of service filed with the court. The petition and each copy of the petition served pursuant to this subsection must set forth the grounds which entitle the judgment creditor to recover from the Account and must include a copy of:

- (a) The final judgment specified in subsection 1;
- (b) The complaint upon which the final judgment was entered; and
- (c) If assets are known to exist, the writ of execution that was returned unsatisfied.

3. The court shall act upon the petition within 30 days after service and, upon the hearing of the petition, the judgment creditor must show that:

- (a) He is not the spouse of the judgment debtor, or the personal representative of that spouse.
- (b) He has complied with all the requirements of NRS 489.4971 to 489.4989, inclusive.

(c) He has obtained a judgment of the kind described in subsection 1, stating the amount of the judgment and the amount owing on it at the date of the petition.

(d) A writ of execution has been issued upon the judgment and that no assets of the judgment debtor liable to be levied upon in satisfaction of the judgment could be found, or that the amount realized on the sale of any of them that were found under the execution was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due.

(e) He and the Division have made reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment.

(f) The petition has been filed not more than 1 year after the termination of all proceedings, including reviews and appeals, in connection with the judgment.

4. A person licensed pursuant to this chapter shall not recover from the Account for damages related to a transaction in which he acted in his capacity as a licensee.

Sec. 49. NRS 489.501 is hereby amended to read as follows:

489.501 1. When a new manufactured home, *new mobile home*, *new manufactured building* or *new commercial coach or new factory-built housing* is sold in this State by a dealer, he shall complete a ~~{dealer's}~~ report of sale. The ~~{dealer's}~~ report of sale must be in a form prescribed by the Division and include a description of the manufactured home, mobile home ~~{or}~~, *manufactured building*, commercial coach ~~{or}~~ *factory-built housing*, the name and address of the seller and the name and address of the buyer. If in connection with the sale a security interest is taken or retained by the seller or dealer to secure all or part of the purchase price, or a security interest is taken by a person who gives value to enable the buyer to acquire rights in the manufactured home, mobile home ~~{or}~~, *manufactured building*, commercial coach ~~{or}~~ *factory-built housing*, the name and address of the secured party or his assignee must be entered on the ~~{dealer's}~~ report of sale.

2. The dealer shall require the buyer to sign an acknowledgment of taxes, on a form prescribed by the Division, which includes a statement that a manufactured home, mobile home, *manufactured building* or commercial coach *or factory-built housing* is taxable in the county in which it is located. A dealer who sells a new manufactured home, *new mobile home*, *new manufactured building* or *new commercial coach or new factory-built housing* shall deliver the buyer's copy of the acknowledgment of taxes to him at the time of sale and submit another copy within 30 days after the date of the sale to the county assessor of the county in which the manufactured home, mobile home ~~{or}~~, *manufactured building*, commercial coach *or factory-built housing* will be located.

3. The dealer shall submit the original of the ~~{dealer's}~~ report of sale and the manufacturer's certificate or statement of origin to the Division within 30 days after the execution of all instruments which the contract of sale

required to be executed at the time of sale or within 30 days after the date of sale, whichever is later, unless an extension of time is granted by the Division.

4. A dealer who sells a new manufactured home, *new mobile home*, *new manufactured building* or *new commercial coach or new factory-built housing* shall deliver the buyer's copy of the report of sale to him at the time of sale and submit another copy within 30 days after the date of the sale to the county assessor of the county in which the manufactured home, mobile home ~~or~~, *manufactured building*, commercial coach *or factory-built housing* will be located.

Sec. 50. NRS 489.511 is hereby amended to read as follows:

489.511 1. If a used or rebuilt manufactured home, mobile home, *manufactured building* or commercial coach *or used or rebuilt factory-built housing* is sold in this State by a dealer, the dealer shall complete a dealer's report of sale. The report must be in a form prescribed by the Division and include a description of the manufactured home, mobile home ~~or~~, *manufactured building*, commercial coach ~~or~~ *or factory-built housing*, the name and address of the seller and the name and address of the buyer. If a security interest exists at the time of the sale, or if in connection with the sale a security interest is taken or retained by the seller or dealer to secure all or part of the purchase price, or a security interest is taken by a person who gives value to enable the buyer to acquire rights in the manufactured home, mobile home ~~or~~, *manufactured building*, commercial coach ~~or~~ *or factory-built housing*, the name and address of the secured party must be entered on the dealer's report of sale.

2. The dealer shall submit the original of the dealer's report of sale to the Division within 45 days after the execution of all instruments which the contract of sale requires to be executed at the time of the sale, unless an extension of time is granted by the Division, together with the endorsed certificate of title or certificate of ownership previously issued. The dealer shall furnish one copy of the report of sale to the buyer at the time of the sale. Within 45 days after the sale, the dealer shall furnish one copy of the report of sale to the assessor of the county in which the manufactured home, mobile home ~~or~~, *manufactured building*, commercial coach *or factory-built housing* will be located.

3. The dealer shall require the buyer to sign an acknowledgment of taxes, on a form prescribed by the Division, which includes a statement that the manufactured home, mobile home ~~or~~, *manufactured building*, commercial coach *or factory-built housing* is taxable in the county in which it is located. The dealer shall deliver the buyer's copy of the acknowledgment to him at the time of sale and submit another copy to the county assessor of the county in which the manufactured home, mobile home ~~or~~, *manufactured building*, commercial coach *or factory-built housing* is to be located.

4. If a used or rebuilt manufactured home, mobile home, *manufactured building* or commercial coach *or used or rebuilt factory-built housing* is sold

by a dealer pursuant to an installment contract or other agreement by which the certificate of title or certificate of ownership does not pass immediately from the seller to the buyer upon the sale, the dealer shall submit to the Division any information required by the regulations adopted by the Administrator pursuant to NRS 489.272.

Sec. 51. NRS 489.521 is hereby amended to read as follows:

489.521 1. If a used or rebuilt manufactured home, mobile home , *manufactured building* or commercial coach *or used or rebuilt factory-built housing* is sold in this State by a person who is not a dealer, the seller or buyer, or both, shall submit to the Division, and a copy to the county assessor of the county in which the manufactured home, mobile home ~~for~~ , *manufactured building*, commercial coach *or factory-built housing* is located, within 45 days after the sale:

(a) If a certificate of ownership has been issued in this State, that certificate properly endorsed.

(b) If a certificate of title or other document of title has been issued by a public authority of another state, territory or country:

(1) The certificate or document properly endorsed; and

(2) A statement showing, if not included on the endorsed certificate or document, the description of the manufactured home, mobile home ~~for~~ , *manufactured building*, commercial coach ~~for~~ *or factory-built housing*, the names and addresses of the buyer and seller, and the name and address of any person who takes or retains a purchase money security interest. The statement must be signed and acknowledged by the seller and buyer.

(c) If a document of title has not been issued by any public authority, a statement showing all the information and signed and acknowledged in the manner required by subparagraph (2) of paragraph (b) of subsection 1.

2. If a used or rebuilt manufactured home, mobile home , *manufactured building* or commercial coach *or used or rebuilt factory-built housing* is sold by a person who is not a dealer pursuant to an installment contract or other agreement by which the certificate of title or certificate of ownership does not pass immediately from the seller to the buyer upon the sale, the seller or buyer, or both, shall submit to the Division any information required by the regulations adopted by the Administrator pursuant to NRS 489.272.

Sec. 52. NRS 489.541 is hereby amended to read as follows:

489.541 1. Except as otherwise provided in ~~subsection 4,~~ *subsections 4 and 5*, upon receipt of the documents required by the Division, the Division shall issue a certificate of ownership.

2. If no security interest is created or exists in connection with the sale, the certificate of ownership must be issued to the buyer.

3. If a security interest is created by the sale, the certificate of ownership must be issued to the secured party or his assignee, and must show the name of the registered owner.

4. The Division shall not issue a certificate of ownership for a mobile home that has been determined to be substandard until the conditions that rendered the mobile home substandard are abated.

5. *The Division shall not issue a certificate of title or certificate of ownership for factory-built housing that constitutes real property pursuant to subsection 4 of NRS 361.244.*

Sec. 53. (Deleted by amendment.)

Sec. 54. (Deleted by amendment.)

Sec. 55. NRS 489.7154 is hereby amended to read as follows:

489.7154 1. Except as otherwise provided in subsection 2, a dealer shall not obtain or attempt to obtain the signature of a buyer on a contract for the sale or exchange of an interest in a mobile home, manufactured home , *manufactured building* or commercial coach *or factory-built housing* if any of the essential provisions of the contract are not set forth in the contract.

2. The dealer may insert:

(a) The identification number or identifying marks of a manufactured home, mobile home , *manufactured building* or commercial coach ~~{-}~~ *or factory-built housing*; and

(b) The date the first installment payment for the sale or exchange is due from the buyer,

➔ into the blank spaces of a contract after the contract has been signed by a buyer if the manufactured home, mobile home ~~{or}~~ , *manufactured building*, commercial coach *or factory-built housing* was not delivered to the buyer on the date the contract was executed.

3. The Administrator shall prescribe, by regulation, the essential provisions of a contract.

Sec. 56. NRS 489.7156 is hereby amended to read as follows:

489.7156 A brokerage agreement that includes a provision that grants a dealer the exclusive right to assist, solicit or negotiate the sale or exchange of an interest in a manufactured home, mobile home , *manufactured building* or commercial coach *or factory-built housing* on behalf of a client is enforceable if the agreement:

1. Is in writing;

2. Sets forth the date the brokerage agreement expires;

3. Does not require the client to perform any act concerning the brokerage agreement after the agreement expires; and

4. Is signed by the client or his representative and the dealer or his representative.

Sec. 57. NRS 489.7158 is hereby amended to read as follows:

489.7158 1. A dealer who has entered into a brokerage agreement with a client for the sale or exchange of an interest in a manufactured home, mobile home , *manufactured building* or commercial coach *or factory-built housing* shall:

(a) Seek the price and terms for the sale or exchange that are set forth in the brokerage agreement or are approved by the client;

- (b) Present all offers made to or by the client as soon as practicable;
- (c) Disclose to the client all the material facts known by him concerning the sale or exchange;
- (d) Advise the client to obtain advice from an expert concerning any matters that are beyond the knowledge or expertise of the dealer;
- (e) As soon as practicable, account for all money and property he receives in which the client may have a financial interest; and
- (f) As soon as practicable, deliver to each party a copy of the executed contract for the sale or exchange.

2. A dealer shall not enter into a brokerage agreement with a client for the sale or exchange of an interest in a manufactured home, mobile home , *manufactured building* or commercial coach *or factory-built housing* unless the dealer has determined that the client will be able to deliver good title upon the execution of the sale or exchange of the interest in the manufactured home, mobile home ~~{or}~~ , *manufactured building*, commercial coach ~~{or}~~ *or factory-built housing*.

Sec. 58. (Deleted by amendment.)

Sec. 59. NRS 489.717 is hereby amended to read as follows:

489.717 1. A dealer shall not require a person to obtain a loan or financing from him or any other person as a condition to the purchase, sale or exchange of a manufactured home, mobile home , *manufactured building* or commercial coach ~~{or}~~ *or factory-built housing*.

2. A dealer shall disclose the substance of subsection 1 to each person with whom it agrees to purchase, sell or exchange a manufactured home, mobile home , *manufactured building* or commercial coach ~~{or}~~ *or factory-built housing*. The Division may adopt regulations concerning the form and manner of the disclosure.

Sec. 60. NRS 489.723 is hereby amended to read as follows:

489.723 1. Any money that a dealer receives from a client or other person concerning the sale or exchange of an interest in a manufactured home, mobile home , *manufactured building* or commercial coach *or factory-built housing* must be accounted for by the dealer when:

(a) The sale or exchange of the interest in the manufactured home, mobile home ~~{or}~~ , *manufactured building*, commercial coach *or factory-built housing* is executed; or

(b) The contract for the sale or exchange of the interest in the manufactured home, mobile home ~~{or}~~ , *manufactured building*, commercial coach *or factory-built housing* is rescinded by the dealer, client or any other person,

➡ whichever occurs earlier.

2. The dealer shall:

(a) Prepare or cause to be prepared a written itemized statement concerning each expenditure or deduction of money made by the dealer;

(b) Deliver or cause to be delivered to each person from whom the dealer received money a copy of the written itemized statement; and

(c) Maintain a copy of the written itemized statement at his place of business.

3. Except as otherwise provided in a brokerage agreement or an escrow agreement signed by the parties to a sale or exchange of an interest in a manufactured home, mobile home, *manufactured building* or commercial coach *or factory-built housing* and the escrow agent or escrow officer licensed pursuant to the provisions of chapter 645A or 692A of NRS, no money concerning that sale or exchange held by a dealer may be distributed until:

(a) An application for:

(1) A certificate of ownership for the manufactured home, mobile home ~~or~~, *manufactured building*, commercial coach ~~or~~ *or factory-built housing*; or

(2) A certificate of title or certificate of ownership that does not pass immediately upon the sale or transfer of the manufactured home, mobile home ~~or~~, *manufactured building*, commercial coach ~~or~~ *or factory-built housing*,

↪ has been submitted to the Division;

(b) Each person who has a financial interest in the manufactured home, mobile home ~~or~~, *manufactured building*, commercial coach *or factory-built housing* has executed a document that releases or waives his interest; and

(c) Each party to the sale or exchange has complied with the requirements for the sale or exchange that are set forth in the regulations adopted pursuant to the provisions of this chapter.

Sec. 61. NRS 489.724 is hereby amended to read as follows:

489.724 1. All down payments, deposits of earnest money, proceeds of loans or other money which a dealer receives ~~or~~ on behalf of his principal or any other person ~~or~~ must be deposited in ~~the~~ the

(a) An escrow account maintained by an escrow agent or escrow officer licensed pursuant to chapter 645A or 692A of NRS; or

(b) A separate checking account, which must be designated a trust account, in a financial institution in this State whose deposits are insured by an agency of the Federal Government or by a private insurer approved pursuant to NRS 678.755.

2. Every dealer required to maintain a separate or trust account shall keep records of all money deposited therein. The records must clearly indicate the date and from whom he received money, the date deposited, the dates of withdrawals ~~or~~ and other pertinent information concerning the transaction, and must show clearly for whose account the money is deposited and to whom the money belongs. All such records and money are subject to inspection and audit by the Division and its authorized representatives ~~or~~ pursuant to section 12 of this act. All such separate trust accounts must designate the dealer as trustee and provide for the withdrawal of money without previous notice. *The dealer shall balance each separate trust account at least monthly. The dealer shall provide to the Division, on a form*

provided by the Division, an annual accounting which shows an annual reconciliation of each separate trust account.

3. All money deposited in a separate trust account from down payments, deposits of earnest money, proceeds of loans or other money received by a dealer from a person pursuant to a written contract signed by the dealer and that person must not be withdrawn from the account except to pay specific expenses as authorized by the written contract. *The dealer is personally responsible and liable for such money at all times. A dealer shall not permit any advance payment of money belonging to another person to be deposited in the dealer's business or personal account or to be commingled with any money he has on deposit.*

4. Each dealer shall notify the Division of the names of the financial institutions in which he maintains trust accounts and specify the names of the accounts on forms provided by the Division.

Sec. 62. NRS 489.729 is hereby amended to read as follows:

489.729 If a licensed dealer takes a mobile home, manufactured home , *manufactured building* or commercial coach *or factory-built housing* in trade on the purchase of another such home , *building* or coach and there is an outstanding security interest, the licensed dealer shall satisfy the outstanding security interest within 30 days after the manufactured home, mobile home ~~for~~ , *manufactured building*, commercial coach *or factory-built housing* is taken in trade on the purchase of the other home , *building* or coach.

Sec. 63. NRS 489.741 is hereby amended to read as follows:

489.741 No right of action exists in favor of any person by reason of any action or failure to act on the part of the Division or any of its officers or employees in carrying out the provisions of this chapter, or in giving or failing to give any information concerning the legal ownership of a manufactured home, mobile home , *manufactured building* or commercial coach *or factory-built housing* or the existence of a security interest in it.

Sec. 64. NRS 489.751 is hereby amended to read as follows:

489.751 1. Unless otherwise specifically waived in writing by the buyer, for each sale ~~of a manufactured home, mobile home or commercial coach~~ in which the dealer is the seller or an agent of the seller, there is an implied warranty by the dealer that all the essential systems are in working order upon the execution of the sale. For the purposes of this subsection, the words "as is" or any similar words do not constitute a waiver of the implied warranty unless the words specifically refer to a specific component of an essential system.

2. As used in this section, "essential system" means the heating, air-conditioning, electrical, plumbing and drainage systems of a manufactured home, mobile home , *manufactured building* or commercial coach ~~or~~ *or factory-built housing*.

Sec. 65. NRS 489.772 is hereby amended to read as follows:

489.772 "Transferee" means any person who purchases, leases or *otherwise* takes possession ~~in any other manner~~ or attempts to purchase,

lease or *otherwise* take possession ~~[in any other manner]~~ of a manufactured home, mobile home , *manufactured building* or commercial coach or *factory-built housing* or any interest therein from a transferor.

Sec. 66. NRS 489.774 is hereby amended to read as follows:

489.774 "Transferor" means any person who:

1. Sells or leases or attempts to sell or lease a manufactured home, mobile home , *manufactured building* or commercial coach or *factory-built housing* or any interest therein to a transferee; or

2. Transfers or attempts to transfer a manufactured home, mobile home , *manufactured building* or commercial coach or *factory-built housing* or any interest therein to a transferee in any other manner.

Sec. 67. NRS 489.776 is hereby amended to read as follows:

489.776 1. Except as otherwise provided in this section and unless required to make a disclosure pursuant to NRS 40.770, if a manufactured home, mobile home , *manufactured building* or commercial coach or *factory-built housing* is or has been the site of a crime that involves the manufacturing of any material, compound, mixture or preparation which contains any quantity of methamphetamine, a transferor or his agent who has actual knowledge of such information shall disclose the information to a transferee or his agent.

2. The disclosure described in subsection 1 is not required if:

(a) All materials and substances involving methamphetamine have been removed from or remediated on the manufactured home, mobile home ~~{or}~~ , *manufactured building*, commercial coach or *factory-built housing* by an entity certified or licensed to do so; or

(b) The manufactured home, mobile home ~~{or}~~ , *manufactured building*, commercial coach or *factory-built housing* has been deemed safe for habitation by a governmental entity.

3. The disclosure described in subsection 1 is not required for any sale or other transfer or intended sale or other transfer of a manufactured home, mobile home , *manufactured building* or commercial coach or *factory-built housing* by a transferor:

(a) To any co-owner of the manufactured home, mobile home ~~{or}~~ , *manufactured building*, commercial coach ~~{or}~~ or *factory-built housing*, the spouse of the transferor or a person related within the third degree of consanguinity to the transferor; or

(b) If the transferor is a dealer and this is the first sale or transfer of a new manufactured home, *new* mobile home , *new manufactured building* or *new* commercial coach ~~{or}~~ or *new factory-built housing*.

4. The Division may adopt regulations to carry out the provisions of this section.

Sec. 68. NRS 489.778 is hereby amended to read as follows:

489.778 1. A transferor or his agent, or both, who violates any provision of NRS 489.776 may be held liable to the transferee in any action at law or in equity.

2. An agent of a transferee who has actual knowledge of any information required to be disclosed pursuant to NRS 489.776 may be held liable to the transferee in any action at law or in equity if he fails to disclose that information to the transferee.

3. If a transferor makes a disclosure pursuant to NRS 489.776, the transferee may:

(a) Rescind the agreement to purchase, lease or take possession of the manufactured home, mobile home ~~or~~, *manufactured building*, commercial coach ~~or~~ *factory-built housing*;

(b) Make the agreement to purchase, lease or take possession of the manufactured home, mobile home ~~or~~, *manufactured building*, commercial coach *or factory-built housing* contingent upon the repair of any damage to the manufactured home, mobile home ~~or~~, *manufactured building*, commercial coach *or factory-built housing* that has been caused by the manufacturing of any material, compound, mixture or preparation which contains any quantity of methamphetamine; or

(c) Accept the manufactured home, mobile home ~~or~~, *manufactured building*, commercial coach *or factory-built housing* with the damage as disclosed by the transferor without further recourse.

4. The rights and remedies provided by this section are in addition to any other rights or remedies that may exist at law or in equity.

Sec. 69. NRS 489.811 is hereby amended to read as follows:

489.811 1. Except as otherwise provided in subsection 5, any person who violates any of the provisions of this chapter is liable to the State for a civil penalty of not more than \$1,000 for each violation. Each violation of this chapter or any regulation or order issued under it constitutes a separate violation with respect to each manufactured home, mobile home ~~or~~, *manufactured building*, commercial coach *or factory-built housing* and with respect to each failure or refusal to allow or perform an act required by this chapter or regulation or order, except that the maximum civil penalty is \$1,000,000 for any related series of violations occurring within 1 year after the first violation.

2. Before the adoption of any regulation for whose violation a civil penalty may be imposed, the Administrator shall give at least 30 days' written notice to every licensed manufacturer, dealer, *distributor*, general serviceman and specialty serviceman, and every other interested party who has requested the notice.

3. An action to enforce a civil penalty must be brought in a court of competent jurisdiction in the county in which the defendant has his principal place of business.

4. All money collected as civil penalties pursuant to the provisions of this chapter must be deposited in the State General Fund.

5. This section does not apply to a manufacturer, *distributor* or dealer of travel trailers.

Sec. 70. NRS 489.821 is hereby amended to read as follows:

489.821 1. A person is guilty of a gross misdemeanor who knowingly:

(a) Makes any false entry on any certificate of origin or certificate of ownership.

(b) Furnishes false information to the Division concerning any security interest.

(c) Files with the Administrator any notice, statement or other document required under the provisions of this chapter which is false or contains any material misstatement of fact.

(d) Whether acting individually or as a director, officer or agent of a corporation, violates a provision of the National Manufactured Housing Construction and Safety Standards Act of 1974 , ~~{4}~~ 42 U.S.C. §§ 5401 et seq. ~~{7}~~ , *this chapter and chapter 461 of NRS, and any regulations adopted pursuant thereto*, causing a condition which endangers the health or safety of a purchaser of a manufactured home.

2. A dealer is guilty of a gross misdemeanor who knowingly:

(a) Fails to maintain a trust account as required by NRS 489.724.

(b) Commingles the money or other property of a seller or purchaser of a manufactured home , *manufactured building* or ~~{a}~~ mobile home or *factory-built housing* with his own.

(c) *Fails to cooperate or comply with or knowingly impedes or interferes with any investigation or audit conducted by the Division pursuant to section 12 of this act.*

(d) *Acts as a dealer while insolvent or engages in any financial practice which creates a substantial risk of insolvency.*

3. Except as *otherwise* provided in ~~{subsections 1, 2 and 4 of}~~ this section, any person who knowingly or willfully violates any ~~{of the provisions}~~ *provision* of this chapter is guilty of a misdemeanor.

4. Subsection 3 does not apply to a manufacturer of travel trailers.

Sec. 71. NRS 108.355 is hereby amended to read as follows:

108.355 1. A person contesting the validity of a lien on a mobile home or manufactured home may file a notice of opposition to the lien in the justice court in whose jurisdiction the mobile home or manufactured home is located. The notice of opposition must be filed within 5 days after the person filing the notice receives the notice of sale by auction, must be made on a form provided by the clerk of the justice court and must include the facts supporting the notice. The person filing the notice shall serve certified copies of it upon the lien claimant and the Manufactured Housing Division of the Department of Business and Industry.

2. Upon the filing of the notice of opposition to the lien, the justice of the peace shall schedule a hearing on the notice, which must be held as soon as practicable but not sooner than 5 days after service of the notice. The justice of the peace shall affix the date of the hearing to the notice and order that a copy be served upon the lien claimant within 5 days after the date of the order.

3. The justice of the peace shall either dismiss the objections to the lien claim, declare the lien invalid or declare the amount of the lien if it is different from that described by the lien claimant.

4. After receipt of a notice of opposition to a lien or other notice pursuant to any proceeding to contest the validity of a lien, the Manufactured Housing Division of the Department of Business and Industry shall not transfer the title to the mobile home or manufactured home that is the subject of the lien until the matter has been adjudicated.

5. *This section does not affect the rights of a secured party pursuant to chapter 104 of NRS.*

Sec. 72. Chapter 118B of NRS is hereby amended by adding thereto the provisions set forth as sections 73 ~~1, 74 and~~ to 75, inclusive, of this act.

Sec. 73. *"Certified appraiser" means an appraiser who possesses the necessary qualifications pursuant to the provisions of this chapter.*

Sec. 74. *To qualify as a certified appraiser, a person must ~~be a dealer licensed pursuant to chapter 489 of NRS and~~ possess a professional certification as an appraiser issued by:*

1. *The National Society of Appraiser Specialists, including, without limitation, a Board Certified Manufactured Housing Valuation designation; or*

2. *Any other organization approved by the Division.*

Sec. 74.5. *A person who makes a determination of the fair market value of a manufactured home pursuant to the provisions of NRS 118B.130, 118B.177, 118B.180 or 118B.183 shall make such determination in compliance with the guidelines of:*

1. *The most current edition of the Manufactured Housing Cost Guide of the National Automobile Dealers Association; or*

2. *The Manufactured Housing National Appraisal System of the National Automobile Dealers Association.*

Sec. 75. *No right of action exists in favor of any person by reason of any action or failure to act on the part of the Division or any of its officers or employees in carrying out the provisions of this chapter.*

Sec. 76. NRS 118B.010 is hereby amended to read as follows:

118B.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 118B.011 to 118B.0195, inclusive, *and section 73 of this act* have the meanings ascribed to them in those sections.

Sec. 77. NRS 118B.120 is hereby amended to read as follows:

118B.120 1. The landlord or his agent or employee may:

(a) Require that the tenant landscape and maintain the tenant's lot if the landlord advises the tenant in writing of reasonable requirements for the landscaping.

(b) If the tenant does not comply with the provisions of paragraph (a), maintain the tenant's lot and charge the tenant a service fee for the actual cost of that maintenance.

(c) Require that the manufactured home be removed from the park if it is unoccupied for more than 90 consecutive days and the tenant or dealer is not making good faith and diligent efforts to sell it.

2. The landlord shall maintain, in the manner required for the other tenants, any lot on which is located a manufactured home within the park which has been repossessed, abandoned or held for rent or taxes. The landlord is entitled to reimbursement for the cost of that maintenance from the repossessor or lienholder or from the proceeds of any sale for taxes, as the case may be.

3. *Before dismantling a manufactured home that was abandoned, the landlord or manager must:*

(a) Conduct a title search with the Division to determine the owner of record of the manufactured home. If the owner of record is not found, the landlord or manager may use the records of the county assessor for the county in which the manufactured home is located to determine the owner of the manufactured home.

(b) Send a certified letter notifying the owner and any lienholder of the intent of the landlord or manager to dismantle the manufactured home.

(c) If the owner does not respond within 30 days after the date of mailing the certified letter, submit to the Division an affidavit of dismantling.

4. The landlord shall trim all the trees located within the park and dispose of the trimmings from those trees absent a written voluntary assumption of that duty by the tenant for trees on the tenant's lot.

~~{4.}~~ 5. For the purposes of this section, a manufactured home shall be deemed to be abandoned if:

(a) It is located on a lot in a manufactured home park, other than a cooperative park, for which no rent has been paid for at least 60 days;

(b) It is unoccupied; and

(c) The manager of the manufactured home park reasonably believes it to be abandoned.

Sec. 78. NRS 118B.130 is hereby amended to read as follows:

118B.130 1. A landlord may not change:

(a) An existing park to a park for older persons pursuant to federal law unless the tenants who do not meet those restrictions and may lawfully be evicted are moved to other parks at the expense of the landlord; or

(b) The restriction of a park for older persons pursuant to federal law unless the tenants are given the option of remaining in their spaces or moving to other parks at the expense of the landlord.

2. A tenant who elects to move pursuant to a provision of subsection 1 shall give the landlord notice in writing of his election to move within 75 days after receiving notice of the change in restrictions in the park.

3. At the time of providing notice of the change in restrictions in the park, the landlord shall provide to each tenant:

(a) The address and telephone number of the Division;

(b) Any list published by the Division setting forth the names of licensed transporters of manufactured homes approved by the Division; and

(c) Any list published by the Division setting forth the names of mobile home parks within 100 miles that have reported having vacant spaces.

4. If a landlord is required to move a tenant to another park pursuant to subsection 1, he shall pay:

(a) The cost of moving the tenant's manufactured home and its appurtenances to a new location in this State or another state within 100 miles from the manufactured home park; or

(b) If the new location is more than 100 miles from the manufactured home park, the cost of moving the manufactured home for the first 100 miles, including fees for inspection, any deposits for connecting utilities and the cost of taking down, moving, setting up and leveling his manufactured home and its appurtenances in the new lot or park.

5. If the landlord is unable to move a shed, due to its physical condition, that belongs to a tenant who has elected to have the landlord move his manufactured home, the landlord shall pay the tenant \$250 as reimbursement for the shed. Each tenant may receive only one payment of \$250 even if more than one shed is owned by the tenant.

6. If the tenant chooses not to move the manufactured home, the manufactured home cannot be moved without being structurally damaged or there is no manufactured home park within 100 miles that is willing to accept the manufactured home, the landlord:

(a) May remove and dispose of the manufactured home; and

(b) Shall pay to the tenant the fair market value of the manufactured home.

7. A landlord of a park in which restrictions have been or are being changed shall give written notice of the change to each:

(a) Tenant of the park who does not meet the new restrictions; and

(b) Prospective tenant before the commencement of the tenancy.

8. For the purposes of this section, the fair market value of a manufactured home ~~{and the reasonable cost of removing and disposing of a manufactured home}~~ must be determined ~~{by:}~~ as follows:

(a) A dealer licensed pursuant to chapter 489 of NRS who is ~~agreed upon~~ a certified appraiser and who is selected jointly by the landlord or his agent and the tenant ~~;~~ or shall make the determination.

(b) ~~{If the landlord and tenant cannot agree pursuant to}~~ If there are insufficient dealers licensed pursuant to chapter 489 of NRS who are certified appraisers available for the purposes of paragraph (a), a person who possesses the qualifications pursuant to the Appraiser Qualifications for Manufactured Homes Classified as Personal Property as set forth in section 8-3 of Valuation Analysis for Single Family One- to Four-Unit Dwellings, HUD Directive Number 4150.2 CHG-1, of the United States Department of Housing and Urban Development, and who is selected jointly by the landlord or his agent and the tenant shall make the determination.

(c) If there are insufficient persons available for the purposes of paragraphs (a) and (b) or if the landlord or his agent and the tenant cannot agree pursuant to paragraphs (a) and (b), the landlord or his agent or the tenant may request the Administrator to, and the Administrator shall, appoint a dealer licensed pursuant to chapter 489 of NRS or a certified appraiser who ~~is selected for this purpose by the Division~~ ~~{,}~~ shall make the determination.

9. The landlord shall pay the costs associated with determining the fair market value of a manufactured home and the ~~reasonable~~ cost of removing and disposing of a manufactured home pursuant to subsection 6.

Sec. 79. NRS 118B.177 is hereby amended to read as follows:

118B.177 1. If a landlord closes a manufactured home park, or if a landlord is forced to close a manufactured home park because of a valid order of a state or local governmental agency or court requiring the closure of the manufactured home park permanently for health or safety reasons, the landlord shall pay the amounts required by subsections 3, 4 and 5.

2. At the time of providing notice of the closure of the park, a landlord shall provide to each tenant:

(a) The address and telephone number of the Division;

(b) Any list published by the Division setting forth the names of licensed transporters of manufactured homes approved by the Division; and

(c) Any list published by the Division setting forth the names of mobile home parks within 100 miles that have reported having vacant spaces.

3. If the tenant chooses to move the manufactured home ~~{, the}~~ :

(a) The tenant shall, within 75 days after receiving notice of the closure, notify the landlord in writing of the tenant's election to move the manufactured home; and

(b) The landlord shall pay to the tenant:

~~{(a)}~~ (1) The cost of moving each tenant's manufactured home and its appurtenances to a new location in this State or another state within 100 miles from the manufactured home park; or

~~{(b)}~~ (2) If the new location is more than 100 miles from the manufactured home park, the cost of moving the manufactured home for the first 100 miles,

↪ including fees for inspection, any deposits for connecting utilities ~~{,}~~ and the cost of taking down, moving, setting up and leveling the manufactured home and its appurtenances in the new lot or park.

4. If the landlord is unable to move a shed, due to its physical condition, that belongs to a tenant who has elected to have the landlord move his manufactured home, the landlord shall pay the tenant \$250 as reimbursement for the shed. Each tenant may receive only one payment of \$250 even if more than one shed is owned by the tenant.

5. If the tenant chooses not to move the manufactured home, the manufactured home cannot be moved without being structurally damaged or

there is no manufactured home park within 100 miles that is willing to accept the manufactured home, the landlord:

- (a) May remove and dispose of the manufactured home; and
- (b) Shall pay to the tenant the fair market value of the manufactured home.

6. Written notice of any closure must be served timely on each:

- (a) Tenant in the manner provided in NRS 40.280, giving the tenant at least 180 days after the date of the notice before he is required to move his manufactured home from the lot.

(b) Prospective tenant by:

- (1) Handing each prospective tenant or his agent a copy of the written notice; and

- (2) Maintaining a copy of the written notice at the entrance of the manufactured home park.

7. For the purposes of this section, the fair market value of a manufactured home ~~[and the reasonable cost of removing and disposing of a manufactured home]~~ must be determined ~~[by:]~~ as follows:

- (a) ~~A dealer licensed pursuant to chapter 489 of NRS who is [agreed upon] a certified appraiser and who is selected jointly by the landlord or his agent and the tenant [-or] shall make the determination.~~

(b) ~~[If the landlord and tenant cannot agree pursuant to]~~ *If there are insufficient dealers licensed pursuant to chapter 489 of NRS who are certified appraisers for the purposes of paragraph (a), a person who possesses the qualifications pursuant to the Appraiser Qualifications for Manufactured Homes Classified as Personal Property as set forth in section 8-3 of Valuation Analysis for Single Family One- to Four-Unit Dwellings, HUD Directive Number 4150.2 CHG-1, of the United States Department of Housing and Urban Development, and who is selected jointly by the landlord or his agent and the tenant shall make the determination.*

(c) *If there are insufficient persons available for the purposes of paragraphs (a) and (b) or if the landlord or his agent and the tenant cannot agree pursuant to paragraphs (a) and (b), the landlord or his agent or the tenant may request the Administrator to, and the Administrator shall, appoint a dealer licensed pursuant to chapter 489 of NRS or a certified appraiser who ~~[is selected for this purpose by the Division]~~ [-.] shall make the determination.*

8. The landlord shall pay the costs associated with determining the fair market value of a manufactured home and the ~~[reasonable]~~ cost of removing and disposing of a manufactured home pursuant to subsection 5.

9. A landlord shall not increase the rent of a tenant after notice is served on the tenant as required by subsection 6.

10. If a landlord begins the process of closing a manufactured home park, he shall comply with the provisions of NRS 118B.184 concerning the submission of a resident impact statement.

11. As used in this section, "timely" means not later than 3 days after the landlord learns of a closure.

Sec. 80. NRS 118B.180 is hereby amended to read as follows:

118B.180 1. A landlord may convert an existing manufactured home park into individual manufactured home lots for sale to manufactured home owners if the change is approved by the appropriate local zoning board, planning commission or governing body. In addition to any other reasons, a landlord may apply for such approval if the landlord is forced to close the manufactured home park because of a valid order of a state or local governmental agency or court requiring the closure of the manufactured home park for health or safety reasons.

2. The landlord may undertake a conversion pursuant to this section only if:

(a) The landlord gives notice in writing to the Division and each tenant within 5 days after he files his application for the change in land use with the local zoning board, planning commission or governing body;

(b) The landlord offers, in writing, to sell the lot to the tenant at the same price the lot will be offered to the public and holds that offer open for at least 90 days or until the landlord receives a written rejection of the offer from the tenant, whichever occurs earlier;

(c) The landlord does not sell the lot to a person other than the tenant for 90 days after the termination of the offer required pursuant to paragraph (b) at a price or on terms that are more favorable than the price or terms offered to the tenant;

(d) If a tenant does not exercise his option to purchase the lot pursuant to paragraph (b), the landlord pays:

(1) The cost of moving the tenant's manufactured home and its appurtenances to a comparable location in this State or another state within 100 miles from the manufactured home park; or

(2) If the new location is more than 100 miles from the manufactured home park, the cost of moving the manufactured home for the first 100 miles, ➡ including fees for inspection, any deposits for connecting utilities and the cost of taking down, moving, setting up and leveling his manufactured home and its appurtenances in the new lot or park;

(e) After the landlord is granted final approval of the change by the appropriate local zoning board, planning commission or governing body, notice in writing is served on each tenant in the manner provided in NRS 40.280, giving the tenant at least 180 days after the date of the notice before he is required to move his manufactured home from the lot; and

(f) The landlord complies with the provisions of NRS 118B.184 concerning the submission of a resident impact statement.

3. At the time of providing notice of the conversion of the park pursuant to this section, a landlord shall provide to each tenant:

(a) The address and telephone number of the Division;

(b) Any list published by the Division setting forth the names of licensed transporters of manufactured homes approved by the Division; and

(c) Any list published by the Division setting forth the names of mobile home parks within 100 miles that have reported having vacant spaces.

4. If the landlord is unable to move a shed, due to its physical condition, that belongs to a tenant who has elected to have the landlord move his manufactured home, the landlord shall pay the tenant \$250 as reimbursement for the shed. Each tenant may receive only one payment of \$250 even if more than one shed is owned by the tenant.

5. If a tenant chooses not to move the manufactured home, the manufactured home cannot be moved without being structurally damaged or there is no manufactured home park within 100 miles that is willing to accept the manufactured home, the landlord:

(a) May remove and dispose of the manufactured home; and

(b) Shall pay to the tenant the fair market value of the manufactured home.

6. Notice sent pursuant to paragraph (a) of subsection 2 or an offer to sell a manufactured home lot to a tenant required pursuant to paragraph (b) of subsection 2 does not constitute notice of termination of the tenancy.

7. Upon the sale of a manufactured home lot and a manufactured home which is situated on that lot, the landlord shall indicate what portion of the purchase price is for the manufactured home lot and what portion is for the manufactured home.

8. For the purposes of this section, the fair market value of a manufactured home ~~{and the reasonable cost of removing and disposing of a manufactured home}~~ must be determined ~~{by:}~~ as follows:

(a) ~~A dealer licensed pursuant to chapter 489 of NRS who is {agreed upon} a certified appraiser and who is selected jointly by the landlord or his agent and the tenant {-or-} shall make the determination.~~

(b) ~~{If the landlord and tenant cannot agree pursuant to}~~ *If there are insufficient dealers licensed pursuant to chapter 489 of NRS who are certified appraisers available for the purposes of paragraph (a), a person who possesses the qualifications pursuant to the Appraiser Qualifications for Manufactured Homes Classified as Personal Property as set forth in section 8-3 of Valuation Analysis for Single Family One- to Four-Unit Dwellings, HUD Directive Number 4150.2 CHG-1, of the United States Department of Housing and Urban Development, and who is selected jointly by the landlord or his agent and the tenant shall make the determination.*

(c) *If there are insufficient persons available for the purposes of paragraphs (a) and (b) or if the landlord or his agent and the tenant cannot agree pursuant to paragraphs (a) and (b), the landlord or his agent or the tenant may request the Administrator to, and the Administrator shall, appoint a dealer licensed pursuant to chapter 489 of NRS or a certified appraiser who ~~{is selected for this purpose by the Division}~~ {-} shall make the determination.*

9. The landlord shall pay the costs associated with determining the fair market value of a manufactured home and the ~~reasonable~~ cost of removing and disposing of a manufactured home pursuant to subsection 5.

10. The provisions of this section do not apply to a corporate cooperative park.

Sec. 81. NRS 118B.183 is hereby amended to read as follows:

118B.183 1. A landlord may convert an existing manufactured home park to any other use of the land if the change is approved by the appropriate local zoning board, planning commission or governing body. In addition to any other reasons, a landlord may apply for such approval if the landlord is forced to close the manufactured home park because of a valid order of a state or local governmental agency or court requiring the closure of the manufactured home park for health or safety reasons.

2. The landlord may undertake a conversion pursuant to this section only if:

(a) The landlord gives notice in writing to the Division and each tenant within 5 days after he files his application for the change in land use with the local zoning board, planning commission or governing body;

(b) The landlord pays the amounts required by subsections 4, 5 and 6;

(c) After the landlord is granted final approval of the change by the appropriate local zoning board, planning commission or governing body, written notice is served on each tenant in the manner provided in NRS 40.280, giving the tenant at least 180 days after the date of the notice before he is required to move his manufactured home from the lot; and

(d) The landlord complies with the provisions of NRS 118B.184 concerning the submission of a resident impact statement.

3. At the time of providing notice of the conversion of the park pursuant to this section, a landlord shall provide to each tenant:

(a) The address and telephone number of the Division;

(b) Any list published by the Division setting forth the names of licensed transporters of manufactured homes approved by the Division; and

(c) Any list published by the Division setting forth the names of mobile home parks within 100 miles that have reported having vacant spaces.

4. If the tenant chooses to move the manufactured home ~~[- the]~~ :

(a) The tenant shall, within 75 days after receiving notice of the conversion, notify the landlord in writing of the tenant's election to move the manufactured home; and

(b) The landlord shall pay to the tenant:

~~[(a)]~~ (1) The cost of moving the tenant's manufactured home and its appurtenances to a new location in this State or another state within 100 miles from the manufactured home park; or

~~[(b)]~~ (2) If the new location is more than 100 miles from the manufactured home park, the cost of moving the manufactured home for the first 100 miles,

↪ including fees for inspection, any deposits for connecting utilities and the cost of taking down, moving, setting up and leveling his manufactured home and its appurtenances in the new lot or park.

5. If the landlord is unable to move a shed, due to its physical condition, that belongs to a tenant who has elected to have the landlord move his manufactured home, the landlord shall pay the tenant \$250 as reimbursement for the shed. Each tenant may receive only one payment of \$250 even if more than one shed is owned by the tenant.

6. If the tenant chooses not to move the manufactured home, the manufactured home cannot be moved without being structurally damaged or there is no manufactured home park within 100 miles that is willing to accept the manufactured home, the landlord:

- (a) May remove and dispose of the manufactured home; and
- (b) Shall pay to the tenant the fair market value of the manufactured home.

7. A landlord shall not increase the rent of any tenant:

(a) For 180 days before filing an application for a change in land use, permit or variance affecting the manufactured home park; or

(b) At any time after filing an application for a change in land use, permit or variance affecting the manufactured home park unless:

(1) The landlord withdraws the application or the appropriate local zoning board, planning commission or governing body denies the application; and

(2) The landlord continues to operate the manufactured home park after the withdrawal or denial.

8. For the purposes of this section, the fair market value of a manufactured home ~~and the reasonable cost of removing and disposing of a manufactured home~~ must be determined ~~by:~~ as follows:

(a) A dealer licensed pursuant to chapter 489 of NRS who is ~~agreed upon~~ a certified appraiser and who is selected jointly by the landlord or his agent and the tenant ~~[-or-]~~ shall make the determination.

(b) ~~[[If the landlord and tenant cannot agree pursuant to]~~ If there are insufficient dealers licensed pursuant to chapter 489 of NRS who are certified appraisers available for the purposes of paragraph (a), a person who possesses the qualifications pursuant to the Appraiser Qualifications for Manufactured Homes Classified as Personal Property as set forth in section 8-3 of Valuation Analysis for Single Family One- to Four-Unit Dwellings, HUD Directive Number 4150.2 CHG-1, of the United States Department of Housing and Urban Development, and who is selected jointly by the landlord or his agent and the tenant shall make the determination.

(c) If there are insufficient persons available for the purposes of paragraphs (a) and (b) or if the landlord or his agent and the tenant cannot agree pursuant to paragraphs (a) and (b), the landlord or his agent or the tenant may request the Administrator to, and the Administrator shall, appoint a dealer licensed pursuant to chapter 489 of NRS or a certified appraiser

who ~~[is selected for this purpose by the Division]~~ ~~[.]~~ shall make the determination.

9. The landlord shall pay the costs associated with determining the fair market value of a manufactured home and the ~~[reasonable]~~ cost of removing and disposing of a manufactured home pursuant to subsection 6.

10. The provisions of this section do not apply to a corporate cooperative park.

Sec. 82. Chapter 461 of NRS is hereby amended by adding thereto a new section to read as follows:

No right of action exists in favor of any person by reason of any action or failure to act on the part of the Division or any of its officers or employees in carrying out the provisions of this chapter.

Sec. 82.5. NRS 461.132 is hereby amended to read as follows:

461.132 "Manufactured building" ~~[includes]~~ means any modular building or any building which is constructed in whole or in substantial part using ~~[one or more]~~ modular components, but does not include a recreational park trailer.

Sec. 83. NRS 624.3015 is hereby amended to read as follows:

624.3015 The following acts, among others, constitute cause for disciplinary action under NRS 624.300:

1. Acting in the capacity of a contractor beyond the scope of the license.
2. Bidding to contract or contracting for a sum for one construction contract or project in excess of the limit placed on the license by the Board.
3. Knowingly bidding to contract or entering into a contract with a contractor for work in excess of his limit or beyond the scope of his license.
4. Knowingly entering into a contract with a contractor while that contractor is not licensed.
5. Constructing or repairing a mobile home, manufactured home , *manufactured building* or commercial coach ~~[.]~~ or *factory-built housing* unless the contractor:

(a) Is licensed pursuant to NRS 489.311; or

(b) Owns, leases or rents the mobile home, manufactured home ~~[or]~~ , *manufactured building*, commercial coach ~~[.]~~ or *factory-built housing*.

6. Engaging in any work or activities that require a contractor's license while the license is placed on inactive status pursuant to NRS 624.282.

Sec. 84. NRS 489.601 is hereby repealed.

Sec. 85. This act becomes effective on July 1, 2009.

TEXT OF REPEALED SECTION

489.601 Special plates for movement of manufactured home, mobile home or commercial coach: Issuance; regulations; fees.

1. Except as otherwise provided in NRS 489.611, any manufacturer or dealer having an established place of business in this State, and owning or controlling any new or used manufactured home, mobile home or commercial coach, may move the manufactured home, mobile home or commercial coach for the purposes of display, maintenance, sale or exchange

if there is displayed on it a special plate issued to the manufacturer or dealer as provided by this section.

2. Upon issuance of a manufacturer's or dealer's license pursuant to this chapter, the Division shall furnish to the licensee one or more special plates for use on manufactured homes, mobile homes and commercial coaches pursuant to subsection 1. Each plate must have displayed upon it the identification number which is assigned to the manufacturer or dealer and may, at the discretion of the Division, have a different letter or symbol on each plate. The plates may be used interchangeably on the manufactured homes, mobile homes or commercial coaches.

3. The Division shall, by regulation, determine the number of plates to which each manufacturer or dealer is entitled.

4. The Department shall supply the Division with the special plates.

5. There must be paid to the Division a fee of \$12 at the time application for a special plate is made, and by the Division to the Department, a fee of \$5.50 for each special plate.

Senator Carlton moved that the Senate concur in the Assembly amendment to Senate Bill No. 89.

Motion carried by a two-thirds majority.

Bill ordered enrolled.

Senate Bill No. 184.

The following Assembly amendment was read:

Amendment No. 718.

"SUMMARY—Establishes provisions relating to broker's price opinions. (BDR 54-234)"

"AN ACT relating to real estate; establishing provisions relating to broker's price opinions; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

This bill defines and specifies the minimum required contents of a broker's price opinion. This bill also sets forth the limitations on the use of a broker's price opinion and the circumstances under which a licensee may provide a broker's price opinion and collect a fee for preparing and providing that broker's price opinion. *This bill further establishes requirements governing a broker's price opinion which is submitted electronically or on a form supplied by the requesting party.*

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

Section 1. Chapter 645 of NRS is hereby amended by adding thereto a new section to read as follows:

1. *A person licensed pursuant to this chapter may prepare and provide a broker's price opinion and charge and collect a fee therefor if:*

(a) *The license of that licensee is active and in good standing; and*

(b) *The broker's price opinion meets the requirements of subsection ~~2~~ 3.*

2. A person licensed pursuant to this chapter may prepare a broker's price opinion for:

(a) An existing or potential seller for the purposes of listing and selling a parcel of real property;

(b) An existing or potential buyer of a parcel of real property;

(c) A third party making decisions or performing due diligence related to the potential listing, offering, sale, exchange, option, lease or acquisition price of a parcel of real property; or

(d) An existing or potential lienholder, except that a broker's price opinion prepared for an existing or potential lienholder may not be used in lieu of an appraisal for the purpose of determining whether to approve a mortgage loan.

3. A broker's price opinion must include, without limitation:

(a) A statement of the intended purpose of the broker's price opinion;

(b) A brief description of the real property and the interest in the real property for which the broker's price opinion is being prepared;

(c) The basis used to determine the broker's price opinion, including, without limitation, any applicable market data and the computation of capitalization;

(d) Any assumptions or limiting conditions used to determine the broker's price opinion;

(e) The date of issuance of the broker's price opinion;

(f) A disclosure of any existing or contemplated interest of every licensee who prepares or provides the broker's price opinion, including, without limitation, the possibility of a licensee representing the seller or purchaser;

~~[(f)]~~ (g) The license number, name and signature of every licensee who prepares or provides the broker's price opinion;

~~[(g)]~~ (h) If a licensee who prepares or provides the broker's price opinion is a real estate salesman or a real estate broker-salesman, the name of the real estate broker with whom the licensee is associated; and

~~[(h)]~~ (i) In at least 14-point bold type, the following disclaimer:

Notwithstanding any preprinted ~~language~~ language to the contrary, this opinion is not an appraisal of the market value of the property. ~~It is intended only for the benefit of the requesting party for the purpose of assisting the requesting party in deciding the listing, offering, sale, exchange, option, lease or acquisition price of the real property and not for any other purpose, including, without limitation, obtaining financing.~~ If an appraisal is desired, the services of a licensed or certified appraiser must be obtained.

~~3. A broker's price opinion may not be used as a written appraisal for the purposes of obtaining a loan or any other financing, including, without limitation, for the purpose of fulfilling the requirements of subsection 1 of NRS 645B.300.~~

4. If a broker's price opinion is submitted electronically or on a form supplied by the requesting party:

(a) A signature required by paragraph (g) of subsection 3 may be an electronic signature, as defined by NRS 719.100.

(b) A signature required by paragraph (g) of subsection 3 and the disclaimer required by paragraph (i) of subsection 3 may be transmitted in a separate attachment if the electronic format or form supplied by the requesting party does not allow additional comments to be written by the licensee. The electronic format or the form supplied by the requesting party must:

(1) Reference the existence of a separate attachment; and

(2) Include a statement that the broker's price opinion is not complete without the attachment.

5. A broker's price opinion that is submitted electronically is subject to any regulations relating to recordkeeping as adopted pursuant to this chapter.

6. A broker is responsible for all activities of a licensee who is associated with the broker and with the preparation of a broker's price opinion.

7. The Commission may adopt regulations prescribing the manner in which a broker's price opinion must be prepared in accordance with the provisions of this section.

8. As used in this section, "broker's price opinion" means a written analysis, opinion or conclusion that a person licensed pursuant to this chapter prepares for a ~~seller, purchaser or third party making decisions related to the disposition of real property, including, without limitation, the listing, offering, sale, exchange, option or lease of the real property or the determination of an acquisition price for the~~ person described in subsection 2 relating to the estimated price for a specified parcel of real property.

Sec. 2. This act becomes effective on July 1, 2009.

Senator Carlton moved that the Senate concur in the Assembly amendment to Senate Bill No. 184.

Remarks by Senator Carlton.

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

Senator Schneider was the main sponsor of this bill. We added Assemblyman Christensen as joint sponsor, and Senator Schneider indicated that this was fine with him.

Motion carried by a constitutional majority.

Bill ordered enrolled.

Senate Bill No. 230.

The following Assembly amendment was read:

Amendment No. 715.

"SUMMARY—Revises provisions governing certain licenses issued by the Real Estate Division of the Department of Business and Industry. (BDR 54-864)"

"AN ACT relating to real estate; revising provisions governing certain licenses issued by the Real Estate Division of the Department of Business and Industry; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Existing law provides that: (1) the initial period of licensure for an original license as a real estate broker, broker-salesman or salesman is 12 consecutive months beginning on the first day of the first calendar month after the original license is issued by the Real Estate Division of the Department of Business and Industry; and (2) each subsequent period of licensure is 24 consecutive months. Existing law additionally provides that other licenses issued pursuant to chapter 645 of NRS are issued for a period of 24 consecutive months. (NRS 645.780) Sections 1 and 2 of this bill increase the period of initial licensure for a license as a real estate broker, broker-salesman or salesman from 12 to 24 consecutive months and each subsequent period of licensure from 24 to 48 consecutive months. Sections 1 and 2 also increase the period of licensure for other licenses issued by the Division from 24 to 48 consecutive months. (NRS 645.490)

Section 3 of this bill increases the fee for each original license of a real estate broker, broker-salesman, corporate broker, real estate salesman and branch office, and each renewal of such a license, to correspond with the increase in the period of licensure of each license pursuant to sections 1 and 2 of this bill. Section 3 also increases the penalty for the late filing of a renewal for such licenses. (NRS 645.830)

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

Section 1. NRS 645.490 is hereby amended to read as follows:

645.490 1. Upon satisfactorily passing the written examination and upon complying with all other provisions of law and conditions of this chapter, a license shall thereupon be granted by the Division to the successful applicant therefor as a real estate broker, broker-salesman or salesman, and the applicant, upon receiving the license, may conduct the business of a real estate broker, broker-salesman or salesman in this State.

2. The Division shall issue licenses as a real estate broker, broker-salesman or salesman to all applicants who qualify and comply with all provisions of law and all requirements of this chapter.

3. Except as otherwise provided in NRS 645.785:

(a) An original license as a real estate broker, broker-salesman or salesman must be renewed with the Division before the expiration of the initial license period of ~~{12}~~ 24 consecutive months as prescribed in NRS 645.780; and

(b) Thereafter, the license must be renewed with the Division before the expiration of each subsequent license period of ~~{24}~~ 48 consecutive months as prescribed in NRS 645.780.

Sec. 2. NRS 645.780 is hereby amended to read as follows:

645.780 1. Each license issued under the provisions of this chapter expires at midnight on the last day of the last month of the applicable license period for the license.

2. The initial license period for an original license as a real estate broker, broker-salesman or salesman is a period of ~~{42}~~ 24 consecutive months beginning on the first day of the first calendar month after the original license is issued by the Division. Thereafter, each subsequent license period is a period of ~~{24}~~ 48 consecutive months beginning on the first day of the first calendar month after a renewal of the license is issued by the Division for the subsequent license period.

3. For all other licenses, the license period is a period of ~~{24}~~ 48 consecutive months beginning on the first day of the first calendar month after the license or any renewal of the license is issued by the Division, unless a specific statute:

- (a) Provides for a different license period; or
- (b) Expressly authorizes a different license period to be provided for by regulation.

4. The Division may:

- (a) Create and maintain a secure website on the Internet through which each license, permit, certificate or registration issued pursuant to the provisions of this chapter may be renewed; and
- (b) For each license, permit, certificate or registration renewed through the use of a website created and maintained pursuant to paragraph (a), charge a fee in addition to any other fee provided for pursuant to this chapter which must not exceed the actual cost to the Division for providing that service.

Sec. 3. NRS 645.830 is hereby amended to read as follows:

645.830 1. The following fees must be charged by and paid to the Division:

| | |
|---|--------------------------------------|
| For each original real estate broker's, broker-salesman's or corporate broker's license | {105} \$210 |
| For each original real estate salesman's license | {85} 170 |
| For each original branch office license | {120} 240 |
| For real estate education, research and recovery to be paid at the time an application for an original license is filed..... | 40 |
| For real estate education, research and recovery to be paid at the time an application for renewal of a license is filed..... | {40} 80 |
| For each renewal of a real estate broker's, broker-salesman's or corporate broker's license | {180} 360 |
| For each renewal of a real estate salesman's license | {140} 280 |
| For each renewal of a real estate branch office license | {110} 220 |
| For each penalty for late filing of a renewal for a broker's, broker-salesman's or corporate broker's license..... | {95} {190} 180 |
| For each penalty for late filing of a renewal for a salesman's | |

| | |
|--|---|
| license | [75] [150] <u>140</u> |
| For each change of name or address | \$20 |
| For each transfer of a real estate salesman's or broker- salesman's license and change of association or employment | 20 |
| For each duplicate license where the original license is lost or destroyed, and an affidavit is made thereof | 20 |
| For each change of broker status from broker to broker- salesman | 20 |
| For each change of broker status from broker-salesman to broker | 40 |
| For each reinstatement to active status of an inactive real estate broker's, broker-salesman's or salesman's license | 20 |
| For each reinstatement of a real estate broker's license when the licensee fails to give immediate written notice to the Division of a change of name or business location | 30 |
| For each reinstatement of a real estate salesman's or broker-salesman's license when he fails to notify the Division of a change of broker within 30 days of termination by previous broker | 30 |
| For each original registration of an owner-developer | 125 |
| For each annual renewal of a registration of an owner- developer | 125 |
| For each enlargement of the area of an owner-developer's registration | 50 |
| For each cooperative certificate issued to an out-of-state broker licensee for 1 year or fraction thereof | 150 |
| For each original accreditation of a course of continuing education | 100 |
| For each renewal of accreditation of a course of continuing education | 50 |
| For each annual approval of a course of instruction offered in preparation for an original license or permit | 100 |

2. The fees prescribed by this section for courses of instruction offered in preparation for an original license or permit or for courses of continuing education do not apply to:

(a) Any university, state college or community college of the Nevada System of Higher Education.

(b) Any agency of the State.

(c) Any regulatory agency of the Federal Government.

3. The Commission shall adopt regulations which establish the fees to be charged and collected by the Division to pay the costs of any investigation of a person's background.

Sec. 4. The amendatory provisions of this act apply to licenses issued or renewed by the Real Estate Division of the Department of Business and Industry pursuant to chapter 645 of NRS on or after July 1, 2011.

Sec. 5. This act becomes effective on July 1, 2011.

Senator Carlton moved that the Senate concur in the Assembly amendment to Senate Bill No. 230.

Remarks by Senator Carlton.

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

There was a math problem. The two tables did not work well, and we had to adjust some of the numbers in the fee schedule to "true up" a mistake that was made a number of years ago.

Motion carried by a constitutional majority.

Bill ordered enrolled.

Senate Bill No. 265.

The following Assembly amendment was read:

Amendment No. 782.

"SUMMARY—Revises provisions relating to the Private Investigator's Licensing Board. (BDR 54-1053)"

"AN ACT relating to the Private Investigator's Licensing Board; revising provisions relating to licenses and registrations issued by the Board; revising provisions governing local regulation of such licensees and registrants; removing certain requirements for security guards and certain exemptions for counties whose population is less than 100,000; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Existing law allows a person who holds a license issued by the Private Investigator's Licensing Board to hire unlicensed employees if they hold a work card issued by the local sheriff. (NRS 648.060) Sections 4-6, 8 and 9 of this bill remove the requirement of obtaining a work card from the local sheriff and instead require an unlicensed employee to be registered with the Board. (NRS 648.060, 648.085, 648.140, 648.158, 648.203) Section 3 of this bill establishes the process and requirements for an application for registration. Section 2 of this bill requires the Board to issue a provisional registration while the application process is pending. Section 10 of this bill deems any person with an active work card issued before January 1, 2010, to be registered until the work card expires or until January 1, 2015, whichever is earlier.

Section 6 of this bill also removes the authority of certain local governments to regulate certain matters relating to licensees and registrants under chapter 648 of NRS.

Section 9 of this bill also removes: (1) the requirement that a security guard obtain a work card from the applicable sheriff; and (2) the exemption from certain requirements of chapter 648 of NRS for counties whose population is less than 100,000 (currently counties other than Clark and Washoe Counties).

Sections 2 and 9 of this bill allow the sheriff of a county whose population is 100,000 or more who has entered into a contract with the Board to issue a provisional registration or to receive a set of fingerprints from an applicant as a part of the registration process.

Section 3.5 of this bill exempts certified public accountants and commercial registered agents from the requirements of chapter 648 of NRS in the performance of certain duties relating to their professions.

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

Section 1. Chapter 648 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. *The Board or the sheriff of a county whose population is 100,000 or more who has entered into a contract with the Board to perform such services shall, upon completion and review by the Board or sheriff of a record of criminal history for the applicant pursuant to NRS 179A.070, issue a provisional registration to an applicant who:*

(a) Submits a completed application for registration in compliance with section 3 of this act; and

(b) Meets the requirements for registration as adopted by the Board by regulation.

2. *A provisional registration issued to an applicant by the Board or sheriff expires automatically:*

(a) If the Board denies the applicant's application;

(b) Upon the issuance of a registration to the applicant; or

(c) If the applicant's check for the fee for the application for registration is returned for insufficient funds.

3. *Except as otherwise provided in this section, a provisional registration expires 90 days after its date of issuance unless an extension is granted by the Executive Director of the Board for good cause.*

Sec. 3. 1. *To obtain a registration, a person must:*

(a) Be a natural person;

(b) File a written application for registration with the Board;

(c) Comply with the applicable requirements of this chapter; and

(d) Pay an application fee set by the Board of not more than \$135.

2. *An application for registration must include:*

(a) A fully completed application for registration as an employee;

(b) A passport size photo;

(c) A completed set of fingerprint cards or a receipt for electronically submitted fingerprints of the applicant submitted as required by the Board; and

(d) Any other information or supporting materials required pursuant to the regulations adopted by the Board or by an order of the Board. 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 Board shall issue a registration to an applicant if:*

(a) The application is verified by the Board and complies with the applicable requirements of this chapter; and

(b) The applicant:

(1) Is of good moral character and temperate habits;

(2) Has not been convicted of, or entered a plea of nolo contendere to, a felony or a crime involving moral turpitude or the illegal use or possession of a dangerous weapon;

(3) Has not made a false statement of material fact on his application; and

(4) Has not violated any provision of this chapter, a regulation adopted pursuant thereto or an order of the Board.

4. *Upon the issuance of a registration, a pocket card of such size, design and content as may be determined by the Board will be issued without charge to each registered person, and will be evidence that the person is duly registered pursuant to this chapter.*

5. *A registration issued pursuant to this section and the cards issued pursuant to subsection 4 expire 5 years after the date the registration is issued, unless it is renewed. To renew a registration, the holder of the registration must submit to the Board on or before the date the registration expires:*

(a) A fully completed application for renewal of registration as an employee;

(b) A passport size photo;

(c) A completed set of fingerprint cards or a receipt for electronically submitted fingerprints of the applicant submitted as required by the Board;

(d) A renewal fee set by the Board of not more than \$135; and

(e) Any other information or supporting materials required pursuant to the regulations adopted by the Board or by an order of the Board. Such information or supporting materials may include, without limitation, other forms of identification of the person.

6. *A denial of registration may be appealed to the Board. The Board shall adopt regulations providing for the consideration of such appeals.*

Sec. 3.5. NRS 648.018 is hereby amended to read as follows:

648.018 Except as to polygraphic examiners and interns, this chapter does not apply:

1. To any detective or officer belonging to the law enforcement agencies of the State of Nevada or the United States, or of any county or city of the State of Nevada, while the detective or officer is engaged in the performance of his official duties.

2. To special police officers appointed by the police department of any city, county, or city and county within the State of Nevada while the officer is engaged in the performance of his official duties.

3. To insurance adjusters and their associate adjusters licensed pursuant to the Nevada Insurance Adjusters Law who are not otherwise engaged in the business of private investigators.

4. To any private investigator, private patrolman, process server, dog handler or security consultant employed by an employer regularly in connection with the affairs of that employer if a bona fide employer-employee relationship exists, except as otherwise provided in NRS 648.060, 648.140 and 648.203.

5. To a reposessor employed exclusively by one employer regularly in connection with the affairs of that employer if a bona fide employer-employee relationship exists, except as otherwise provided in NRS 648.060, 648.140 and 648.203.

6. To a person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.

7. To a charitable philanthropic society or association incorporated under the laws of this State which is organized and maintained for the public good and not for private profit.

8. To an attorney at law in performing his duties as such.

9. To a collection agency unless engaged in business as a reposessor, licensed by the Commissioner of Financial Institutions, or an employee thereof while acting within the scope of his employment while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his assets and of property which the client has an interest in or lien upon.

10. To admitted insurers and agents and insurance brokers licensed by the State, performing duties in connection with insurance transacted by them.

11. To any bank organized pursuant to the laws of this State or to any national bank engaged in banking in this State.

12. To any person employed to administer a program of supervision for persons who are serving terms of residential confinement.

13. To any commercial registered agent, as defined in NRS 77.040, who obtains copies of, examines or extracts information from public records maintained by any foreign, federal, state or local government, or any agency or political subdivision of any foreign, federal, state or local government.

14. To any holder of a certificate of certified public accountant issued by the Nevada State Board of Accountancy pursuant to chapter 628 of NRS while performing his duties pursuant to the certificate.

Sec. 4. NRS 648.060 is hereby amended to read as follows:

648.060 1. Except as otherwise provided in NRS 253.220, no person may:

(a) Engage in the business of private investigator, private patrolman, process server, reposessor, dog handler, security consultant, or polygraphic examiner or intern; or

(b) Advertise his business as such, irrespective of the name or title actually used,

↪ unless he is licensed pursuant to this chapter.

2. No person may be employed by a licensee unless the person ~~holds a work card issued by the sheriff of the county in which the work is to be performed.~~ *is registered pursuant to this chapter.* The provisions of this subsection do not apply to a person licensed pursuant to this chapter.

3. A person licensed pursuant to this chapter may employ only another licensee, or a nonlicensed person who:

- (a) Is at least 18 years of age.
- (b) Is a citizen of the United States or lawfully entitled to remain and work in the United States.
- (c) Is of good moral character and temperate habits.
- (d) Has not been convicted of a felony or a crime involving moral turpitude or the illegal use or possession of a dangerous weapon.

(e) *Is registered pursuant to this chapter.*

Sec. 5. NRS 648.085 is hereby amended to read as follows:

648.085 1. In addition to any other requirements set forth in this chapter:

(a) A natural person who applies for the issuance of a license or ~~work card~~ *registration* issued pursuant to this chapter shall include the social security number of the applicant in the application submitted to the Board.

(b) A natural person who applies for the issuance or renewal of a license or ~~work card~~ *registration* issued pursuant to this chapter 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 ~~work card~~ *registration*; or
- (b) A separate form prescribed by the Board.

3. A license or ~~work card~~ *registration* may not be issued or renewed by the Board pursuant to this chapter if the applicant is a natural person who:

- (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. 6. NRS 648.140 is hereby amended to read as follows:

648.140 1. Any license obtained pursuant to the provisions of this chapter gives the licensee or any bona fide employee of the licensee authority to engage in the type of business for which he is licensed in any county or city in the State of Nevada. A county or city shall not enact ordinances regulating persons licensed pursuant to this chapter, except ~~for~~

~~(a) Ordinances regulating the employer-employee relationship of licensees and their unlicensed employees; and~~

~~(b) General~~ *general* business regulations designed to raise revenue or assure compliance with building codes and ordinances or regulations concerning zoning and safety from fire.

2. Except for polygraphic examiners and interns, a licensee may employ, in connection with his business, as many ~~unlicensed~~ persons *registered pursuant to this chapter* as may be necessary, but at all times every licensee is accountable for the good conduct of every person employed by him in connection with his business. Each licensee shall furnish the Board with the information requested by it concerning all ~~unlicensed~~ employees ~~for~~ *registered pursuant to this chapter*, except clerical personnel, and shall notify the Board within ~~10~~ 3 days after such employees begin ~~for terminate~~ their employment.

~~{3. The Board may by regulation require that a licensee pay registration fees for each of his unlicensed employees, except clerical employees, and impose such terms and conditions in connection with those fees as it deems appropriate. The registration fee must not exceed \$10 for each unlicensed employee.~~

~~4. Each licensee shall report quarterly on forms provided by the Board the name of each unlicensed employee employed by him at the time of the report and the name of each unlicensed employee who has left his employ since the date of the last quarterly report. The report required by this subsection is in addition to the reports required by subsection 2.~~

Sec. 7. NRS 648.144 is hereby amended to read as follows:

648.144 A license issued under the provisions of this chapter and the cards issued pursuant to NRS 648.142 expire on June 30 of each year ~~for~~ *unless they are renewed*. A licensee desiring a renewal of his license must file an application for renewal on or before June 30 on a form prescribed by the Board which is accompanied by the fee prescribed pursuant to NRS 648.120 and all information required to complete the application for renewal. A renewal license for the next ensuing year must then be issued together with renewal cards for the persons described in subsection 3 of NRS 648.142.

Sec. 8. NRS 648.158 is hereby amended to read as follows:

648.158 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 or ~~work card~~ *registration* issued

pursuant to this chapter, the Board shall deem the license or ~~{work-card}~~ *registration* 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 or ~~{work-card}~~ *registration* by the district attorney or other public agency pursuant to NRS 425.550 stating that the holder of the license or ~~{work-card}~~ *registration* has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

2. The Board shall reinstate a license or ~~{work-card}~~ *registration* issued pursuant to this chapter 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 or ~~{work-card}~~ *registration* was suspended stating that the person whose license or ~~{work-card}~~ *registration* was suspended has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

Sec. 9. NRS 648.203 is hereby amended to read as follows:

648.203 1. Except as otherwise provided in ~~{subsection 2 or}~~ NRS 253.220, it is unlawful for a person to ~~{~~:

~~{(a) Allow}~~ allow an employee ~~{including an independent contractor,}~~ to perform any work regulated pursuant to the provisions of this chapter unless the employee ~~{holds a work card authorizing his work which is issued by the sheriff of the county in which the work is performed.}~~ *is registered pursuant to this chapter.* The provisions of this ~~{paragraph}~~ *subsection* do not apply to a person licensed pursuant to this chapter.

~~{(b) Work as a security guard unless he holds a work card authorizing his work as a security guard issued in accordance with applicable ordinances by the sheriff of the county in which the work is performed.}~~

2. ~~{The provisions of subsection 1 do not apply in any county whose population is less than 100,000, but this subsection does not prohibit a board of county commissioners from adopting similar restrictions by ordinance.}~~

3. ~~{The {sheriff of any county in which such restrictions apply} Board}~~ shall require any person applying for ~~{such a work-card}~~ *registration pursuant to this chapter* to submit a complete set of his fingerprints *or a receipt for electronically submitted fingerprints* to the ~~{sheriff}~~ *Board or to the sheriff of a county whose population is 100,000 or more who has entered into a contract with the Board to perform such services, who {may}* shall forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation to determine the applicant's criminal history.

Sec. 10. Any person who holds an active work card issued before January 1, 2010, will be deemed to be registered pursuant to chapter 648 of NRS. Notwithstanding the amendatory provisions of this act to the contrary, any such registration pursuant to this section expires on the date that the work card expires or January 1, 2015, whichever is earlier.

Sec. 11. 1. This section and section 3.5 of this act become effective upon passage and approval.

2. Sections 1, 2, 3 and 4 to 10, inclusive, of this act ~~[becomes]~~ become effective on January 1, 2010.

Senator Carlton moved that the Senate concur in the Assembly amendment to Senate Bill No. 265.

Remarks by Senator Carlton.

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

We needed to exempt certified public accountants and commercial registered agents from the requirements of Chapter 648 for certain duties within their professions. They do not need to be licensed Private Investigators to do that.

Motion carried by a two-thirds majority.

Bill ordered enrolled.

Senate Bill No. 310.

The following Assembly amendment was read:

Amendment No. 784.

"SUMMARY—Revises provisions governing the regulation of trust companies. (BDR 55-788)"

"AN ACT relating to trust companies; establishing various requirements for licensing as a retail trust company; establishing certain minimum capital requirements for trust companies; authorizing the Commissioner of Financial Institutions to take various actions relating to the regulation of trust companies; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Sections 3, 4, 6-8, 12-14, 16, 18, 25-27 and 30-36 of this bill revise various provisions governing the licensing and conduct of retail trust companies.

Sections 15-21, 31 and 35 of this bill authorize the Commissioner of Financial Institutions to take various actions concerning the activities of retail trust companies and the enforcement of chapter 669 of NRS.

Section 26 of this bill revises the minimum requirements for the amount of capital that must be held by trust companies.

Section 30 of this bill revises various fees relating to the licensing of retail trust companies.

Section 11 of this bill makes certain information provided to the Division of Financial Institutions of the Department of Business and Industry confidential in certain circumstances.

Section 9 of this bill authorizes the Commissioner to be a signatory to the Nationwide Cooperative Agreement for Supervision and Examination of Multi-State Trust Institutions as adopted by the Conference of State Bank Supervisors.

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

Section 1. Chapter 669 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 21, inclusive, of this act.

Sec. 2. 1. "Family trust company" means a ~~nondepository trust company which is organized and licensed under this chapter by a designated~~

~~relative to engage in trust company business with one or more family members and which does not transact business with the general public.]~~
corporation or limited-liability company that:

(a) Acts or proposes to act as a fiduciary;

(b) Is organized or qualified to do business in this State to serve family members; and

(c) Does not:

(1) Transact trust company business with;

(2) Propose to act as a fiduciary for; or

(3) Solicit trust company business from,

↪ a person who is not a family member.

2. As used in this section:

(a) "Designated relative" means the ~~[person who is so designated in the application for a license under NRS 669.150.]~~ common ancestor of the family, who may be either a living or deceased person. With regard to:

(1) A licensed family trust company or a family trust company applying to be licensed pursuant to this chapter, the designated relative is the person who is designated in the application for a license under this chapter or in the annual renewal of a license.

(2) A family trust company other than a family trust company described in subsection 1, the designated relative is any person designated by the family trust company in a letter to the Commissioner sent by certified mail, return receipt requested.

(b) "Family member" ~~[means]~~ includes, without limitation, the designated relative and:

(1) Any person within the ~~[fifth]~~ tenth degree of lineal kinship to the designated relative;

(2) Any person within the ninth degree of collateral kinship to the designated relative;

(3) Any nonfamily member who is an individual beneficiary under a will or trust created by a family member specified in subparagraph (1) or (2), including the spouse and issue of that person;

(4) The spouse and any former spouse of the designated relative ~~+~~

~~(4) A spouse~~ or of any person qualifying as a family member under subparagraph (1) or (2);

(5) Any person within the fifth degree of lineal kinship of ~~[the]~~ a spouse or former spouse identified in subparagraph (3) ~~++~~ or (4);

(6) A ~~[company controlled by one or more family members, who possess, directly or indirectly, the power to direct or cause the direction of the management and policies of the company, whether through the ownership of voting securities, by contract or otherwise]~~

~~(7) A~~ family affiliate and the officers, managers and directors of that family affiliate and their immediate families;

(7) An inter vivos or testamentary trust established by a family member either individually or jointly with a spouse or third party and any trustee, advisor or other person assisting with administration of that trust;

(8) An inter vivos or testamentary trust established by a ~~family member or by a~~ person who is not a family member if noncharitable beneficiaries ~~who are~~ of that trust include family members ; ~~represent a majority interest in the trust;~~

~~##8##~~ (9) The estate of a family member; ~~for~~

~~(9##~~ (10) The estate of a nonfamily member if the noncharitable beneficiaries of that estate include family members; and

(11) A charitable foundation , charitable trust or charitable entity ~~created by~~ of which a family member ~~is~~ is an organizer, incorporator, officer, member of the governing board, trustee, major donor or noncharitable beneficiary and the officers, directors, individual trustees and managers of that foundation, trust or entity and their immediate families.

3. For the purposes of this section:

(a) A family member is not a member of the public.

(b) A legally adopted person must be treated as a natural child of the adoptive parents.

(c) A stepchild must be treated as a natural child of the family member who is or was the stepparent of that child.

(d) Children of a spouse of a family member must be treated as natural children of that family member.

(e) Degrees are calculated by adding the number of steps from the designated relative through each person to the family member either directly, in the case of lineal kinship, or through the common ancestor, in the case of collateral kinship. As used in this paragraph:

(1) "Collateral kinship" means a relationship that is not lineal but stems from a common ancestor.

(2) "Lineal kinship" means a family member who is in the direct line of ascent or descent from the designated relative.

Sec. 2.3. "Grandfathered trust company" means a trust company that:

1. Held a license pursuant to this chapter on March 16, 2009; or
2. Filed an application for a license pursuant to this chapter with the Commissioner on or before March 16, 2009, and held such license on October 1, 2009.

Sec. 2.7. 1. "Noncustodial trust company" means a grandfathered trust company that:

(a) Does not manage, or advise regarding, in the aggregate, more than \$100,000,000 worth of a client's assets;

(b) Does not have custody or control of ~~a client's~~ clients' assets that exceed 20 percent of the total assets that the trust company manages for ~~that client;~~ all clients; and

(c) To the extent that the trust company has custody or control of a client's assets, invests such assets pursuant to:

(1) *Direction by the client; or*
(2) *The prudent investor standards of NRS 164.700 to 164.775, inclusive.*

2. *For the purposes of this section:*

(a) *"Advise" means to provide investment advice.*

(b) *"Control" means the ability to invest or transfer cash or any other asset in a fiduciary or client account to any person other than:*

(1) *In the case of an account for which the trust company acts as fiduciary, the settlor or beneficiary; and*

(2) *In the case of any other account of a client, the owner of the account.*

(c) *"Manage" means the exercise of discretion regarding investments, whether or not that discretion is delegated to another person.*

Sec. 3. *"Retail trust company" means an entity which is licensed under this chapter, ~~and engaged in a trust company business in this State.~~*

Sec. 4. 1. *A retail trust company licensed in this State shall maintain its principal office in this State.*

2. *The conditions for a retail trust company to fulfill the requirements of subsection 1 include, but are not limited to:*

(a) *A verifiable physical office in this State that conducts such business operations in this State as are necessary to administer trusts in this State;*

(b) *The presence of an employee that is a resident of Nevada in the principal office who has experience that is satisfactory to the Commissioner in accepting and administering trusts;*

(c) *Maintenance of originals or true copies of all material business records and accounts of the retail trust company which may be accessed and are readily available for examination by the Division of Financial Institutions;*

(d) *Maintenance of the required cash portion of the stockholders' equity pursuant to NRS 669.100 in accounts with one or more banks or other financial institutions located in this State;*

(e) *The provision of services to residents of this State consistent with the business plan provided by the trust company with its license application; and*

(f) *Such other conditions that the Commissioner may require to protect the public interest.*

Sec. 5. *(Deleted by amendment.)*

Sec. 6. 1. *The Commissioner may conduct a pre-opening examination of a retail trust company and, in rendering a decision on an application for a license as a retail trust company, consider:*

(a) *The proposed market or markets to be served and, if they extend outside of this State, any exceptional risk, examination or supervision concerns associated with such markets;*

(b) *Whether the proposed organizational and capital structure and the amount of initial capital appear adequate in relation to the proposed business and market or markets, including, without limitation, the average*

level of assets under management and administration projected for each of the first 3 years of operation;

(c) Whether the anticipated volume and nature of business indicate a reasonable probability of success and profitability based on the market or markets proposed to be served;

(d) Whether the proposed officers and directors or managers of the proposed retail trust company, as a group, have sufficient experience, ability, standing and competence and whether each individually has sufficient trustworthiness and integrity to justify a belief that the proposed retail trust company will be free from improper or unlawful influence and otherwise will operate in compliance with the law and applicable fiduciary duties and that success of the proposed retail trust company is reasonably probable;

(e) Whether any investment services to trusts, estates, charities, employee benefit plans and other fiduciary accounts or to natural persons, partnerships, limited-liability companies and other entities, including, without limitation, providing investment advice with or without discretion or selling investments in or investment products of affiliated or nonaffiliated persons, will be conducted in compliance with all applicable fiduciary standards, including, without limitation, NRS 164.700 to 164.775, inclusive, the duty of loyalty and disclosure of material information;

(f) Whether the proposed retail trust company will be exempt from registration under the Investment Advisers Act of 1940, 15 U.S.C. § 80a-1 et seq., and any similar state laws in each state where it would otherwise be required to register and, if not, whether it will comply with such registration requirements before commencing business and thereafter will comply with all federal and state laws and regulations applicable to it, its employees and representatives as a registrant under such laws;

(g) Whether the proposed retail trust company will obtain suitable annual audits by qualified outside auditors of its books and records and its fiduciary activities under applicable account rules and standards as well as suitable internal audits; and

(h) Any other factors that the Commissioner may require.

2. *The Commissioner may require a retail trust company to maintain capital in excess of the minimum required either initially or at any subsequent time based on his assessment of the risks associated with the retail trust company's business plan or any other circumstances revealed in the application, his investigation of the application or any examination of or filing by the retail trust company thereafter, including any examination before the opening of the retail trust company for business. In making such a determination, the Commissioner may consider:*

(a) The nature and type of business proposed to be conducted by the retail trust company;

(b) The nature and liquidity of assets proposed to be held in its own account;

- (c) The amount of fiduciary assets projected to be under management or under administration of the retail trust company;*
- (d) The type of fiduciary assets proposed to be held and any proposed depository of such assets;*
- (e) The complexity of fiduciary duties and degree of discretion proposed to be undertaken by the retail trust company;*
- (f) The competence and experience of proposed management of the retail trust company;*
- (g) The extent and adequacy of proposed internal controls;*
- (h) The proposed presence or absence of annual audits by an independent certified public accountant, and the scope and frequency of such audits, whether they result in an opinion of the accountant and any qualifications to the opinion;*
- (i) The reasonableness of business plans for retaining or acquiring additional equity capital;*
- (j) The existence and adequacy of insurance proposed to be obtained by the retail trust company for the purpose of protecting its fiduciary assets;*
- (k) The success of the retail trust company in achieving the financial projections submitted with its licensing application;*
- (l) The fulfillment by the retail trust company of its representations and its descriptions of its business structures and methods and management set forth in its licensing application; and*
- (m) Any other factor that the Commissioner may require.*

Sec. 7. 1. A license issued pursuant to this chapter is not transferable or assignable. Upon approval of the Commissioner, a licensee may merge or consolidate with, or transfer its assets and control to, another entity that has been issued a license under this chapter. In making a determination regarding whether to grant such approval, the Commissioner may consider the factors set forth in paragraphs (a) to (m), inclusive, of subsection 2 of section 6 of this act.

2. If there is a change in control of any retail trust company, the chief executive officer or managing member of the retail trust company shall report the fact and the person obtaining control to the Commissioner within 5 business days after obtaining knowledge of the change.

3. A retail trust company shall, within 5 business days after there is a change in the chief executive officer, managing member or a majority of the directors or managing directors of the retail trust company, report the change to the Commissioner. The retail trust company shall include in its report a statement of the past and current business and professional affiliations of each new chief executive officer, managing member, director or managing director. A new chief executive officer, managing member, director or managing director shall furnish to the Commissioner a complete financial statement on a form prescribed by the Commissioner.

4. A person who acquires control as a result of a change of control of a retail trust company shall submit an application to the Commissioner. The

application must be submitted on a form prescribed by the Commissioner. The Commissioner shall conduct an investigation to determine whether the person has a good reputation for honesty, trustworthiness and integrity and is competent to transact the business of a trust company in a manner which protects the interests of the general public.

5. The retail trust company with which the applicant described in subsection 4 is affiliated shall pay the nonrefundable cost of the investigation as the Commissioner requires. If the Commissioner denies the application, he may forbid or limit the applicant's participation in the business of the trust company.

6. As used in this section, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policy of a retail trust company, or a change in the ownership of at least 25 percent of the outstanding voting stock of, or participating members' interest in, a retail trust company.

Sec. 8. 1. It is unlawful for any retail trust company licensed in this State to engage in trust company business at any office outside this State without the prior approval of the Commissioner.

2. Before the Commissioner will approve a branch to be located in another state, the retail trust company must:

(a) Obtain from that state a license as a trust company; or

(b) Meet all the requirements to ~~operate~~ do business as a trust company at an office in that state.

Sec. 9. The Commissioner is authorized to be, on his own behalf and that of the Division of Financial Institutions, a signatory to the Nationwide Cooperative Agreement for Supervision and Examination of Multi-State Trust Institutions as adopted by the Conference of State Bank Supervisors and exercise his discretion in the supervision of multi-state trust institutions consistently with that agreement.

Sec. 10. 1. The Commissioner may require a licensee to provide an audited financial statement prepared by an independent certified public accountant licensed to do business in this State.

2. On the fourth Monday in January of each year, each licensee shall submit to the Commissioner a list of stockholders required to be maintained pursuant to paragraph (c) of subsection 1 of NRS 78.105 or the list of members required to be maintained pursuant to paragraph (a) of subsection 1 of NRS 86.241, verified by the president or a manager, as appropriate.

3. The list of members required to be maintained pursuant to paragraph (a) of subsection 1 of NRS 86.241 must include the percentage of each member's interest in the company, in addition to the requirements set forth in that section.

4. Except as otherwise provided in NRS 239.0115, any document submitted pursuant to this section is confidential.

Sec. 11. *Except as otherwise provided in NRS 239.0115, any application and personal or financial records submitted by a person pursuant to the provisions of this chapter and any personal or financial records or other documents obtained by the Division of Financial Institutions pursuant to an examination or audit conducted by the Division are confidential and may be disclosed only to:*

1. *The Division, any authorized employee of the Division and any state or federal agency investigating the activities covered under the provisions of this chapter; and*

2. *Any person when the Commissioner, in his discretion, determines that the interests of the public that would be protected by disclosure outweigh the interest of any person in the confidential information not being disclosed.*

Sec. 12. *The Commissioner may direct that the board of directors or managers of a retail trust company meet at least quarterly in regular meetings to review the books, records, funds and securities held by the retail trust company in its individual and fiduciary capacities and maintain a written record of those meetings for review by the Division.*

Sec. 13. 1. *Except as otherwise provided in subsection 3, the affairs and business of a retail trust company organized as a corporation under the laws of this State must be managed or controlled by a board of directors of not less than five in number who must be selected by the stockholders at the annual meeting of stockholders in such manner as may be provided by the bylaws of the corporation.*

2. *Except as otherwise provided in subsection 3, the affairs and business of a retail trust company organized as a limited-liability company under the laws of this State must be managed or controlled by no fewer than five managers selected from the members as provided in the operating agreement.*

3. *The Commissioner may authorize a retail trust company to be managed or controlled by no fewer than three directors or managers, as appropriate.*

4. *The board of directors or managers of a noncustodial trust company must be not less than three in number unless a smaller number is authorized by the Commissioner.*

Sec. 14. 1. *No person is eligible to serve as a director or manager of any retail trust company unless he:*

(a) *Displays the competence and integrity to transact the business of the retail trust company in a manner which safeguards the interests of the general public; and*

(b) *Has a financial status consistent with his responsibilities to the public.*

2. *The Commissioner may require any or all new directors or managing directors of a retail trust company to provide such financial and biographical information and verification thereof as he deems appropriate, including the completion of any forms required to be completed in connection with the licensing of a retail trust company.*

Sec. 15. 1. *For the purpose of discovering violations of this title or of securing information required under this chapter, the Commissioner or his duly authorized representatives may at any time investigate the business and examine the books, accounts, papers and records used therein of:*

- (a) Any licensee;*
- (b) Any other person engaged in an activity for which a license is required pursuant to the provisions of this chapter; and*
- (c) Any person that the Commissioner has reasonable cause to believe is violating or is about to violate any provision of this chapter, whether or not the person claims to be within the authority or beyond the scope of this chapter.*

2. *For the purpose of examination, the Commissioner or his authorized representatives must have and be given free access to the offices and places of business, files, safes and vaults of such persons.*

3. *The Commissioner may require the attendance of any person and examine him under oath regarding:*

- (a) Any transaction or business regulated pursuant to the provisions of this chapter; or*
- (b) The subject matter of any audit, examination, investigation or hearing.*

Sec. 16. *The Commissioner may require the immediate removal from office of any officer, director, manager or employee of any retail trust company doing business under this chapter who is found to be dishonest, incompetent or reckless in the management of the affairs of the retail trust company, or who persistently violates the laws of this State or the lawful orders, instructions and regulations issued by the Commissioner.*

Sec. 17. (Deleted by amendment.)

Sec. 18. 1. *The Commissioner may institute disciplinary action or forthwith initiate proceedings to take possession of the business and property of any retail trust company when it appears that the retail trust company:*

- (a) Has violated its charter or any state or federal laws applicable to the business of a trust company.*
- (b) Is conducting its business in an unauthorized or unsafe manner.*
- (c) Is in an unsafe or unsound condition to transact its business.*
- (d) Has an impairment of its stockholders' equity.*
- (e) Has refused to pay or transfer account assets to its account holders as required by the terms of the accounts' governing instruments.*
- (f) Has become insolvent.*
- (g) Has neglected or refused to comply with the terms of a lawful order of the Commissioner.*
- (h) Has refused, upon proper demand, to submit its records, affairs and concerns for inspection and examination of an appointed or authorized examiner of the Commissioner.*
- (i) Has made a voluntary assignment of its assets to receivers, conservators, trustees or creditors without complying with NRS 669.230.*

(j) *Has failed to pay a tax as required pursuant to the provisions of chapter 363A of NRS.*

(k) *Has materially and willfully breached its fiduciary duties to its customers.*

(l) *Has failed to properly disclose all fees, interest and other charges to its customers.*

(m) *Has willfully engaged in material conflicts of interest regarding a customer's account.*

(n) *Has made intentional material misrepresentations regarding any aspect of the services performed or proposed to be performed by the retail trust company.*

2. *The Commissioner also may forthwith initiate proceedings to take possession of the business and property of any trust company when it appears that the officers of the trust company have refused to be examined upon oath regarding its affairs.*

Sec. 19. *If the Commissioner finds that probable cause for revocation of any license exists and that enforcement of the provisions of this chapter requires immediate suspension of a license pending investigation, he may, upon 5 days' written notice and a hearing, enter an order suspending a license for a period not exceeding 20 days, pending a hearing upon the revocation.*

Sec. 20. 1. *Whenever the Commissioner has reasonable cause to believe that any person is violating or is threatening to or intends to violate any provision of this chapter, he may, in addition to all actions provided for in this chapter and without prejudice thereto, enter an order requiring the person to desist or to refrain from such violation.*

2. *The Attorney General or the Commissioner may bring an action to enjoin a person from engaging in or continuing a violation or from doing any act or acts in furtherance thereof. In any such action, an order or judgment may be entered awarding a preliminary or final injunction as may be deemed proper.*

3. *In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which an action is brought may impound, and appoint a receiver for, the property and business of the defendant, including books, papers, documents and records pertaining thereto, or so much thereof as a court may deem reasonably necessary to prevent violations of this chapter through or by means of the use of property and business, whether such books, papers, documents and records are in the possession of the defendant, a registered agent acting on behalf of the defendant or any other person. A receiver, when appointed and qualified, has such powers and duties as to custody, collection, administration, winding up and liquidation of such property and business as may from time to time be conferred upon him by the court.*

4. *If a receiver is appointed pursuant to subsection 3, such receiver shall remit to the owners, members or shareholders of the retail trust company any*

amount of equity and capital of the retail trust company remaining after discharge of the liabilities and payment of the normal, prudent and reasonable expenses of the receivership.

Sec. 21. 1. If the Commissioner has reason to believe that grounds for revocation or suspension of a license exist, he shall give at least 20 days' written notice to the licensee stating the contemplated action and, in general, the grounds therefor and set a date for a hearing.

2. At the conclusion of a hearing, the Commissioner shall:

(a) Enter a written order dismissing the charges, revoking the license or suspending the license for a period of not more than 60 days, which period must include any prior temporary suspension. The Commissioner shall send a copy of the order to the licensee by registered or certified mail.

(b) Impose upon the licensee an administrative fine of not more than \$10,000 for each violation by the licensee of any provision of this chapter or any regulation adopted pursuant thereto.

(c) If a fine is imposed pursuant to this section, enter such order as is necessary to recover the costs of the proceeding, including his investigative costs and attorney's fees.

3. The grounds for revocation or suspension of a license are that:

(a) The licensee has failed to pay the annual license fee;

(b) The licensee, either knowingly or without any exercise of due care to prevent it, has violated any provision of this chapter or any regulation adopted pursuant thereto or any lawful order of the Division of Financial Institutions;

(c) The licensee has failed to pay a tax as required pursuant to the provisions of chapter 363A of NRS;

(d) Any fact or condition exists which would have justified the Commissioner in denying the licensee's original application for a license pursuant to the provisions of this chapter; or

(e) The licensee:

(1) Failed to open an office for the conduct of the business authorized by his license within 180 days after the date his license was issued; or

(2) Has failed to remain open for the conduct of the business for a period of 30 days without good cause therefor.

4. An order suspending or revoking a license becomes effective 5 days after being entered unless the order specifies otherwise or a stay is granted.

Sec. 22. NRS 669.020 is hereby amended to read as follows:

669.020 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 669.029 to 669.070, inclusive, and sections 2 to 3, inclusive, of this act have the meanings ascribed to them in those sections.

Sec. 23. NRS 669.045 is hereby amended to read as follows:

669.045 1. "Fiduciary" means a trustee, executor, administrator, guardian of an estate, *personal representative*, conservator, assignee for the benefit of creditors, receiver, depositary or person that receives on deposit

money or property from a public administrator under any provision of this chapter or from another fiduciary.

2. *As used in this section, "administrator" includes servicers or administrators of individual retirement accounts within the meaning of section 408(a) of the Internal Revenue Code of 1986, 26 U.S.C. § 408(a), where the servicer or administrator holds itself out to the public for performance of such services and holds or maintains an ownership interest in the servicing rights of such accounts, or possesses or controls any of the assets of such accounts, including cash.*

Sec. 24. NRS 669.080 is hereby amended to read as follows:

669.080 1. This chapter does not apply to a person who:

(a) Does business under the laws of this State, the United States or another state relating to banks, savings banks, savings and loan associations or thrift companies, but if the *trust company* business conducted in this State is not subject to supervision by a regulatory authority of another jurisdiction, the person must be licensed pursuant to this chapter ~~if~~ *before engaging in such business in this State;*

(b) Is appointed as a fiduciary pursuant to NRS 662.245;

(c) Is acting in the performance of his duties as an attorney at law;

(d) Acts as a trustee under a deed of trust;

(e) Acts as a registered agent for a domestic or foreign corporation, limited-liability company, limited partnership or limited-liability partnership;

(f) Acts as a trustee of a trust holding real property for the primary purpose of facilitating any transaction with respect to real estate if he is not regularly engaged in the business of acting as a trustee for such trusts;

(g) Engages in the business of a collection agency pursuant to chapter 649 of NRS;

(h) Engages in the business of an escrow agency, escrow agent or escrow officer pursuant to the provisions of chapter 645A or 692A of NRS;

(i) Acts as a trustee of a trust created for charitable or nonprofit purposes if he is not regularly engaged in the business of acting as trustee for such trusts;

(j) Receives money or other property as a real estate broker licensed under chapter 645 of NRS on behalf of a principal;

(k) Engages in transactions as a broker-dealer or sales representative pursuant to chapter 90 of NRS;

(l) Acts as a fiduciary under a court trust;

(m) Does business as an insurer authorized to issue policies of life insurance and annuities or endowment contracts in this State and is subject to regulation and control of the Commissioner of Insurance; ~~or~~

(n) Acts as a fiduciary ~~if~~:

~~(1) The fiduciary relationship is not one of his principal occupations; or~~

~~(2) He serves as a fiduciary for a relative by blood or marriage.~~ *as an individual; or*

(o) Acts as a family trust company, unless the family trust company is licensed under this chapter. A family trust company which is not licensed under the provisions of this chapter shall be deemed not to be engaged in trust company business for the purposes of this chapter.

2. A bank, savings bank, savings and loan association or thrift company claiming an exemption from this chapter pursuant to paragraph (a) of subsection 1 must notify the Commissioner of Financial Institutions of its intention to engage in the business of a trust company in this State and present proof satisfactory to the Commissioner of Financial Institutions that its fiduciary activities in this State will be subject to regulation by another jurisdiction.

Sec. 25. NRS 669.090 is hereby amended to read as follows:

669.090 It is unlawful for any ~~person~~ *retail trust company* to engage in the business of a trust company without complying with the provisions of this chapter and having a license issued by the Commissioner.

Sec. 26. NRS 669.100 is hereby amended to read as follows:

669.100 1. No *retail trust company* may be organized or operated with a stockholders' equity of less than ~~[\$300,000,]~~ *\$1,000,000*, or in such greater amount as may be required by the Commissioner. The full amount of the initial stockholders' equity must be paid in cash, exclusive of all organization expenses, before the trust company is authorized to commence business.

2. *A retail trust company shall maintain at least 50 percent of its required stockholders' equity in cash unless the Commissioner approves a smaller amount. The remaining 50 percent of its required stockholders' equity may be a different form of readily marketable securities or with prior approval by the Commissioner other liquid, secure asset, bond, surety or insurance, or some combination of the foregoing.*

3. *Any grandfathered trust company other than a noncustodial trust company that does not have the minimum capital required by this section as of October 1, 2009, shall:*

(a) Except as otherwise determined by the Commissioner, increase its capital to a minimum of:

(1) By October 1, 2010, \$500,000;

(2) By October 1, 2011, \$750,000; and

(3) By October 1, 2012, \$1,000,000; and

(b) Maintain \$500,000 of such minimum capital in cash on and after October 1, 2010.

4. *Any noncustodial trust company that does not have the minimum capital required by this section as of October 1, 2009, shall:*

(a) Except as otherwise determined by the Commissioner, increase its capital to a minimum of:

(1) By October 1, 2010, \$350,000;

(2) By October 1, 2011, \$400,000; and

(3) By October 1, 2012, \$500,000; and

(b) *Maintain 50 percent of such minimum capital in cash on and after October 1, 2010.*

5. *As used in this section, "in cash" means in depository accounts with one or more banks in this State.*

Sec. 27. NRS 669.130 is hereby amended to read as follows:

669.130 A *retail* trust company shall not transact business, except business that is incidental to its organization, until it is authorized by the Commissioner to commence the business of a trust company as provided in this chapter.

Sec. 28. NRS 669.150 is hereby amended to read as follows:

669.150 1. An applicant must file an application for a license to transact trust company business with the Commissioner on forms prescribed by the Commissioner, which must contain or be accompanied by such information as the Commissioner requires.

2. A nonrefundable fee of not more than \$2,000 must accompany the application. The applicant must also pay such reasonable additional expenses incurred in the process of investigation as the Commissioner deems necessary. In addition, a fee of not less than \$200 or more than \$500, prorated on the basis of the licensing year as provided by the Commissioner, must be paid at the time of making the application.

3. ~~{A}~~ *Except as otherwise provided in section 8 of this act, a* trust company may maintain offices in this and other states. For every branch location of a trust company organized under the laws of this State, and every branch location in this State of a foreign trust company authorized to do business in this State, a request for approval and licensing must be filed with the Commissioner on such forms as he prescribes. A nonrefundable fee of not more than \$500 must accompany each request. In addition, a fee of not more than \$200, prorated on the basis of the licensing year as provided by the Commissioner, must be paid at the time of making the request.

4. The Commissioner shall adopt regulations establishing the amount of the fees required pursuant to this section. All money received by the Commissioner pursuant to this section must be placed in the Investigative Account *for Financial Institutions* created by NRS 232.545.

5. The Commissioner shall consider an application to be withdrawn if the Commissioner has not received all information and fees required to complete the application within 12 months after the date the application is first submitted to the Commissioner or within such later period as the Commissioner determines in accordance with any existing policies of joint regulatory partners. If an application is deemed to be withdrawn pursuant to this subsection or if an applicant otherwise withdraws an application, the Commissioner may not issue a license to the applicant unless the applicant submits a new application and pays any required fees.

Sec. 29. NRS 669.160 is hereby amended to read as follows:

669.160 1. Within ~~60~~ 90 days after the application for a license is filed, the Commissioner shall investigate the facts of the application and the other requirements of this chapter to determine:

(a) That the persons who will serve as directors or officers of the corporation, or the managers or members acting in a managerial capacity of the limited-liability company, as applicable:

(1) Have a good reputation for honesty, trustworthiness and integrity and display competence to transact the business of a trust company in a manner which safeguards the interests of the general public. The applicant must submit satisfactory proof of these qualifications to the Commissioner.

(2) Have not been convicted of, or entered a plea of nolo contendere to, a felony or any crime involving fraud, misrepresentation or moral turpitude.

(3) Have not made a false statement of material fact on the application.

(4) Have not *been an officer or member of the board of directors for an entity which had a license ~~that was~~* issued pursuant to the provisions of this chapter *that was* suspended or revoked within the 10 years immediately preceding the date of the application ~~that~~, *and in the reasonable judgment of the Commissioner, there is evidence that the officer or member of the board of directors materially contributed to the actions resulting in the license suspension or revocation.*

(5) Have not *been an officer or member of the board of directors for a company which* had a license as a trust company which 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 the application ~~that~~, *and in the reasonable judgment of the Commissioner, there is evidence that the officer or member of the board of directors materially contributed to the actions resulting in the license suspension or revocation.*

(6) Have not violated any of the provisions of this chapter or any regulation adopted pursuant to the provisions of this chapter.

(b) That the financial status of the directors and officers of the corporation or the managers or members acting in a managerial capacity of the limited-liability company is consistent with their responsibilities and duties.

(c) That the name of the proposed company complies with the provisions of NRS 657.200.

(d) That the initial stockholders' equity is not less than the required minimum.

(e) *That the applicant has retained the employee required by paragraph (b) of subsection 2 of section 4 of this act.*

2. Notice of the entry of an order refusing a license to a trust company must be given in writing, served personally or sent by certified mail ~~for by telegram~~ to the company affected. The company, upon application, is entitled to a hearing before ~~a hearing officer appointed by the Director of the Department of Business and Industry,~~ the Commissioner, but if no such

application is made within 30 days after the entry of an order refusing a license to any company, the Commissioner shall enter a final order.

3. ~~[If the hearing officer affirms the] The order of the Commissioner [refusing the license, the applicant may file a petition for] is final for the purposes of judicial review . [pursuant to NRS 233B.130.]~~

Sec. 30. NRS 669.190 is hereby amended to read as follows:

669.190 1. The initial fee to be paid for a *retail* trust company license ~~[must be in proportion to the initial stockholders' equity of the trust company as follows:~~

~~(a) A trust company with an initial stockholders' equity of not less than \$300,000 but not more than \$500,000 must pay a license fee of not more than \$1,000.~~

~~(b) A trust company with an initial stockholders' equity of more than \$500,000 but not more than \$1,000,000 must pay a license fee of not more than not more than \$1,500.~~

~~(c) A trust company with an initial stockholders' equity of more than \$1,000,000 must pay a license fee of not more than \$2,000.] must not be more than \$3,000.~~

2. In addition, every *retail* trust company must pay an initial license fee of not more than ~~[\$200] \$500~~ for each branch office that is authorized by the Commissioner.

3. Thereafter, every *retail* trust company must pay annually on or before April 1 of each year a license fee ~~[which must be in proportion to its existing stockholders' equity as follows:~~

~~(a) A trust company with an existing stockholders' equity of not less than \$300,000 but not more than \$500,000 must pay a license fee of not more than \$1,000.~~

~~(b) A trust company with an existing stockholders' equity of more than \$500,000 but not more than \$1,000,000 must pay a license fee of not more than \$1,500.~~

~~(c) A trust company with an existing stockholders' equity of more than \$1,000,000 must pay a license fee of not more than \$2,000.] of not more than \$3,000.~~

4. The Commissioner shall adopt regulations establishing the amount of the fees required pursuant to this section. All money collected under the provisions of this section must be deposited in the State Treasury pursuant to the provisions of NRS 658.091.

Sec. 31. NRS 669.200 is hereby amended to read as follows:

669.200 *The Commissioner shall issue an order cancelling a retail trust company's license:*

1. If ~~[a]~~ the proposed *retail* trust company fails to open for business within 6 months after the date the license was issued, or within an additional 6-month extension granted by the Commissioner upon written application and for good cause shown ~~[, the Commissioner shall issue an order cancelling the trust company's license.] ; or~~

2. *If the retail trust company fails to maintain regular business hours or otherwise conduct the business of a trust company for more than 30 days.*

Sec. 32. NRS 669.210 is hereby amended to read as follows:

669.210 1. Each ~~licensed~~ retail trust company may ~~[-]~~, *in the conduct of its trust business, within and outside this State, subject to section 8 of this act, as applicable:*

(a) Act as *indenture trustee or as trustee* under any mortgage or bond of any person or of any municipality or body politic.

(b) Accept and execute any municipal or corporate or individual trust not inconsistent with the laws of this State.

(c) Act under the order or appointment of any court as guardian, administrator, receiver or trustee.

(d) Act as executor or trustee under any will.

(e) Act as fiscal or transfer agent of any state, municipality, body politic or corporation, and in such capacity receive and disburse money and register, transfer and countersign certificates of stock, bonds and other evidences of indebtedness.

(f) Act as ~~local or~~ a registered agent of foreign corporations.

(g) Accept and execute any trust business permitted by any law.

(h) Acquire the fiduciary rights, powers, duties and liabilities of a bank, savings and loan association, thrift company, trust company or credit union licensed pursuant to titles 55 and 56 of NRS, and upon the effective date of such an acquisition, the fiduciary rights, powers, duties and liabilities of the bank, savings and loan association, thrift company, trust company or credit union vest in and must be performed by the acquiring trust company.

(i) *Act as an agent, advisory agent, assignee, attorney-in-fact, authenticating agent, bailee, bond or indenture trustee, conversion agent, curator, custodian, escrow agent, exchange agent, fiscal or paying agent, financial adviser, investment adviser, investment manager, managing agent, purchase agent, registrar, safekeeping agent, subscription agent, warrant agent or in similar capacities generally performed by corporate trustees, and in so acting, may possess, purchase, sell, invest, reinvest, safekeep or otherwise manage or administer real or personal property of other persons.*

(j) *Exercise the powers of a business corporation or limited-liability company organized or qualified as a foreign corporation or limited-liability company under Nevada law and any incidental powers that are reasonably necessary to enable it to fully exercise, in accordance with commonly accepted customs and usages, a power conferred in this chapter.*

(k) Do and perform all acts necessary to exercise the powers enumerated in this subsection and authorized by this chapter and any other applicable laws of this State.

2. A retail trust company may not engage in any banking business by accepting deposits or making loans.

Sec. 33. NRS 669.220 is hereby amended to read as follows:

669.220 1. A retail trust company:

(a) Shall keep all trust funds and investments separate from the assets of the *retail* trust company, and all investments made by the *retail* trust company as a fiduciary must be designated so that the trust or estate to which the investments belong may be clearly identified.

(b) When it holds trust funds awaiting investment or distribution, may deposit or leave those funds on deposit with a state or national bank or credit union. The funds must not be deposited or left with the same corporation depositing them or leaving them on deposit, or with a corporation or association holding or owning a majority of the stock of the *retail* trust company making or leaving the deposit, unless that corporation or association first pledges, as security for the deposit, securities eligible for investment by state banks or credit unions which have a market value equal to that of the deposited funds. No security is required with respect to any portion of the deposits that is insured under the provisions of NRS 678.755 or a law of the United States.

(c) When it acts in any capacity under a court trust or private trust, unless the instrument creating the trust provides otherwise, may cause any securities *or other assets* held by it in its representative capacity to be registered *or titled* in the name of a nominee or nominees of the *retail* trust company.

(d) When acting as depositary or custodian for the personal representative of a court trust or private trust, unless the instrument creating the trust provides otherwise, may with the consent of the personal representative of the trust, cause any securities *or other assets* held by it to be registered *or titled* in the name of a nominee or nominees of the *retail* trust company.

2. A trust company is liable for any loss occasioned by the acts of its nominees with respect to securities registered under this section.

3. No corporation or the registrar or transfer agent of the corporation is liable for registering or causing to be registered on the books of the corporation any securities in the name of any nominee of a trust company or for transferring or causing to be transferred on the books of the corporation any securities registered by the corporation in the name of any nominee of a trust company when the transfer is made on the authorization of the nominee.

4. ~~{Except as otherwise provided in subsection 5, the}~~ The assets forming the capital of a *retail* trust company must:

(a) Be *cash*, governmental obligations or insured deposits that mature within 3 years after acquisition ~~{,}~~ *, readily marketable securities or other liquid, secure assets, bonds, sureties or insurance, or some combination of the foregoing in accordance with NRS 669.100.*

(b) Have an aggregate market value that equals or exceeds ~~{60}~~ 100 percent of the company's ~~{current}~~ *required* stockholders' equity . ~~{or 60 percent of the company's initial stockholders' equity, whichever is greater.}~~

5. A *retail* trust company may purchase or rent ~~{land and equipment for use in the daily}~~ *real or personal property useful for the conduct of the business and other activities of the retail trust company.*

6. A retail trust company may invest its money for its own account, other than those required or permitted to be maintained by subsection 4 or 5 or NRS 669.100, in any type or character of equity securities, debt securities or other asset, provided the investment complies with the prudent investor standards of NRS 164.700 to 164.775, inclusive.

Sec. 34. NRS 669.225 is hereby amended to read as follows:

669.225 1. In addition to the powers of investment granted to the trust company by the instrument creating the relationship of fiduciary or agent, a trust company which is acting as a fiduciary or agent may, in its discretion or at the direction of another person who is authorized to direct the investment of money held by the trust company as a fiduciary or agent, invest in the securities of an investment trust or investment company if:

(a) The investment trust or investment company is ~~registered pursuant to~~ *an investment company for the purposes of* the Investment Company Act of 1940, as amended, 15 U.S.C. §§ 80a-1 et seq.; ~~and~~

(b) The portfolio of the investment trust or investment company consists substantially of investments which are not prohibited by the instrument creating the fiduciary or agency relationship ~~[-]~~; *and*

(c) *The relationship of the investment company to the trust company is disclosed to any person who is currently receiving statements for the account, by a prospectus, a statement of account or otherwise.*

2. A retail trust company or an affiliate of the retail trust company ~~may provide~~ *that provides* services to the investment trust or investment company, including, without limitation, acting as an ~~investment adviser,~~ *adviser*, custodian, transfer agent, registrar, sponsor, distributor or *shareholder serving agent manager*, ~~and~~ may receive reasonable compensation for the services. The manner in which the compensation is calculated must be disclosed to ~~the~~ *any* person who is currently receiving ~~the benefits of the relationship of a fiduciary or agent with the trust company. The disclosure may be made~~ *statements for the account by a* prospectus, a statement of account or otherwise.

3. A retail trust company may deposit money held by the retail trust company as a fiduciary or agent ~~with an affiliate before investing or making other disposition of the money.~~ *that is awaiting investment or distribution as provided in the governing instrument for the account in an affiliated bank. To the extent that the money invested in an affiliated bank is not insured by the Federal Deposit Insurance Corporation, the retail trust company shall set aside collateral as security, under the control of appropriate fiduciary officers and employees, with a market value that at all times equals or exceeds the amount of the uninsured fiduciary money.*

4. Notwithstanding subsections 1, 2 and 3, a retail trust company authorized to exercise trust powers in this State which is acting as a fiduciary shall not purchase for the fiduciary estate any fixed income or equity security issued by the retail trust company or an affiliate thereof other than an investment company, unless:

(a) The retail trust company is expressly authorized to do so by the terms of the instrument creating the trust, a court order, the written consent of the grantor of the trust or the written consent of every adult beneficiary of the trust who, at the time the notice is provided, receives, or is entitled to receive, income under the trust or who would be entitled to receive a distribution of principal if the trust were terminated; or

(b) The security is fairly priced and otherwise complies with the prudent investor standards of NRS 164.700 to 164.775, inclusive, and the terms of the instrument, judgment, decree, or other document establishing the fiduciary relationship.

Sec. 35. NRS 669.295 is hereby amended to read as follows:

669.295 1. In addition to any other remedy or penalty, the Commissioner may impose an administrative fine of not more than \$10,000 per violation upon a person who:

~~{1-}~~ (a) Without a license, conducts any business or activity for which a license is required pursuant to the provisions of this chapter; or

~~{2-}~~ (b) Violates any provision of this chapter or any regulation adopted pursuant thereto.

2. *The maximum total fine that the Commissioner may impose on any person pursuant to this section with respect to the same or similar actions or series of actions which constitute the violations must not exceed the greater of \$100,000 or 125 percent of all losses incurred by the retail trust company and its clients as the direct or indirect result of such violations.*

Sec. 36. NRS 669.282 and 669.284 are hereby repealed.

Sec. 37. (Deleted by amendment.)

TEXT OF REPEALED SECTIONS

669.282 Authority of Commissioner to seize property, business and assets; duties of Commissioner upon seizure.

1. If the Commissioner ascertains by examination or otherwise that the capital or assets of a trust company are impaired or that the affairs of a trust company are in an unsafe condition which may result in danger to the public, he may immediately take possession of all the property, business and assets of the company which are located in this state and retain possession of them pending further proceedings as provided in this chapter.

2. If the directors or officers of a corporation or the managers or members acting in a managerial capacity of a limited-liability company refuse to allow the Commissioner to take possession of the property of the company, the Commissioner shall communicate that fact to the Attorney General. Upon notification from the Commissioner, the Attorney General shall immediately institute such proceedings as may be necessary to place the Commissioner in immediate possession of the property of the company. Upon possession of the property, the Commissioner shall make or have made an inventory of the assets and known liabilities of the company.

3. The Commissioner shall file one copy of the inventory in his office and one copy in the office of the clerk of the district court of the county in

which the principal office of the trust company is located and shall mail one copy to each director or officer of the corporation, or the manager or member acting in a managerial capacity of the limited-liability company, at his last known address.

4. The clerk of the court with which the copy of the inventory is filed shall file it as any other case or proceeding pending in the court and shall give it a docket number.

669.284 Persons entitled to remedy conditions leading to seizure; effect of failure to remedy; receivership and liquidation of assets.

1. The directors or officers of a corporation or the managers or members acting in a managerial capacity of a limited-liability company licensed as a trust company may, within 60 days after the date the Commissioner takes possession of the property, business and assets of the corporation or limited-liability company licensed as a trust company, make good any deficit that exists or remedy the unsafe condition of the affairs of the corporation or limited-liability company licensed as a trust company.

2. At the expiration of the 60-day period set forth in subsection 1, if the deficiency in assets or capital has not been made good or the unsafe condition remedied, the Commissioner may apply to the court to be appointed receiver and proceed to liquidate the assets of the company that are located in this state in the same manner as now provided by law for liquidation of a private corporation in receivership.

3. Another person may not be appointed receiver by any court unless he first gives the Commissioner ample notice of his application.

4. The inventory made by the Commissioner pursuant to NRS 669.282 and all claims filed by creditors are open at all reasonable times for inspection, and any action taken by the receiver upon any of the claims is subject to the approval of the court before which the cause is pending.

5. The expenses of the receiver and compensation of counsel, as well as all expenditures required in the liquidation proceedings, must be fixed by the Commissioner subject to the approval of the court and, upon certification of the Commissioner, must be paid out of the money in his hands as the receiver.

Senator Carlton moved that the Senate concur in the Assembly amendment to Senate Bill No. 310.

Motion carried by two-thirds majority.

Bill ordered enrolled.

Senate Bill No. 355.

The following Assembly amendment was read:

Amendment No. 786.

"SUMMARY—Enacts the Uniform Debt-Management Services Act. (BDR ~~521~~ 56-1279)"

"AN ACT relating to trade practices; enacting the Uniform Debt-Management Services Act; repealing the existing provisions governing

the regulation of debt adjusters; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Existing law provides for the regulation of debt adjusters by the Commissioner of Financial Institutions. (Chapter 676 of NRS) This bill repeals those provisions and enacts the Uniform Debt-Management Services Act, which provides for the regulation of providers of debt-management services by the Commissioner of ~~(Consumer Affairs)~~ *Financial Institutions*.

Sections 26-38 of this bill provide for the registration of providers of debt-management services ~~(1)~~, which includes providers of credit counseling, providers that develop and implement debt-management plans and providers of debt settlement services. No provider may enter into an agreement with any debtor in this State without registering as a consumer debt-management service in this State. Registration requires submission of detailed information concerning the service, including, without limitation, its financial condition, the identity of principals, locations at which service will be offered, the form for agreements with debtors and business history in other jurisdictions. To register, a service must have an effective insurance policy against fraud, dishonesty, theft and the like in an amount not less than \$250,000. It must also provide a security bond of a minimum of \$50,000 which has the Commissioner as a beneficiary. If a registration substantially duplicates one in another state, the service may offer proof of registration in that other state to satisfy the registration requirements in this State. A satisfactory application will result in a certificate to do business from the Commissioner. A yearly renewal is required.

Sections 39-49 of this bill govern agreements between debtors and providers of debt-management services. To enter into agreements with debtors, there is a disclosure requirement respecting fees and services to be offered, and the risks and benefits of entering into such a contract. The service must offer counseling services from a certified counselor or certified debt specialist, and a plan must be created by the counselor or debt specialist for debt-management service to commence. The contents of the agreements and fees that may be charged are set forth in sections 39-49. There is a penalty-free 3-day right of rescission on the part of the debtor. In addition, the debtor may cancel the agreement after 30 days, but may be subject to fees if that occurs. The service may terminate the agreement if required payments are delinquent for at least 60 days. Any payments for creditors received from a debtor must be kept in a trust account that may not be used to hold any other funds of the service. There are strict accounting requirements and periodic reporting requirements respecting funds held.

Section 50 of this bill prohibits specific acts on the part of a service, including, without limitation, misappropriation of funds in trust, settlement for more than 50 percent of a debt with a creditor without a debtor's consent, gifts or premiums to enter into an agreement and representation that settlement has occurred without certification from a creditor. Sections 51-59

of this bill provide that the enforcement of the provisions of this bill occurs at two levels, the Commissioner and the individual level. The Commissioner has investigative power, power to order an individual to cease and desist, power to assess a civil penalty up to \$10,000 and power to bring a civil action. An individual may bring a civil action for compensatory damages, including, without limitation, triple damages, if a provider of debt-management services obtains payments not authorized by the provisions of this bill, and may seek punitive damages and attorney's fees. A service has a good faith mistake defense against liability. The statute of limitations pertaining to an action by the Commissioner is 4 years, and 2 years for a private right of action. Section 58 of this bill provides that a violation of a provision of this bill constitutes a deceptive trade practice and that, for such a violation, an individual may recover pursuant to the provisions of this bill or the provisions of existing law relating to deceptive trade practices.

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

Section 1. Title ~~52~~ 56 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 61, inclusive, of this act.

Sec. 2. *This chapter may be cited as the Uniform Debt-Management Services Act.*

Sec. 3. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 4 to 24, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 4. "Affiliate" means:

1. *With respect to an individual:*

- (a) *The spouse of the individual;*
- (b) *A sibling of the individual or the spouse of a sibling;*
- (c) *An individual or the spouse of an individual who is a lineal ancestor or lineal descendant of the individual or the individual's spouse;*
- (d) *An aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece or grandnephew, whether related by the whole or the half blood or adoption, or the spouse of any of them; or*
- (e) *Any other individual occupying the residence of the individual; and*

2. *With respect to an entity:*

- (a) *A person that directly or indirectly controls, is controlled by or is under common control with the entity;*
- (b) *An officer of, or an individual performing similar functions with respect to, the entity;*
- (c) *A director of, or an individual performing similar functions with respect to, the entity;*

(d) *Subject to adjustment of the dollar amount pursuant to subsection 6 of section 54 of this act, a person that receives or received more than \$25,000 from the entity in either the current year or the preceding year or a person that owns more than 10 percent of, or an individual who is employed by or is*

a director of, a person that receives or received more than \$25,000 from the entity in either the current year or the preceding year;

(e) An officer or director of, or an individual performing similar functions with respect to, a person described in paragraph (a);

(f) The spouse of, or an individual occupying the residence of, an individual described in paragraphs (a) to (e), inclusive; or

(g) An individual who has the relationship specified in paragraph (d) of subsection 1 to an individual or the spouse of an individual described in paragraphs (a) to (e), inclusive.

Sec. 5. "Agreement" means an agreement between a provider and an individual for the performance of debt-management services.

Sec. 6. "Bank" means a financial institution, including, without limitation, a commercial bank, savings bank, savings and loan association, credit union and trust company, engaged in the business of banking, chartered under federal or state law and regulated by a federal or state banking regulatory authority.

Sec. 7. "Business address" means the physical location of a business, including, without limitation, the name and number of a street.

Sec. 8. "Certified counselor" means an individual certified by a training program or certifying organization, approved by the Commissioner, that authenticates the competence of individuals providing education and assistance to other individuals in connection with debt-management services in which an agreement contemplates that creditors will reduce finance charges or fees for late payment, default or delinquency.

Sec. 9. "Certified debt specialist" means an individual certified by a training program or certifying organization, approved by the Commissioner, that authenticates the competence of individuals providing education and assistance to other individuals in connection with ~~debt management services in which an agreement contemplates that creditors will settle debts for less than the full principal amount of the debt owed.~~ debt settlement services.

Sec. 10. "Commissioner" means the Commissioner of ~~Consumer Affairs.~~ Financial Institutions.

Sec. 11. "Concessions" means assent to repayment of a debt on terms more favorable to an individual than the terms of the contract between the individual and a creditor.

Sec. 11.5. "Credit counseling" means providing education and assistance to an individual concerning debts owed by the individual which may include, without limitation, the development and implementation of a debt-management plan.

Sec. 12. "Day" means calendar day.

Sec. 12.5. "Debt-management plan" means a plan which contemplates that:

1. Regular, periodic payments will be made to a provider by or on behalf of an individual to whom debt-management services are being provided; and

2. The individual's creditors will reduce financing charges or fees for late payment, default or delinquency.

↪ The term does not include a plan which contemplates that creditors of the individual will settle debts for less than the principal amount of the debt.

Sec. 13. "Debt-management services" means services as an intermediary between an individual and one or more creditors of the individual for the purpose of obtaining concessions, ~~but~~ and includes credit counseling, the development and implementation of debt-management plans and debt settlement services. The term does not include:

1. Legal services provided in an attorney-client relationship by an attorney licensed or otherwise authorized to practice law in this State;

2. Accounting services provided in an accountant-client relationship by a certified public accountant licensed to provide accounting services in this State; or

3. Financial-planning services provided in a financial planner-client relationship by a member of a financial-planning profession whose members the Commissioner, by regulation, determines are:

(a) Licensed by this State;

(b) Subject to a disciplinary mechanism;

(c) Subject to a code of professional responsibility; and

(d) Subject to a continuing education requirement.

Sec. 13.5. "Debt settlement services" means debt-management services which contemplate that:

1. Regular, periodic payments will be made by or on behalf of the individual to whom the services are being provided;

2. The individual will accumulate such payments in a bank account which is insured by the Federal Deposit Insurance Corporation, owned by the individual and not controlled by the provider; and

3. The individual will use the accumulated amount of the payments made pursuant to subsection 1 to make payments to:

(a) The provider for any fees charged by the provider pursuant to section 45 of this act; and

(b) Creditors in order to settle the debts of the individual for less than the principal amount of the debt.

Sec. 14. "Entity" means a person other than an individual.

Sec. 15. "Good faith" means honesty in fact and the observance of reasonable standards of fair dealing.

Sec. 16. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited-liability company, association, joint venture or any other legal or commercial entity. The term does not include a public corporation, government or governmental subdivision, agency or instrumentality.

Sec. 17. "Plan" means a program or strategy in which a provider furnishes debt-management services to an individual and which includes a

schedule of payments to be made by or on behalf of the individual and used to pay debts owed by the individual.

Sec. 18. *"Principal amount of the debt" means the amount of a debt at the time of an agreement.*

Sec. 19. *"Provider" means a person that provides, offers to provide or agrees to provide debt-management services directly or through others.*

Sec. 20. *"Record" means information which is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.*

Sec. 21. *"Settlement fee" means a charge imposed on or paid by an individual in connection with a creditor's assent to accept in full satisfaction of a debt an amount less than the principal amount of the debt.*

Sec. 22. *"Sign" means, with present intent to authenticate or adopt a record:*

1. *To execute or adopt a tangible symbol; or*
2. *To attach to or logically associate with the record an electronic sound, symbol or process.*

Sec. 23. *"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.*

Sec. 24. *"Trust account" means an account held by a provider that is:*

1. *Established in an insured bank;*
2. *Separate from other accounts of the provider or its designee;*
3. *Designated as a trust account or other account designated to indicate that the money in the account is not the money of the provider or its designee; and*
4. *Used to hold money of one or more individuals for disbursement to creditors of the individuals.*

Sec. 25. 1. *This chapter does not apply to an agreement with an individual who the provider has no reason to know resides in this State at the time of the agreement.*

2. *This chapter does not apply to a provider to the extent that the provider:*

- (a) *Provides or agrees to provide debt-management, educational or counseling services to an individual who the provider has no reason to know resides in this State at the time the provider agrees to provide the services; or*
- (b) *Receives no compensation for debt-management services from or on behalf of the individuals to whom it provides the services or from their creditors.*

3. *This chapter does not apply to the following persons or their employees when the person or the employee is engaged in the regular course of the person's business or profession:*

- (a) *A judicial officer, a person acting under an order of a court or an administrative agency or an assignee for the benefit of creditors;*
- (b) *A bank;*

(c) An affiliate, as defined in paragraph (a) of subsection 2 of section 4 of this act, of a bank if the affiliate is regulated by a federal or state banking regulatory authority; or

(d) A title insurer, escrow company or other person that provides bill-paying services if the provision of debt-management services is incidental to the bill-paying services.

Sec. 26. 1. Except as otherwise provided in subsection 2, a provider may not provide debt-management services to an individual who it reasonably should know resides in this State at the time it agrees to provide the services, unless the provider is registered under this chapter.

2. If a provider is registered under this chapter, subsection 1 does not apply to an employee or agent of the provider.

3. The Commissioner shall maintain and publicize a list of the names of all registered providers.

Sec. 27. 1. An application for registration as a provider must be in a form prescribed by the Commissioner.

2. Subject to adjustment of dollar amounts pursuant to subsection 6 of section 54 of this act, an application for registration as a provider must be accompanied by:

(a) The fee established by the Commissioner;

(b) The bond required by section 35 of this act;

(c) ~~Identification~~ If the debt-management services to be provided by the provider will include the development and implementation of debt-management plans, identification of all trust accounts required by section 44 of this act and an irrevocable consent authorizing the Commissioner to review and examine the trust accounts;

(d) Evidence of insurance in the amount of \$250,000:

(1) Against the risks of dishonesty, fraud, theft and other misconduct on the part of the applicant or a director, employee or agent of the applicant;

(2) Issued by an insurance company authorized to do business in this State and rated at least A or equivalent by a nationally recognized rating organization approved by the Commissioner;

(3) With a deductible not exceeding \$5,000;

(4) Payable for the benefit of the applicant, this State and individuals who are residents of this State, as their interests may appear; and

(5) Not subject to cancellation by the applicant or the insurer until 60 days after written notice has been given to the Commissioner;

(e) Proof of compliance with NRS 360.760 to 360.798, inclusive; and

(f) If the applicant is exempt from taxation, evidence of nonprofit and tax-exempt status applicable to the applicant under the Internal Revenue Code, 26 U.S.C. § 501.

Sec. 28. An application for registration must be signed under oath and include:

1. The applicant's name, principal business address and telephone number and all other business addresses in this State, electronic mail addresses and Internet website addresses;

2. All names under which the applicant conducts business;

3. The address of each location in this State at which the applicant will provide debt-management services or a statement that the applicant will have no such location;

4. The name and home address of each officer and director of the applicant and each person that owns at least 10 percent of the applicant;

5. Identification of every jurisdiction in which, during the 5 years immediately preceding the application:

(a) The applicant or any of its officers or directors have been licensed or registered to provide debt-management services; or

(b) Individuals have resided when they received debt-management services from the applicant;

6. A statement describing, to the extent it is known or should be known by the applicant, any material civil or criminal judgment or litigation and any material administrative or enforcement action by a governmental agency in any jurisdiction against the applicant, any of its officers, directors, owners or agents or any person who is authorized to have access to the trust account required by section 44 of this act;

7. The applicant's financial statements ~~that, audited by an accountant licensed to conduct audits,~~ for each of the 2 years immediately preceding the application or, if it has not been in operation for the 2 years preceding the application, for the period of its existence ~~that, which must be audited by an accountant licensed to conduct audits if the applicant is claiming nonprofit or tax-exempt status or if the applicant's business practices involve holding, accessing or directing the funds of an individual;~~

8. Evidence of accreditation by an independent accrediting organization approved by the Commissioner;

9. Evidence that, within 12 months after initial employment, each of the applicant's counselors becomes certified as a certified counselor or certified debt specialist;

10. A description of the three most commonly used educational programs that the applicant provides or intends to provide to individuals who reside in this State and a copy of any materials used or to be used in those programs;

11. A description of the applicant's financial analysis and initial budget plan, including, without limitation, any form or electronic model used to evaluate the financial condition of individuals;

12. A copy of each form of agreement that the applicant will use with individuals who reside in this State;

13. The schedule of fees and charges that the applicant will use with individuals who reside in this State;

14. A complete set of the fingerprints of every officer of the applicant and every employee or agent of the applicant who is authorized to have access to

the trust account required by section 44 of this act and written permission from each individual submitting a complete set of fingerprints authorizing the Commissioner 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;

15. The names and addresses of all employers of each director during the 10 years immediately preceding the application;

16. A description of any ownership interest of at least 10 percent by a director, owner or employee of the applicant in:

(a) Any affiliate of the applicant; or

(b) Any entity that provides products or services to the applicant or any individual relating to the applicant's debt-management services;

17. ~~17.~~ If the applicant is exempt from taxation, a statement of the amount of compensation of the applicant's five most highly compensated employees for each of the 3 years immediately preceding the application or, if it has not been in operation for the 3 years preceding the application, for the period of its existence;

18. The identity of each director who is an affiliate, as defined in subsection 1 of section 4 of this act or paragraph (a), (b), (d), (e), (f) or (g) of subsection 2 of section 4 of this act, of the applicant; and

19. Any other information that the Commissioner reasonably requires to perform the Commissioner's duties under section 31 of this act.

Sec. 29. An applicant or registered provider shall notify the Commissioner within 10 days after a change in the information specified in paragraph (d) or (f) of subsection 2 of section 27 of this act or subsection 1, 3, 6, 12 or 13 of section 28 of this act.

Sec. 30. 1. Except as otherwise provided in subsection 2, the Commissioner shall make the information in an application for registration as a provider available to the public.

2. Except as otherwise provided in NRS 239.0115, the information required by subsections 7, 14 and 17 of section 28 of this act and the addresses required by subsection 4 of section 28 of this act are confidential ~~(, not subject to subpoena or discovery,)~~ and not subject to inspection by the general public.

Sec. 31. 1. Except as otherwise provided in subsections 3 and 4, the Commissioner shall issue a certificate of registration as a provider to a person that complies with sections 27 and 28 of this act.

2. If an applicant has otherwise complied with sections 27 and 28 of this act, including a timely effort to obtain the information required by subsection 14 of section 28 of this act, but the information has not been received, the Commissioner may issue a temporary certificate of registration. The temporary certificate expires not later than 180 days after issuance.

3. The Commissioner may deny registration if:

(a) The application contains information that is materially erroneous or incomplete;

(b) An officer, director or owner of the applicant has been convicted of a crime, or suffered a civil judgment, involving dishonesty or the violation of state or federal securities laws;

(c) The applicant or any of its officers, directors or owners have defaulted in the payment of money collected for others; or

(d) The Commissioner finds that the financial responsibility, experience, character or general fitness of the applicant or its owners, directors, employees or agents does not warrant belief that the business will be operated in compliance with this chapter.

4. The Commissioner shall deny registration if, with respect to an applicant that is organized as a nonprofit entity or has obtained tax-exempt status under the Internal Revenue Code, 26 U.S.C. § 501, the applicant's board of directors is not independent of the applicant's employees and agents.

5. Subject to adjustment of the dollar amount pursuant to subsection 6 of section 54 of this act, a board of directors is not independent for purposes of subsection 4 if more than one-fourth of its members:

(a) Are affiliates of the applicant, as defined in subsection 1 of section 4 of this act or paragraph (a), (b), (d), (e), (f) or (g) of subsection 2 of section 4 of this act; or

(b) After the date 10 years before first becoming a director of the applicant, were employed by or directors of a person that received from the applicant more than \$25,000 in either the current year or the preceding year.

Sec. 32. 1. The Commissioner shall approve or deny an initial registration as a provider within 120 days after an application is filed. In connection with a request pursuant to subsection 19 of section 28 of this act for additional information, the Commissioner may extend the 120-day period for not more than 60 days. Within 7 days after denying an application, the Commissioner, in a record, shall inform the applicant of the reasons for the denial.

2. If the Commissioner denies an application for registration as a provider or does not act on an application within the time prescribed in subsection 1, the applicant may appeal and request a hearing pursuant to NRS 233B.121 to 233B.150, inclusive.

3. Subject to subsection 4 of section 33 of this act and section 56 of this act, a registration as a provider is valid for 1 year.

Sec. 33. 1. A provider must obtain a renewal of its registration annually.

2. An application for renewal of registration as a provider must be in a form prescribed by the Commissioner, signed under oath, and:

(a) Be filed not fewer than 30 days and not more than 60 days before the registration expires;

(b) Be accompanied by the fee established by the Commissioner and the bond required by section 35 of this act;

(c) Contain the matter required for initial registration as a provider by subsections 8 and 9 of section 28 of this act and a financial statement, audited by an accountant licensed to conduct audits, for the applicant's fiscal year immediately preceding the application;

(d) Disclose any changes in the information contained in the applicant's application for registration or its immediately previous application for renewal, as applicable, and if an application is otherwise complete and the applicant has made a timely effort to obtain the information required by subsection 14 of section 28 of this act but the information has not been received, the Commissioner may issue a temporary renewal of registration which expires not later than 180 days after issuance;

(e) Supply evidence of insurance in an amount equal to the larger of \$250,000 or the highest daily balance in the trust account required by section 44 of this act during the 6-month period immediately preceding the application:

(1) Against risks of dishonesty, fraud, theft and other misconduct on the part of the applicant or a director, employee or agent of the applicant;

(2) Issued by an insurance company authorized to do business in this State and rated at least A or equivalent by a nationally recognized rating organization approved by the Commissioner;

(3) With a deductible not exceeding \$5,000;

(4) Payable for the benefit of the applicant, this State and the individuals who are residents of this State, as their interests may appear; and

(5) Not subject to cancellation by the applicant or the insurer until 60 days after written notice has been given to the Commissioner;

(f) ~~Disclose the~~ If the applicant has developed and implemented debt-management plans, disclose:

(1) The total amount of money received by the applicant pursuant to plans during the preceding 12 months from or on behalf of individuals who reside in this State and the total amount of money distributed to creditors of those individuals during that period;

~~† (g) Disclose, to† and~~

(2) To the best of the applicant's knowledge, the gross amount of money accumulated during the preceding 12 months pursuant to plans by or on behalf of individuals who reside in this State and with whom the applicant has agreements; and

~~†(h)†~~ (g) Provide any other information that the Commissioner reasonably requires to perform the Commissioner's duties under this section.

3. Except as otherwise provided in this subsection, the Commissioner shall make the information in an application for renewal of registration as a provider available to the public. Except as otherwise provided in NRS 239.0115, the information required by subsections 7, 14 and 17 of section 28 of this act and the addresses required by subsection 4 of section 28 of this act are confidential ~~†, not subject to subpoena or discovery,†~~ and not subject to inspection by the general public.

4. If a registered provider files a timely and complete application for renewal of registration, the registration remains effective until the Commissioner, in a record, notifies the applicant of a denial and states the reasons for the denial.

5. If the Commissioner denies an application for renewal of registration as a provider, the applicant, within 30 days after receiving notice of the denial, may appeal and request a hearing pursuant to NRS 233B.121 to 233B.150, inclusive. Subject to section 56 of this act, while the appeal is pending, the applicant must continue to provide debt-management services to individuals with whom it has agreements. If the denial is affirmed, subject to the Commissioner's order and section 56 of this act, the applicant must continue to provide debt-management services to individuals with whom it has agreements until, with the approval of the Commissioner, it transfers the agreements to another registered provider or returns to the individuals all unexpended money that is under the applicant's control.

Sec. 34. If a provider holds a license or certificate of registration in another state authorizing it to provide debt-management services, the provider may submit a copy of that license or certificate and the application for it instead of an application in the form prescribed by subsection 1 of section 27 of this act, section 28 of this act or subsection 2 of section 33 of this act. The Commissioner shall accept the application and the license or certificate from the other state as an application for registration as a provider or for renewal of registration as a provider, as appropriate, in this State if:

1. The application in the other state contains information substantially similar to or more comprehensive than that required in an application submitted in this State;

2. The applicant provides the information required by subsections 1, 3, 10, 12 and 13 of section 28 of this act; and

3. The applicant, under oath, certifies that the information contained in the application is current or, to the extent it is not current, supplements the application to make the information current.

Sec. 35. 1. Except as otherwise provided in section 36 of this act, a provider that is required to be registered under this chapter shall file a surety bond with the Commissioner, which must:

(a) Be continuously in effect during the period of registration and for 2 years after the provider ceases providing debt-management services to individuals in this State; and

(b) Run to this State for the benefit of this State and of individuals who reside in this State when they agree to receive debt-management services from the provider, as their interests may appear.

2. Subject to adjustment of the dollar amount pursuant to subsection 6 of section 54 of this act, a surety bond filed pursuant to subsection 1 must:

(a) Be in the amount of \$50,000 or other larger ~~(or smaller)~~ amount that the Commissioner determines is warranted by the financial condition and

business experience of the provider, the history of the provider in performing debt-management services, the risk to individuals and any other factor the Commissioner considers appropriate;

(b) Be issued by a bonding, surety or insurance company authorized to do business in this State and rated at least A by a nationally recognized rating organization; and

(c) Have payment conditioned upon noncompliance of the provider or its agent with this chapter.

3. *If the principal amount of a surety bond is reduced by payment of a claim or a judgment, the provider shall immediately notify the Commissioner and, within 30 days after notice by the Commissioner, file a new or additional surety bond in an amount set by the Commissioner. The amount of the new or additional bond must be at least the amount of the bond immediately before payment of the claim or judgment. If for any reason a surety terminates a bond, the provider shall immediately file a new surety bond in the amount of \$50,000 or other larger amount determined pursuant to subsection 2.*

4. *The Commissioner or an individual may obtain satisfaction out of the surety bond procured pursuant to this section if:*

(a) The Commissioner assesses expenses under paragraph (a) of subsection 2 of section 54 of this act, issues a final order under paragraph (b) of subsection 1 of section 55 of this act or recovers a final judgment under paragraph (d) or (e) of subsection 1 of section 55 of this act or subsection 4 of section 55 of this act; or

(b) An individual recovers a final judgment pursuant to subsection 1 or 2 of section 57 of this act or paragraph (a), (b) or (d) of subsection 3 of section 57 of this act.

5. *If claims against a surety bond exceed or are reasonably expected to exceed the amount of the bond, the Commissioner, on the initiative of the Commissioner or on petition of the surety, shall, unless the proceeds are adequate to pay all costs, judgments and claims, distribute the proceeds in the following order:*

(a) To satisfaction of a final order or judgment under paragraph (b), (d) or (e) of subsection 1 of section 55 of this act or subsection 4 of section 55 of this act;

(b) To final judgments recovered by individuals pursuant to subsection 1 or 2 of section 57 of this act or paragraph (a), (b) or (d) of subsection 3 of section 57 of this act, pro rata;

(c) To claims of individuals established to the satisfaction of the Commissioner, pro rata; and

(d) If a final order or judgment is issued under subsection 1 of section 55 of this act, to the expenses charged pursuant to paragraph (a) of subsection 2 of section 54 of this act.

Sec. 36. 1. *Instead of the surety bond required by section 35 of this act, a provider may deliver to the Commissioner, in the amount required by*

subsection 2 of section 35 of this act, and, except as otherwise provided in subparagraph (1) of paragraph (b), payable or available to this State and to individuals who reside in this State when they agree to receive debt-management services from the provider, as their interests may appear, if the provider or its agent does not comply with this chapter:

(a) A certificate of insurance issued by an insurance company authorized to do business in this State and rated at least A or equivalent by a nationally recognized rating organization, approved by the Commissioner and with no deductible, or, if the provider supplies a bond in the amount of \$5,000, a deductible not exceeding \$5,000; or

(b) With the approval of the Commissioner:

(1) An irrevocable letter of credit, issued or confirmed by a bank approved by the Commissioner, payable upon presentation of a certificate by the Commissioner stating that the provider or its agent has not complied with this chapter; or

(2) Bonds or other obligations of the United States or guaranteed by the United States or bonds or other obligations of this State or a political subdivision of this State, to be deposited and maintained with a bank approved by the Commissioner for this purpose.

2. If a provider furnishes a substitute pursuant to subsection 1, the provisions of subsections 1, 3, 4 and 5 of section 35 of this act apply to the substitute.

Sec. 37. 1. A provider shall act in good faith in all matters under this chapter.

2. A provider who holds funds on behalf of an individual to whom it provides debt-management services shall act as a fiduciary with respect to those funds.

Sec. 38. A provider that is required to be registered under this chapter shall maintain a toll-free communication system, staffed at a level that reasonably permits an individual to speak to a certified counselor, certified debt specialist or customer service representative, as appropriate, during ordinary business hours.

Sec. 39. 1. Before providing debt-management services, a registered provider shall give the individual an itemized list of goods and services and the charges for each. The list must be clear and conspicuous, be in a record the individual may keep whether or not the individual assents to an agreement and describe the goods and services the provider offers:

(a) Free of additional charge if the individual enters into an agreement;

(b) For a charge if the individual does not enter into an agreement; and

(c) For a charge if the individual enters into an agreement, using the following terminology, as applicable, and format:

Set-up fee

dollar amount of fee

Monthly service fee

dollar amount of fee or method
of determining amount

Settlement fee

dollar amount of fee or method
of determining amount

Goods and services in addition to those provided in connection with a plan:

(item) dollar amount or method of determining amount

(item) dollar amount or method of determining amount

2. A provider may not furnish debt-management services unless the provider, through the services of a certified counselor or certified debt specialist:

(a) Provides the individual with reasonable education about the management of personal finance;

(b) Has prepared a financial analysis; and

(c) If the provider will develop and implement a debt-management plan and the individual is to make regular, periodic payments:

(1) Has prepared a plan for the individual;

(2) Has made a determination, based on the provider's analysis of the information provided by the individual and otherwise available to the provider, that the plan is suitable for the individual and the individual will be able to meet the payment obligations under the plan; and

(3) Believes that each creditor of the individual listed as a participating creditor in the plan will accept payment of the individual's debts as provided in the plan.

3. Before an individual assents to an agreement, a provider shall:

(a) Provide the individual with a copy of the analysis and plan required by subsection 2 in a record which identifies the provider and which the individual may keep whether or not the individual assents to the agreement;

(b) Inform the individual of the availability, at the individual's option, of assistance by a toll-free communication system or in person to discuss the financial analysis and plan required by subsection 2; and

(c) ~~With~~ If the agreement contemplates that the provider will develop and implement a debt-management plan and with respect to all creditors identified by the individual or otherwise known by the provider to be creditors of the individual, provide the individual with a list of:

(1) Creditors that the provider expects to participate in the plan and grant concessions;

(2) Creditors that the provider expects to participate in the plan but not grant concessions;

(3) Creditors that the provider expects not to participate in the plan; and

(4) All other creditors.

4. Before an individual assents to an agreement, the provider shall inform the individual in a separate record which the individual may keep:

(a) Of the name and business address of the provider;

(b) That plans are not suitable for all individuals and the individual may ask the provider about other ways, including, without limitation, bankruptcy, to deal with indebtedness;

(c) That establishment of a plan may adversely affect the individual's credit rating or credit scores;

(d) That nonpayment of debt may lead creditors to increase finance and other charges or undertake collection activity, including, without limitation, litigation;

(e) Unless it is not true, that the provider may receive compensation from the creditors of the individual; and

(f) That, unless the individual is insolvent, if a creditor settles for less than the full amount of the debt, the plan may result in the creation of taxable income to the individual, even though the individual does not receive any money.

5. If a provider may receive payments from an individual's creditors and the plan contemplates that the ~~individual's creditors will reduce finance charges or fees for late payment, default or delinquency,~~ provider will develop and implement a debt-management plan, the provider may comply with subsection 4 by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Debt-management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.

(2) Using a debt-management plan may make it harder for you to obtain credit.

(3) We may receive compensation for our services from your creditors.

Name and business address of provider

6. If a provider will not receive payments from an individual's creditors and the plan contemplates that the ~~individual's creditors will reduce finance charges or fees for late payment, default or delinquency,~~ provider will develop and implement a debt-management plan, a provider may comply with subsection 4 by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Debt-management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.

(2) *Using a debt-management plan may make it harder for you to obtain credit.*

Name and business address of provider

7. ~~If an agreement contemplates that creditors will settle debts for less than the full principal amount of the debt owed,~~ *a provider will provide debt settlement services, the provider may comply with subsection 4 by providing the following disclosure, surrounded by black lines:*

IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) *Our program is not right for all individuals, and you may ask us to provide information about bankruptcy and other ways to deal with your debts.*

(2) *Nonpayment of your debts under our program may:*

Hurt your credit rating or credit scores;

Lead your creditors to increase finance and other charges; and

Lead your creditors to undertake activity, including lawsuits, to collect the debts.

(3) *Reduction of debt under our program may result in taxable income to you, even though you will not actually receive any money.*

Name and business address of provider

Sec. 40. 1. *A provider may satisfy the requirements of section 39, 41 or 49 of this act by means of the Internet or other electronic means if the provider obtains a consumer's consent in the manner provided by section 101(c)(1) of the federal act.*

2. *The disclosures and materials required by section 39, 41 or 49 of this act must be presented in a form that is capable of being accurately reproduced for later reference.*

3. *With respect to disclosure by means of an Internet website, the disclosure of the information required by subsection 4 of section 39 of this act must appear on one or more screens that:*

(a) *Contain no other information; and*

(b) *The individual must see before proceeding to assent to formation of an agreement.*

4. *At the time of providing the materials and agreement required by subsections 3 and 4 of section 39 of this act and sections 41 and 49 of this act, a provider shall inform the individual that upon electronic, telephonic or written request, it will send the individual a written copy of the materials, and shall comply with a request as provided in subsection 5.*

5. *If a provider is requested, before the expiration of 90 days after an agreement is completed or terminated, to send a written copy of the materials required by subsections 3 and 4 of section 39 of this act or section 41 or 49 of this act, the provider shall send them at no charge within 3 business days after the request, but the provider need not comply with a request more than once per calendar month or if it reasonably believes the request is made for*

purposes of harassment. If a request is made more than 90 days after an agreement is completed or terminated, the provider shall send within a reasonable time a written copy of the materials requested.

6. A provider that maintains an Internet website shall disclose on the home page of its website or on a page that is clearly and conspicuously connected to the home page by a link that clearly reveals its contents:

- (a) Its name and all names under which it does business;
- (b) Its principal business address, telephone number and electronic mail address, if any; and
- (c) The names of its principal officers.

7. Subject to subsection 8, if a consumer who has consented to electronic communication in the manner provided by section 101 of the federal act withdraws consent as provided in the federal act, a provider may terminate its agreement with the consumer.

8. If a provider wishes to terminate an agreement with a consumer pursuant to subsection 7, it shall notify the consumer that it will terminate the agreement unless the consumer, within 30 days after receiving the notification, consents to electronic communication in the manner provided in section 101(c) of the federal act. If the consumer consents, the provider may terminate the agreement only as permitted by subparagraph (6) of paragraph (f) of subsection 1 of section 41 of this act.

9. As used in this section:

- (a) "Consumer" means an individual who seeks or obtains goods or services that are used primarily for personal, family or household purposes.
- (b) "Federal act" means the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001 et seq.

Sec. 41. 1. An agreement must:

- (a) Be in a record;
- (b) Be dated and signed by the provider and the individual;
- (c) Include the name of the individual and the address where the individual resides;
- (d) Include the name, business address and telephone number of the provider;
- (e) Be ~~delivered~~ provided to the individual ~~immediately upon formation of~~ before the individual assents to the agreement; and
- (f) Disclose:

(1) The services to be provided ~~to~~, including, without limitation, whether the provider will provide credit counseling, develop and implement a debt-management plan, provide debt settlement services or provide any combination of these services;

(2) The amount, or method of determining the amount, of all fees, individually itemized, to be paid by the individual;

(3) ~~The~~ If the agreement contemplates that the provider will develop and implement a debt-management plan or provide debt settlement services, the schedule of payments to be made by or on behalf of the individual,

including the amount of each payment, the date on which each payment is due and an estimate of the date of the final payment;

(4) If the agreement contemplates that the provider will develop and implement a debt-management plan and a plan provides for regular periodic payments to creditors:

(I) Each creditor of the individual to which payment will be made, the amount owed to each creditor and any concessions the provider reasonably believes each creditor will offer;

(II) The schedule of expected payments to each creditor, including the amount of each payment and the date on which it will be made; and

(III) Each creditor that the provider believes will not participate in the plan and to which the provider will not direct payment;

(5) ~~How~~ If the agreement contemplates that the provider will develop and implement a debt-management plan or provide debt settlement services, how the provider will comply with its obligations under subsection 1 of section 49 of this act;

(6) That the provider may terminate the agreement for good cause, upon return of unexpended money of the individual;

(7) That the individual may cancel the agreement as provided in section 42 of this act;

(8) That the individual may terminate a plan at any time without incurring any liability as provided in subparagraph (4) of paragraph (a) of subsection 4;

(9) That the individual may contact the Commissioner with any questions or complaints regarding the provider; and

~~How~~ (10) The address, telephone number and Internet address of the website of the Commissioner.

2. For purposes of paragraph (e) of subsection 1, delivery of an electronic record occurs when it is made available in a format in which the individual may retrieve, save and print it and the individual is notified that it is available.

3. If the Commissioner supplies the provider with any information required under subparagraph ~~9~~ 10 of paragraph (f) of subsection 1, the provider may comply with that requirement only by disclosing the information supplied by the Commissioner.

4. An agreement must provide that:

(a) The individual has a right to terminate the agreement at any time, without penalty or obligation ~~to~~ or the payment of any termination fee, by giving the provider written or electronic notice, in which event:

(1) The provider will refund all unexpended money that the provider or its agent has received from or on behalf of the individual for the reduction or satisfaction of the individual's debt;

(2) With respect to an agreement which contemplates that creditors will settle debts for less than the principal amount of the debt, the provider will

refund 65 percent of any portion of the set-up fee that has not been credited against the settlement fee; ~~and~~

(3) All powers of attorney granted by the individual to the provider are revoked and ineffective; and

(4) The provider will cease charging a monthly service fee, other than a monthly service fee which became due before the termination of the agreement.

(b) The individual authorizes any bank in which the provider or its agent has established a trust account to disclose to the Commissioner any financial records relating to the trust account; ~~and~~

(c) The provider will notify the individual within 5 days after learning of a creditor's final decision to reject or withdraw from a plan and that this notice will include:

(1) The identity of the creditor; and

(2) The right of the individual to modify or terminate the agreement ~~and~~; and

(d) The individual may terminate a plan at any time without incurring any liability.

5. ~~Am~~ If an agreement contemplates that the provider will provide debt settlement services, the agreement may confer on a provider a power of attorney to settle the individual's debt for not more than 50 percent of the outstanding amount of the debt. ~~Am~~ The agreement may not confer a power of attorney to settle a debt for more than 50 percent of that amount, but may confer a power of attorney to negotiate with creditors of the individual on behalf of the individual. ~~Am~~ The agreement must provide that the provider will obtain the assent of the individual after a creditor has assented to a settlement for more than 50 percent of the outstanding amount of the debt.

6. An agreement may not:

(a) Provide for application of the law of any jurisdiction other than the United States and this State;

(b) Except as permitted by section 2 of the Federal Arbitration Act, 9 U.S.C. § 2, or NRS 38.206 to 38.248, inclusive, contain a provision that modifies or limits otherwise available forums or procedural rights, including, without limitation, the right to trial by jury, that are generally available to the individual under law other than this chapter;

(c) Contain a provision that restricts the individual's remedies under this chapter or law other than this chapter; or

(d) Contain a provision that:

(1) Limits or releases the liability of any person for not performing the agreement or for violating this chapter; or

(2) Indemnifies any person for liability arising under the agreement or this chapter.

7. All rights and obligations specified in subsection 4 and section 42 of this act exist even if not provided in the agreement. A provision in an agreement which violates subsection 4, 5 or 6 is void.

Sec. 42. 1. An individual may cancel an agreement before midnight of the third business day after the individual assents to it, unless the agreement does not comply with subsection 2 or section 41 or 50 of this act, in which event the individual may cancel the agreement within 30 days after the individual assents to it. To exercise the right to cancel, the individual must give notice in a record to the provider. Notice by mail is given when mailed.

2. An agreement must be accompanied by a form that contains in boldface type, surrounded by bold black lines:

NOTICE OF RIGHT TO CANCEL

You may cancel this agreement, without any penalty or obligation, at any time before midnight of the third business day that begins the day after you agree to it by electronic communication or by signing it.

To cancel this agreement during this period, send an e-mail to _____ (e-mail address of provider) or mail or deliver a signed, dated copy of this notice, or any other written notice to _____ (name of provider) at _____ (address of provider) before midnight on _____ (date).

If you cancel this agreement within the 3-day period, we will refund all money you already have paid us.

You also may terminate this agreement at any later time, but we may not be required to refund fees you have paid us.

I cancel this agreement,

Print your name

Signature

Date

3. If a personal financial emergency necessitates the disbursement of an individual's money to one or more of the individual's creditors before the expiration of 3 days after an agreement is signed, an individual may waive the right to cancel. To waive the right, the individual must send or deliver a signed, dated statement in the individual's own words describing the circumstances that necessitate a waiver. The waiver must explicitly waive the right to cancel. A waiver by means of a standard form record is void.

Sec. 43. Unless the Commissioner, by regulation, provides otherwise, the disclosures and documents required by this chapter must be in English. If a provider communicates with an individual primarily in a language other than English, the provider must furnish a translation into the other language of the disclosures and documents required by this chapter.

Sec. 44. 1. All money paid to a provider by or on behalf of an individual for distribution to creditors pursuant to a plan is held in trust. Within 2 business days after receipt, the provider shall deposit the money in

a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services.

2. *Money held in trust by a provider is not property of the provider or its designee. The money is not available to creditors of the provider or its designee, except an individual from whom or on whose behalf the provider received money, to the extent that the money has not been disbursed to creditors of the individual.*

3. *A provider shall:*

(a) Maintain separate records of account for each individual to whom the provider is furnishing debt-management services;

(b) Disburse money paid by or on behalf of the individual to creditors of the individual as disclosed in the agreement, except that the provider may delay payment to the extent that a payment by the individual is not final; and

(c) Promptly correct any payments which are not made or which are misdirected as a result of an error by the provider or other person in control of the trust account and reimburse the individual for any costs or fees imposed by a creditor as a result of the failure to pay or misdirection.

4. *A provider may not commingle money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services with money of other persons.*

5. *A trust account must at all times have a cash balance equal to the sum of the balances of each individual's account.*

6. *If a provider has established a trust account pursuant to subsection 1, the provider shall reconcile the trust account at least once a month. The reconciliation must compare the cash balance in the trust account with the sum of the balances in each individual's account. If the provider or its designee has more than one trust account, each trust account must be individually reconciled.*

7. *If a provider discovers, or has a reasonable suspicion of, embezzlement or other unlawful appropriation of money held in trust, the provider immediately shall notify the Commissioner by a method approved by the Commissioner. Unless the Commissioner, by regulation, provides otherwise, within 5 days thereafter, the provider shall give notice to the Commissioner describing the remedial action taken or to be taken.*

8. *If an individual terminates an agreement or it becomes reasonably apparent to a provider that a plan has failed, the provider shall promptly refund to the individual all money paid by or on behalf of the individual which has not been paid to creditors, less fees that are payable to the provider under section 45 of this act.*

9. *Before relocating a trust account from one bank to another, a provider shall inform the Commissioner of the name, business address and telephone number of the new bank. As soon as practicable, the provider shall inform the Commissioner of the account number of the trust account at the new bank.*

Sec. 45. 1. A provider may not impose directly or indirectly a fee or other charge on an individual or receive money from or on behalf of an individual for debt-management services except as permitted by this section.

2. A provider may not impose charges or receive payment for debt-management services until the provider and the individual have signed an agreement that complies with sections 41 and 50 of this act.

3. If an individual assents to an agreement, a provider may not impose a fee or other charge for educational or counseling services or the like, except as otherwise provided in this subsection and subsection ~~44~~ 5 of section 50 of this act. The Commissioner may authorize a provider to charge a fee based on the nature and extent of the educational or counseling services furnished by the provider.

4. Subject to adjustment of dollar amounts pursuant to subsection 6 of section 54 of this act, the following rules apply:

(a) If an individual assents to a plan which contemplates that creditors will reduce finance charges or fees for late payment, default or delinquency, the provider may charge, not including money provided by creditors to support educational or counseling services concerning personal finance provided by nonprofit entities:

(1) A fee not to exceed \$50 for consultation, obtaining a credit report, setting up an account and the like; and

(2) A monthly service fee, not to exceed \$10 times the number of accounts remaining in a plan at the time the fee is assessed, but not more than \$50 in any month.

(b) If an individual assents to an agreement which contemplates that creditors will settle debts for less than the principal amount of the debt, a provider may charge:

(1) Subject to subsection 4 of section 41 of this act, a fee for consultation, obtaining a credit report, setting up an account and the like, in an amount not to exceed the lesser of \$400 and 4 percent of the debt in the plan at the inception of the plan; and

(2) A monthly service fee, not to exceed \$10 times the number of accounts remaining in a plan at the time the fee is assessed, but not more than \$50 in any month.

(c) A provider may not impose or receive fees under both paragraphs (a) and (b).

(d) Except as otherwise provided in subsection ~~44~~ 5 of section 50 of this act, if an individual does not assent to an agreement, a provider may receive for educational or counseling services it provides to the individual a fee not to exceed \$100 or, with the approval of the Commissioner, a larger fee. The Commissioner may approve a fee larger than \$100 if the nature and extent of the educational or counseling services warrant the larger fee.

5. If, before the expiration of 90 days after the completion or termination of educational or counseling services, an individual assents to an agreement,

the provider shall refund to the individual any fee paid pursuant to paragraph (d) of subsection 4.

6. Except as otherwise provided in subsections 3 and 4, if an agreement contemplates that creditors will settle an individual's debts for less than the principal amount of the debt, compensation for services in connection with settling debt may not exceed one of the following applicable settlement fee limits, the terms of which must be clearly disclosed in the agreement:

(a) With respect to agreements in which a flat settlement fee is charged based on the overall amount of included debt, the total aggregate amount of fees charged to an individual under this chapter, including fees charged under subparagraphs (1) and (2) of paragraph (b) of subsection 4, may not exceed 17 percent of the principal amount of debt included in the agreement at the agreement's inception. The flat settlement fee authorized under this paragraph must be assessed in equal monthly payments over not less than half of the length of the plan, as estimated at the plan's inception, unless:

(1) Voluntarily accelerated by the individual in a separate record; and

(2) Offers of settlement by creditors have been obtained on at least half of the outstanding debt included in the agreement.

(b) With respect to agreements in which fees are calculated as a percentage of the amount saved by an individual, a settlement fee may not exceed 30 percent of the excess of the outstanding amount of each debt over the amount actually paid to the creditor, as calculated at the time of settlement. Settlement fees authorized under this paragraph must become billable only as debts are settled, and the total aggregate amount of fees charged to an individual under this paragraph, including fees charged under subparagraphs (1) and (2) of paragraph (b) of subsection 4, may not exceed 20 percent of the principal amount of debt included in the agreement at the agreement's inception.

➡ A provider may not impose or receive fees under both paragraphs (a) and (b).

7. Subject to adjustment of the dollar amount pursuant to subsection 6 of section 54 of this act, if a payment to a provider by an individual under this chapter is dishonored, a provider may impose a reasonable charge on the individual, not to exceed the lesser of \$25 and the amount permitted by law other than this chapter.

Sec. 46. A provider may not solicit a voluntary contribution from an individual or an affiliate of the individual for any service provided to the individual. A provider may accept voluntary contributions from an individual but, until 30 days after completion or termination of a plan, the aggregate amount of money received from or on behalf of the individual may not exceed the total amount the provider may charge the individual under section 45 of this act.

Sec. 47. 1. If a provider imposes a fee or other charge or receives money or other payments not authorized by section 45 or 46 of this act, the

individual may void the agreement and recover as provided in section 57 of this act.

2. If a provider is not registered as required by this chapter when an individual assents to an agreement, the agreement is voidable by the individual.

3. If an individual voids an agreement under subsection 2, the provider does not have a claim against the individual for breach of contract or for restitution.

Sec. 48. 1. If an individual who has entered into an agreement fails for 60 days to make payments required by the agreement, a provider may terminate the agreement.

2. If a provider or an individual terminates an agreement, the provider shall immediately return to the individual:

(a) Any money of the individual held in trust for the benefit of the individual; and

(b) ~~(Sixty-five)~~ If the agreement contemplated that the provider would provide debt settlement services, sixty-five percent of any portion of the set-up fee received pursuant to paragraph (b) of subsection 4 of section 45 of this act which has not been credited against settlement fees.

Sec. 49. 1. ~~4A~~ If an agreement contemplates that a provider will develop and implement a debt-management plan or provide debt settlement services, the provider shall provide the accounting required by subsection 2:

(a) Upon cancellation or termination of ~~any~~ the agreement; and

(b) Before cancellation or termination of ~~any~~ the agreement:

(1) At least once each month; and

(2) Within 5 business days after a request by an individual, but the provider need not comply with more than one request in any calendar month.

2. A provider, in a record, shall provide each individual for whom it has established a plan an accounting of the following information:

(a) The amount of money received from the individual since the last report;

(b) The amounts and dates of disbursement made on the individual's behalf, or by the individual upon the direction of the provider, since the last report to each creditor listed in the plan;

(c) The amounts deducted from the amount received from the individual;

(d) The amount held in reserve; and

(e) If, since the last report, a creditor has agreed to accept as payment in full an amount less than the principal amount of the debt owed by the individual:

(1) The total amount and terms of the settlement;

(2) The amount of the debt when the individual assented to the plan;

(3) The amount of the debt when the creditor agreed to the settlement;

and

(4) The calculation of a settlement fee.

3. A provider shall maintain records for each individual for whom it provides debt-management services for 5 years after the final payment made by the individual and produce a copy of them to the individual within a reasonable time after a request for them. The provider may use electronic or other means of storage of the records.

Sec. 50. 1. A provider may not, directly or indirectly:

(a) Misappropriate or misapply money held in trust;

(b) Settle a debt on behalf of an individual for more than 50 percent of the outstanding amount of the debt owed a creditor, unless the individual assents to the settlement after the creditor has assented;

(c) Take a power of attorney that authorizes it to settle a debt, unless the power of attorney expressly limits the provider's authority to settle debts for not more than 50 percent of the outstanding amount of the debt owed a creditor;

(d) Exercise or attempt to exercise a power of attorney after an individual has terminated an agreement;

(e) Initiate a transfer from an individual's account at a bank or with another person unless the transfer is:

(1) A return of money to the individual; or

(2) Before termination of an agreement, properly authorized by the agreement and this chapter and for:

(I) Payment to one or more creditors pursuant to an agreement; or

(II) Payment of a fee;

(f) Offer a gift or bonus, premium, reward or other compensation to an individual for executing an agreement;

(g) Offer, pay or give a gift or bonus, premium, reward or other compensation to a person for referring a prospective customer, if the person making the referral has a financial interest in the outcome of debt-management services provided to the customer, unless neither the provider nor the person making the referral communicates to the prospective customer the identity of the source of the referral;

(h) Receive a bonus, commission or other benefit for referring an individual to a person;

(i) Structure a plan in a manner that would result in a negative amortization of any of an individual's debts, unless a creditor that is owed a negatively amortizing debt agrees to refund or waive the finance charge upon payment of the principal amount of the debt;

(j) Compensate its employees on the basis of a formula that incorporates the number of individuals the employee induces to enter into agreements;

(k) Settle a debt or lead an individual to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the individual receives a certification by the creditor that the payment is in full settlement of the debt or is part of a payment plan, the terms of which are included in the certification, that on completion will lead to full settlement of the debt;

(l) *Make a representation that:*

(1) *The provider will furnish money to pay bills or prevent attachments;*

(2) *Payment of a certain amount will permit satisfaction of a certain amount or range of indebtedness; or*

(3) *Participation in a plan will or may prevent litigation, garnishment, attachment, repossession, foreclosure, eviction or loss of employment;*

(m) *Misrepresent that it is authorized or competent to furnish legal advice or perform legal services;*

(n) *Represent in its agreements, disclosures required by this chapter, advertisements or Internet website that it is a not-for-profit entity unless it is organized and properly operating as a not-for-profit entity under the law of the state in which it was formed or a tax-exempt entity unless it has received certification of tax-exempt status from the Internal Revenue Service and is properly operating as a not-for-profit entity under the law of the state in which it was formed;*

(o) *Take a confession of judgment or power of attorney to confess judgment against an individual; ~~for~~*

(p) *Employ an unfair, unconscionable or deceptive act or practice, including, without limitation, the knowing omission of any material information ~~for~~;*

(q) Receive any compensation from the creditors of an individual, unless the compensation is a donation for the operating costs of the provider; or

(r) If the provider furnishes debt settlement services, represent that the provider is able to prevent telephone calls from creditors.

2. *If a provider furnishes debt-management services to an individual, the provider may not, directly or indirectly:*

(a) *Purchase a debt or obligation of the individual;*

(b) *Receive from or on behalf of the individual:*

(1) *A promissory note or other negotiable instrument other than a check or a demand draft; or*

(2) *A postdated check or demand draft;*

(c) *Lend money or provide credit to the individual, except as a deferral of a settlement fee at no additional expense to the individual;*

(d) *Obtain a mortgage or other security interest from any person in connection with the services provided to the individual;*

(e) *Except as permitted by federal law, disclose the identity or identifying information of the individual or the identity of the individual's creditors, except to:*

(1) *The Commissioner, upon proper demand;*

(2) *A creditor of the individual, to the extent necessary to secure the cooperation of the creditor in a plan; or*

(3) *The extent necessary to administer the plan;*

(f) *Except as otherwise provided in subsection 6 of section 45 of this act, provide the individual less than the full benefit of a compromise of a debt arranged by the provider;*

(g) Charge the individual for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the Internet or any other matter not directly related to debt-management services or educational or counseling services concerning personal finance, except to the extent such services are expressly authorized by the Commissioner; ~~for~~

(h) Furnish legal advice or perform legal services, unless the person furnishing that advice to or performing those services for the individual is licensed to practice law ~~for~~; or

(i) With respect to debt settlement services:

(1) Have an ownership interest in, or any control of, the settlement account of an individual to whom the provider is providing debt settlement services; or

(2) Provide debt settlement services with respect to a secured debt, a debt which was at any time a secured debt or a loan to which chapter 604A of NRS applies or include a secured debt, debt which was at any time a secured debt or a loan to which chapter 604A of NRS applies in the calculation of the provider's fee.

3. A provider, or an employee, officer or agent of a provider, may not provide legal services or advice or represent that the provider, or an employee, officer or agent of the provider, is authorized or competent to provide legal services or advice, unless the person providing legal services or advice, or about whom the representations concerning the provision of legal services or advice were made, is authorized to practice law in this State. As used in this subsection, "legal services or advice" include, without limitation, an analysis of the rights of a creditor or debtor with respect to a debt, advice concerning a response to legal filings or actions and predictions of the likely outcome of litigation or arbitration concerning a debt.

4. This chapter does not authorize any person to engage in the practice of law.

~~4.4~~ 5. A provider may not receive a gift or bonus, premium, reward or other compensation, directly or indirectly, for advising, arranging or assisting an individual in connection with obtaining an extension of credit or other service from a lender or service provider, except for educational or counseling services required in connection with a government-sponsored program.

~~5.4~~ 6. Unless a person supplies goods, services or facilities generally and supplies them to the provider at a cost no greater than the cost the person generally charges to others, a provider may not purchase goods, services or facilities from the person if an employee or a person that the provider should reasonably know is an affiliate of the provider:

(a) Owns more than 10 percent of the person; or

(b) Is an employee or affiliate of the person.

Sec. 51. Not later than 30 days after a provider has been served with notice of a civil action for violation of this chapter by or on behalf of an

individual who resides in this State at either the time of an agreement or the time the notice is served, the provider shall notify the Commissioner in a record that it has been sued.

Sec. 52. 1. If the agreements of a provider contemplate that ~~creditors will reduce finance charges or fees for late payment, default or delinquency and~~ the provider will develop and implement a debt-management plan and the provider advertises debt-management services, it shall disclose, in an easily comprehensible manner, that using a debt-management plan may make it harder for the individual to obtain credit.

2. If the agreements of a provider contemplate that ~~creditors will settle for less than the full principal amount of the debt~~ the provider will provide debt settlement services and the provider advertises ~~debt-management~~ debt settlement services, it shall disclose, in an easily comprehensible manner, the information specified in paragraphs (c) and (d) of subsection 4 of section 39 of this act.

Sec. 53. If a provider delegates any of its duties or obligations under an agreement or this chapter to another person, including, without limitation, an independent contractor, the provider is liable for conduct of the person which, if done by the provider, would violate the agreement or this chapter.

Sec. 54. 1. The Commissioner may act on his own initiative or in response to complaints and may receive complaints, take action to obtain voluntary compliance with this chapter, refer cases to the Attorney General and seek or provide remedies as provided in this chapter.

2. The Commissioner may investigate and examine, in this State or elsewhere, by subpoena or otherwise, the activities, books, accounts and records of a person that provides or offers to provide debt-management services, or a person to which a provider has delegated its obligations under an agreement or this chapter, to determine compliance with this chapter. Information that identifies individuals who have agreements with the provider must not be disclosed to the public. In connection with the investigation, the Commissioner may:

(a) Charge the person the reasonable expenses necessarily incurred to conduct the examination;

(b) Require or permit a person to file a statement under oath as to all the facts and circumstances of a matter to be investigated; and

(c) Seek a court order authorizing seizure from a bank at which the person maintains a trust account required by section 44 of this act, any or all money, books, records, accounts and other property of the provider that is in the control of the bank and relates to individuals who reside in this State.

3. The Commissioner may adopt regulations to implement the provisions of this chapter.

4. The Commissioner may enter into cooperative arrangements with any other federal or state agency having authority over providers and may exchange with any of those agencies information about a provider, including,

without limitation, information obtained during an examination of the provider.

5. The Commissioner, by regulation, shall establish reasonable fees to be paid by providers for the expense of administering this chapter. The Commissioner may, in his discretion, establish a reduced fee schedule for providers that are qualified nonprofit entities.

6. The Commissioner, by regulation, shall adopt dollar amounts instead of those specified in sections 4, 27, 31, 35, 45, 55 and 57 of this act to reflect inflation, as measured by the Consumer Price Index for All Urban Consumers, published by the United States Department of Labor, or, if that Index is not available, another index adopted by regulation by the Commissioner. The Commissioner shall adopt a base year and adjust the dollar amounts, effective on July 1 of each year, if the change in the index from the base year, as of December 31 of the preceding year, is at least 10 percent. The dollar amount must be rounded to the nearest \$100, except that the amounts in section 45 of this act must be rounded to the nearest dollar.

7. The Commissioner shall notify registered providers of any change in dollar amounts made pursuant to subsection 6 and make that information available to the public.

8. The Commissioner, by regulation, may:

(a) Require a provider to make additional disclosures before an individual assents to an agreement, including, without limitation, disclosures that:

(1) Nothing in the agreement requires the individual's creditors to accept payments pursuant to a plan.

(2) Nothing in the agreement prevents creditors of the individual from pursuing collection efforts, including, without limitation, telephone calls for the purpose of collecting a debt, and that creditors may sue the individual for any debt that remains unpaid.

(3) The provider cannot provide legal services or advice and, if the individual is sued, the individual should seek legal services or advice.

(4) The provider is not a credit repair organization and does not claim that the plan will have a positive impact on the credit score of the individual.

(5) If an agreement contemplates that a provider will develop and implement a debt-management plan, a creditor may be included in the debt-management plan even if the creditor does not make a contribution.

(b) Establish any requirements and prohibitions with respect to advertising by providers which do not violate the Nevada Constitution or the Constitution of the United States. Such regulations may include, without limitation, a requirement that a provider submit all advertising used by the provider to the Commissioner within 30 days after the first publication of the advertisement.

Sec. 55. 1. The Commissioner may enforce this chapter and regulations adopted under this chapter by taking one or more of the following actions:

(a) Ordering a provider or a director, employee or other agent of a provider to cease and desist from any violations;

(b) Ordering a provider or a person that has caused a violation to correct the violation, including, without limitation, making restitution of money or property to a person aggrieved by a violation;

(c) Subject to adjustment of the dollar amount pursuant to subsection 6 of section 54 of this act, imposing on a provider or a person that has caused a violation a civil penalty not to exceed \$10,000 for each violation;

(d) Prosecuting a civil action to:

(1) Enforce an order; or

(2) Obtain restitution or an injunction or other equitable relief, or both;

or

(e) Intervening in an action brought under section 57 of this act.

2. *Subject to adjustment of the dollar amount pursuant to subsection 6 of section 54 of this act, if a person violates or knowingly authorizes, directs or aids in the violation of a final order issued under paragraph (a) or (b) of subsection 1, the Commissioner may impose a civil penalty not to exceed \$20,000 for each violation.*

3. *The Commissioner may maintain an action to enforce this chapter in any county.*

4. *The Commissioner may recover the reasonable costs of enforcing this chapter under subsections 1, 2 and 3, including, without limitation, attorney's fees based on the hours reasonably expended and the hourly rates for attorneys of comparable experience in the community.*

5. *In determining the amount of a civil penalty to impose under subsection 1 or 2, the Commissioner shall consider the seriousness of the violation, the good faith of the violator, any previous violations by the violator, the deleterious effect of the violation on the public, the net worth of the violator and any other factor the Commissioner considers relevant to the determination of the civil penalty.*

Sec. 56. 1. *The Commissioner may suspend, revoke or deny renewal of a provider's registration if:*

(a) A fact or condition exists that, if it had existed when the registrant applied for registration as a provider, would have been a reason for denying registration;

(b) The provider has committed a material violation of this chapter or a rule or order of the Commissioner under this chapter;

(c) The provider is insolvent;

(d) The provider or an employee or affiliate of the provider has refused to permit the Commissioner to make an examination authorized by this chapter, failed to comply with paragraph (b) of subsection 2 of section 54 of this act within 15 days after request, or made a material misrepresentation or omission in complying with paragraph (b) of subsection 2 of section 54 of this act; or

(e) *The provider has not responded within a reasonable time and in an appropriate manner to communications from the Commissioner.*

2. *If a provider does not comply with subsection 6 of section 44 of this act or if the Commissioner otherwise finds that the public health or safety or general welfare requires emergency action, the Commissioner may order a summary suspension of the provider's registration, effective on the date specified in the order.*

3. *If the Commissioner suspends, revokes or denies renewal of the registration of a provider, the Commissioner may seek a court order authorizing seizure of any or all of the money in a trust account required by section 44 of this act, books, records, accounts and other property of the provider which are located in this State.*

4. *If the Commissioner suspends or revokes a provider's registration, the provider may appeal and request a hearing pursuant to NRS 233B.121 to 233B.150, inclusive.*

5. *As used in this section, "insolvent" means:*

(a) *Having generally ceased to pay debts in the ordinary course of business other than as a result of good faith dispute;*

(b) *Being unable to pay debts as they become due; or*

(c) *Being insolvent within the meaning of the federal bankruptcy law, 11 U.S.C. §§ 101 et seq.*

Sec. 57. 1. *If an individual voids an agreement pursuant to subsection 2 of section 47 of this act, the individual may recover in a civil action all money paid or deposited by or on behalf of the individual pursuant to the agreement, except amounts paid to creditors, in addition to the recovery under paragraph (c) and (d) of subsection 3.*

2. *If an individual voids an agreement pursuant to subsection 1 of section 47 of this act, the individual may recover in a civil action three times the total amount of the fees, charges, money and payments made by the individual to the provider, in addition to the recovery under paragraph (d) of subsection 3.*

3. *Subject to subsection 4, an individual with respect to whom a provider violates this chapter may recover in a civil action from the provider and any person that caused the violation:*

(a) *Compensatory damages for injury, including, without limitation, noneconomic injury, caused by the violation;*

(b) *Except as otherwise provided in subsection 4 and subject to adjustment of the dollar amount pursuant to subsection 6 of section 54 of this act, with respect to a violation of section 39, 41 to 46, inclusive, or 49 of this act or subsection 1, 2 or ~~44~~ 5 of section 50 of this act, the greater of the amount recoverable under paragraph (a) or \$5,000;*

(c) *Punitive damages; and*

(d) *Reasonable attorney's fees and costs.*

4. In a class action, except for a violation of paragraph (e) of subsection 1 of section 50 of this act, the minimum damages provided in paragraph (b) of subsection 3 do not apply.

5. In addition to the remedy available under subsection 3, if a provider violates an individual's rights under section 42 of this act, the individual may recover in a civil action all money paid or deposited by or on behalf of the individual pursuant to the agreement, except for amounts paid to creditors.

6. A provider is not liable under this section for a violation of this chapter if the provider proves that the violation was not intentional and resulted from a good faith error notwithstanding the maintenance of procedures reasonably adapted to avoid the error. An error of legal judgment with respect to a provider's obligations under this chapter is not a good faith error. If, in connection with a violation, the provider has received more money than authorized by an agreement or this chapter, the defense provided by this subsection is not available unless the provider refunds the excess within 2 business days after learning of the violation.

7. The Commissioner shall assist an individual in enforcing a judgment against the surety bond or other security provided under section 35 or 36 of this act.

Sec. 58. 1. A violation of a provision of this chapter constitutes a deceptive trade practice for the purposes of NRS 598.0903 to 598.0999, inclusive.

2. If an act or practice of a provider violates both a provision of this chapter and a provision of chapter 598 of NRS, an individual may not recover under both for the same act or practice.

Sec. 59. 1. An action or proceeding brought pursuant to subsection 1, 2 or 3 of section 55 of this act must be commenced within 4 years after the conduct that is the basis of the Commissioner's complaint.

2. An action brought pursuant to section 57 of this act must be commenced within 2 years after the latest of:

- (a) The individual's last transmission of money to a provider;
- (b) The individual's last transmission of money to a creditor at the direction of the provider;
- (c) The provider's last disbursement to a creditor of the individual;
- (d) The provider's last accounting to the individual pursuant to subsection 1 of section 49 of this act;
- (e) The date on which the individual discovered or reasonably should have discovered the facts giving rise to the individual's claim; or
- (f) Termination of actions or proceedings by the Commissioner with respect to a violation of the chapter.

3. The period prescribed in paragraph (e) of subsection 2 is tolled during any period during which the provider or, if different, the defendant has materially and willfully misrepresented information required by this chapter to be disclosed to the individual, if the information so misrepresented is

material to the establishment of the liability of the defendant under this chapter.

Sec. 60. *In applying and construing the Uniform Debt-Management Services Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.*

Sec. 61. *This chapter modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001 et seq., but does not modify, limit or supersede section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. § 7003(b).*

Sec. 62. NRS 598.741 is hereby amended to read as follows:

598.741 As used in NRS 598.741 to 598.787, inclusive, unless the context otherwise requires:

1. "Buyer" means a natural person who is solicited to purchase or who purchases the services of an organization which provides credit services.
2. "Commissioner" means the Commissioner of Consumer Affairs.
3. "Division" means the Consumer Affairs Division of the Department of Business and Industry.
4. "Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment, offered or granted primarily for personal, family or household purposes.
5. "Organization":
 - (a) Means a person who, with respect to the extension of credit by others, sells, provides or performs, or represents that he can or will sell, provide or perform, any of the following services, in return for the payment of money or other valuable consideration:
 - (1) Improving a buyer's credit record, history or rating.
 - (2) Obtaining an extension of credit for a buyer.
 - (3) Providing counseling or assistance to a person in establishing or effecting a plan for the payment of his indebtedness, unless that counseling or assistance is provided by and is within the scope of the authorized practice of a ~~debt adjuster licensed~~ *provider of debt-management services registered pursuant to [chapter 676 of NRS.] sections 2 to 61, inclusive, of this act.*
 - (4) Providing advice or assistance to a buyer with regard to subparagraph (1) or (2).
 - (b) Does not include:
 - (1) A person organized, chartered or holding a license or authorization certificate to make loans or extensions of credit pursuant to the laws of this state or the United States who is subject to regulation and supervision by an officer or agency of this state or the United States.
 - (2) A bank, credit union or savings and loan institution whose deposits or accounts are eligible for insurance by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or a private insurer approved pursuant to NRS 678.755.

(3) A person licensed as a real estate broker by this state where the person is acting within the course and scope of that license, unless the person is rendering those services in the course and scope of employment by or other affiliation with an organization.

(4) A person licensed to practice law in this state where the person renders services within the course and scope of his practice as an attorney at law, unless the person is rendering those services in the course and scope of employment by or other affiliation with an organization.

(5) A broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission where the broker-dealer is acting within the course and scope of such regulation.

(6) A person ~~licensed~~ *registered* as a ~~debt adjuster~~ *provider of debt-management services* pursuant to ~~chapter 676 of NRS~~ *sections 2 to 61, inclusive, of this act.*

(7) A reporting agency.

6. "Reporting agency" means a person who, for fees, dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the business of assembling or evaluating information regarding the credit of or other information regarding consumers to furnish consumer reports to third parties, regardless of the means or facility of commerce used to prepare or furnish the consumer reports. The term does not include:

(a) A person solely for the reason that he conveys a decision regarding whether to guarantee a check in response to a request by a third party;

(b) A person who obtains or creates a consumer report and provides the report or information contained in it to a subsidiary or affiliate; or

(c) A person licensed pursuant to chapter 463 of NRS.

Sec. 63. NRS 645F.380 is hereby amended to read as follows:

645F.380 The provisions of NRS 645F.300 to 645F.450, inclusive, do not apply to, and the terms "foreclosure consultant" and "foreclosure purchaser" do not include:

1. An attorney at law rendering services in the performance of his duties as an attorney at law;

2. A ~~person, firm, company or corporation licensed to engage in the business of debt adjustment pursuant to chapter 676 of NRS while engaging in that business;~~ *provider of debt-management services registered pursuant to sections 2 to 61, inclusive, of this act while providing debt-management services pursuant to sections 2 to 61, inclusive, of this act;*

3. A person licensed as a real estate broker, broker-salesman or salesman pursuant to chapter 645 of NRS while acting under the authority of that license;

4. A person or the authorized agent of a person acting under the provisions of a program sponsored by the Federal Government, this State or a local government, including, without limitation, the Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or the Federal Home Loan Bank;

5. A person who holds or is owed an obligation secured by a mortgage or other lien on a residence in foreclosure if the person performs services in connection with this obligation or lien and the obligation or lien did not arise as the result of or as part of a proposed foreclosure reconveyance;

6. Any person doing business under the laws of this State or of the United States relating to banks, trust companies, savings and loan associations, industrial loan and thrift companies, regulated lenders, credit unions, insurance companies, or a mortgagee which is a United States Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of those persons, and any agent or employee of those persons while engaged in the business of those persons;

7. A person licensed as an escrow agent, title agent, mortgage agent, mortgage broker or mortgage banker pursuant to chapter 645A, 692A, 645B or 645E of NRS, respectively, while acting under the authority of his license;

8. A nonprofit agency or organization that offers credit counseling or advice to a homeowner of a residence in foreclosure or a person in default on a loan; or

9. A judgment creditor of the homeowner whose claim accrued before the recording of the notice of the pendency of an action for foreclosure against the homeowner pursuant to NRS 14.010 or the recording of the notice of default and election to sell pursuant to NRS 107.080.

Sec. 64. NRS 658.098 is hereby amended to read as follows:

658.098 1. On a quarterly or other regular basis, the Commissioner shall collect an assessment pursuant to this section from each:

(a) Check-cashing service or deferred deposit loan service that is supervised pursuant to chapter 604A of NRS;

(b) Collection agency that is supervised pursuant to chapter 649 of NRS;

(c) Bank that is supervised pursuant to chapters 657 to 668, inclusive, of NRS;

(d) Trust company that is supervised pursuant to chapter 669 of NRS;

(e) Development corporation that is supervised pursuant to chapter 670 of NRS;

(f) Corporation for economic revitalization and diversification that is supervised pursuant to chapter 670A of NRS;

(g) Person engaged in the business of selling or issuing checks or of receiving for transmission or transmitting money or credits that is supervised pursuant to chapter 671 of NRS;

(h) Savings and loan association that is supervised pursuant to chapter 673 of NRS;

(i) Person engaged in the business of lending that is supervised pursuant to chapter 675 of NRS;

(j) ~~Person engaged in the business of debt adjusting that is supervised pursuant to chapter 676 of NRS;~~

~~(k)~~ Thrift company that is supervised pursuant to chapter 677 of NRS;
and

~~{{(4)}} (k)~~ Credit union that is supervised pursuant to chapter 678 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 of Financial Institutions. 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) A portion of the total amount of all assessments as determined pursuant to subsection 2, such that the assessment collected from an entity identified in subsection 1 shall bear the same relation to the total amount of all assessments as the total assets of that entity bear to the total of all assets of all entities identified in subsection 1; 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 State Treasury pursuant to the provisions of NRS 658.091.

Sec. 65. NRS 676.010, 676.015, 676.020, 676.030, 676.040, 676.050, 676.060, 676.070, 676.080, 676.100, 676.110, 676.120, 676.125, 676.130, 676.135, 676.140, 676.150, 676.160, 676.170, 676.180, 676.190, 676.200, 676.205, 676.207, 676.210, 676.220, 676.230, 676.235, 676.240, 676.250, 676.260, 676.270, 676.280, 676.290, 676.295, 676.300, 676.310, 676.320, 676.330, 676.335 and 676.340 are hereby repealed.

Sec. 66. Transactions entered into before July 1, 2010, and the rights, duties and interests resulting from them may be completed, terminated or enforced as required or permitted by a law amended, repealed or modified by this act as though the amendment, repeal or modification had not occurred.

Sec. 67. This act becomes effective:

1. 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

2. On July 1, 2010, for all other purposes.

LEADLINES OF REPEALED SECTIONS

676.010 Definitions.

676.015 "Commissioner" defined.

676.020 "Contract" defined.

676.030 "Creditor" defined.

676.040 "Debt adjustment" defined.

676.050 "Debtor" defined.

676.060 "License" defined.

- 676.070 "Licensee" defined.
- 676.080 "Office" defined.
- 676.100 Applicability.
- 676.110 Engaging in business of debt adjusting without license or in violation of chapter prohibited.
- 676.120 Application; withdrawal of application.
- 676.125 Application for license: Additional requirements; fingerprints; grounds for refusal of license.
- 676.130 Submission of fees, bond and copy of contract with application; regulations; periodic determination of amount of bond.
- 676.135 Deposit as substitute for surety bond.
- 676.140 Investigation of applicants.
- 676.150 Issuance of license subsequent to findings by Commissioner.
- 676.160 Expiration, renewal and reinstatement of license; fees; regulations.
- 676.170 Disposition of fees and charges.
- 676.180 Display of license required.
- 676.190 Transfer of license prohibited.
- 676.200 Additional licenses for other offices.
- 676.205 Notification of change in ownership of stock; application for license after certain acquisitions; investigation; costs; waiver.
- 676.207 Use or change of business name; prohibitions.
- 676.210 Surrender.
- 676.220 Maintenance of separate trust accounts; maintenance and preservation of records.
- 676.230 Reports required.
- 676.235 Independent audit and examination: Payment of assessment; cooperation.
- 676.240 Contracts: Form; contents.
- 676.250 Fees.
- 676.260 Remittances to creditors; written statements of account and information on account to debtor.
- 676.270 Authorization of Commissioner to investigate business; free access required; compelling attendance of witnesses; fee.
- 676.280 Authority of Commissioner to require attendance of witnesses and production of documents.
- 676.290 Grounds for denial, suspension or revocation of license; administrative fine for violation.
- 676.295 Suspension or revocation of license: Additional grounds.
- 676.300 Temporary suspension of license: Conditions; notice; hearing; term of suspension.
- 676.310 Order denying or revoking license; contracts unaffected by disciplinary action or expiration of license.
- 676.320 Engaging in business without license.
- 676.330 Prohibited practices.

676.335 Administrative fines.

676.340 Violation of chapter.

Senator Carlton moved that the Senate concur in the Assembly amendment to Senate Bill No. 355.

Remarks by Senator Carlton.

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

This bill was brought to us by the Committee on Judiciary. They have reviewed it and have no concerns with the amendments proposed by the Assembly.

Motion carried by a two-thirds majority.

Bill ordered enrolled.

Senate Bill No. 119.

The following Assembly amendments were read:

Amendment No. 777.

"SUMMARY—Revises provisions governing massage therapists. (BDR 54-162)"

"AN ACT relating to professions; revising provisions governing the regulation of massage therapists by the Board of Massage Therapists; prohibiting certain misleading and deceptive practices relating to massage therapy; revising provisions governing the discipline of massage therapists; authorizing the Board to issue administrative citations and to impose administrative fines for certain violations; revising provisions governing the temporary suspension of licenses of massage therapists; requiring law enforcement agencies to provide certain records to the Board or its Executive Director upon request; authorizing law enforcement agencies to redact certain confidential information from records provided to the Board or its Executive Director; providing remedies and penalties; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Under existing law, massage therapists must be licensed by the Board of Massage Therapists. (Chapter 640C of NRS) Sections 2, 3 and 11 of this bill require a massage therapist to display his original license, not a copy or replica, at each location where he practices massage therapy. (NRS 640C.450) Section 3 prohibits a person from: (1) forging or counterfeiting a license; (2) altering, copying or replicating a license for the purpose of aiding or abetting an unlawful act; or (3) using or displaying a license that has been forged or counterfeited or has been altered, copied or replicated for the purpose of aiding or abetting an unlawful act.

Sections 4 and 16 of this bill prohibit an unlicensed person from advertising as a massage therapist and prohibit a licensed person from using any false or misleading statements in advertising. (NRS 640C.910) Sections 4 and 16 also prohibit an unlicensed person from having his name listed in a telephone directory under a heading such as "massage" which indicates or implies that he is licensed or qualified to practice massage therapy. Sections 4 and 16 also authorize the Board to issue an order to cease and desist from

engaging in unlawful advertising. Sections 4, 18 and 19 of this bill contain provisions whereby the Board can have telephone numbers for any type of telephone, messaging or paging service disconnected because they are included in unlawful advertising. (NRS 703.175, 707.355)

Existing law authorizes the Board to take disciplinary action by imposing administrative fines. (NRS 640C.710) Section 14 of this bill provides that the Board may impose an administrative fine of not more than \$5,000 for each violation, unless a greater fine is required pursuant to section 5 of this bill. Section 5 requires the Board to impose, based on the number of violations, increasing administrative fines of not more than ~~[\$50,000]~~ \$10,000 against a licensee who has engaged in or solicited sexual activity during a massage therapy session or has been convicted of a crime involving violence, prostitution or any other sexual offense that occurred during a massage therapy session.

Section 7 of this bill authorizes the Board to issue administrative citations for any statutory or regulatory violations relating to massage therapy and provides that an unlicensed person who fails to comply with a citation is guilty of a misdemeanor. A citation may include an order to: (1) pay an administrative fine; (2) correct a condition resulting from a violation; and (3) reimburse the Board for expenses incurred to investigate the violation. Section 8 of this bill allows a person to request a hearing before the Board to contest an administrative citation.

Existing law provides for the temporary suspension of a massage therapy license without a prior hearing for a period of 15 or 30 days under certain exigent circumstances. (NRS 640C.720) Generally, procedural due process entitles a licensee to a hearing before his license is suspended. (*Barry v. Barchi*, 443 U.S. 55, 99 S. Ct. 2642 (1979); U.S. Const. Amend. XIV, § 1; Nev. Const. Art. 1, § 8) However, when exigent circumstances justify immediate action, a statute may provide for the temporary suspension of a license without a prior hearing if the statute requires a post-suspension administrative review where a hearing is held and a final decision is rendered as promptly as is practicable. (*Federal Deposit Insurance Corporation v. Mallen*, 486 U.S. 230, 108 S. Ct. 1780 (1988); *Sierra Life Insurance Company v. Rottman*, 95 Nev. 654 (1979)) Section 15 of this bill: (1) provides for the temporary suspension of a massage therapy license without a prior hearing for a period not to exceed ~~160~~ 30 days under certain exigent circumstances; (2) authorizes the licensee to request a post-suspension administrative review; and (3) requires the Board to hold a hearing and render a final decision as promptly as is practicable but not later than ~~160~~ 30 days after the date of the initial suspension. (NRS 640C.720)

Section 15 of this bill also authorizes the Board and its Executive Director to request from state and local law enforcement agencies records relating to any charge or citation against a massage therapist for a crime involving violence, prostitution or any other sexual offense and authorizes those law enforcement agencies to redact from those records certain information which

the agencies deem confidential. (NRS 640C.720) Sections 15 and 17 of this bill require a law enforcement agency to provide the requested records as soon as reasonably practicable. (NRS 179A.100) Section 15 also provides that the Board and its Executive Director: (1) must maintain the confidentiality of the records; and (2) may use the records for the sole and limited purpose of determining whether to take disciplinary action against the massage therapist.

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

Section 1. Chapter 640C of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this act.

Sec. 2. 1. *"Original license" means the actual license which is issued to the licensee by the Board and which is current and valid.*

2. *The term does not include any photocopy print, photostat or other replica of such a license.*

Sec. 3. 1. *A person shall not:*

(a) *Counterfeit or forge or attempt to counterfeit or forge a license to practice massage therapy; or*

(b) *For the purpose of aiding or abetting an unlawful act:*

(1) *Alter or attempt to alter a license to practice massage therapy; or*

(2) *Make or attempt to make any photocopy print, photostat or other replica of a license to practice massage therapy.*

2. *A person shall not use or display a license to practice massage therapy that:*

(a) *Is not the original license issued to the person;*

(b) *Has been counterfeited or forged;*

(c) *Has been altered, copied or replicated for the purpose of aiding or abetting an unlawful act; or*

(d) *Has been issued to another person.*

3. *A person who violates any provision of this section is guilty of a misdemeanor.*

Sec. 4. 1. *A person shall not advertise as a massage therapist in this State unless the person is licensed to practice massage therapy pursuant to this chapter.*

2. *A person licensed to practice massage therapy pursuant to this chapter shall not disseminate, as part of any advertising by the massage therapist, any false or misleading statement or representation of material fact that is intended, directly or indirectly, to induce another person to use the services of the massage therapist.*

3. *All advertising by a licensed massage therapist must include his name ~~and~~ and the name of his company, if applicable . ~~and the number of his license.~~ All advertising in a telephone directory or a newspaper must also include the number of his license.*

4. *A person who violates any provision of subsection 1 ~~or 2~~ or 2 ~~or 3~~ is guilty of a misdemeanor.*

5. If, after notice and a hearing as required by law, the Board determines that a person has willfully engaged in advertising in a manner that violates the provisions of this section or NRS 640C.910, the Board may, in addition to any penalty, punishment or disciplinary action authorized by the provisions of this chapter, order the person to cease and desist the unlawful advertising ~~and order the person to cause any telephone number included in the advertising to be disconnected from service.~~ The provisions of this subsection do not apply to any person whose license has been expired for less than 90 days or is temporarily suspended.

6. The Board may order any person convicted of a crime involving violence, prostitution or any other sexual offense to cause any telephone number included in the advertising to be disconnected from service. If the Board orders the person to cause any telephone number to be disconnected from service and the person fails to comply within 5 days after the date on which he is served with the order, the Board may:

(a) If the provider is regulated by the Public Utilities Commission of Nevada, request the Commission to order the provider to disconnect the telephone number from service pursuant to NRS 703.175 and 707.355; or

(b) If the provider is not regulated by the Public Utilities Commission of Nevada, request the provider to disconnect the telephone number from service and inform the provider that the request is made pursuant to this section. Upon receiving such a request, the provider shall take such action as is necessary to disconnect the telephone number from service.

7. A provider shall not:

(a) Forward or offer to forward the telephone calls of a telephone number disconnected from service pursuant to this section; or

(b) Provide or offer to provide a message that includes a new telephone number for the person whose telephone number was disconnected from service pursuant to this section.

8. If a provider complies in good faith with a request to disconnect a telephone number from service pursuant to this section, such good-faith compliance shall constitute a complete defense to any civil or criminal action brought against the provider arising from the disconnection or termination of service.

9. As used in this section:

(a) "Advertising" ~~includes, without limitation,~~ means the intentional placement or issuance of any sign, card or device, or the permitting or allowing of any sign or marking on a motor vehicle, in any building, structure, newspaper, magazine or airway transmission, on the Internet or in any directory under the listing of "massage therapist" or "massage." ~~"with or without any limiting qualifications."~~

(b) "Provider" means a provider of any type of telephone, messaging or paging service.

(c) "Provider of messaging or paging service" means an entity that provides any type of messaging or paging service to any type of communication device.

(d) "Provider of telephone service" has the meaning ascribed to it in NRS 707.355.

(e) "Telephone number" means any sequence of numbers or characters, or both, used by a provider to provide any type of telephone, messaging or paging service.

Sec. 5. 1. In addition to any other actions authorized by NRS 640C.710, if after notice and a hearing as required by law, the Board ~~finds~~ determines that a licensee has engaged in or solicited sexual activity during the course of practicing massage on a person or has been convicted of a crime involving violence, prostitution or any other sexual offense that occurred during the course of practicing massage on a person, the Board shall:

(a) For a first violation, impose an administrative fine of not less than ~~[\$1,000]~~ \$100 and not more than ~~[\$50,000]~~ \$1,000;

(b) For a second violation, impose an administrative fine of not less than ~~[\$5,000]~~ \$250 and not more than ~~[\$50,000]~~ \$5,000; and

(c) For a third violation and for each additional violation, impose an administrative fine of not less than ~~[\$10,000]~~ \$500 and not more than ~~[\$50,000]~~ \$10,000.

2. The Board shall, by regulation, establish standards for use by the Board in determining the amount of an administrative fine imposed pursuant to this section. The standards must include, without limitation, provisions requiring the Board to consider:

(a) The gravity of the violation;

(b) The good faith of the licensee; and

(c) Any history of previous violations of the provisions of this chapter committed by the licensee.

Sec. 6. The expiration of a license by operation of law or by order or decision of the Board or a court, or the voluntary surrender of a license by a licensee, does not deprive the Board of jurisdiction to proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

Sec. 7. 1. If the Board or its designee, based upon a preponderance of the evidence, has reason to believe that a person has committed an act which constitutes a violation of this chapter or the regulations of the Board, the Board or its designee, as appropriate, may issue or authorize the issuance of a written administrative citation to the person. A citation issued pursuant to this section may include, without limitation:

(a) An order to take action to correct a condition resulting from an act that constitutes a violation of this chapter or the regulations of the Board, at the person's cost;

(b) An order to pay an administrative fine for each violation; and

(c) An order to reimburse the Board for the amount of the expenses incurred to investigate each violation.

2. If the citation includes an order to take action to correct a condition resulting from an act that constitutes a violation of this chapter or the regulations of the Board, the citation must:

(a) State the time permitted for compliance, which must not be less than 15 business days after the date on which the citation is ~~issued to~~ received by the person; and

(b) Describe, in specific detail, the action required to be taken.

3. If the citation is issued to a licensee and includes an order to pay an administrative fine for one or more violations, the amount of the administrative fine must not exceed the maximum amount authorized by NRS 640C.710 or section 5 of this act, as appropriate for each violation.

4. If the citation is issued to an unlicensed person and includes an order to pay an administrative fine for one or more violations, the amount of the administrative fine:

(a) For a first violation, must not be less than \$100 and must not be more than \$1,000;

(b) For a second violation, must not be less than \$250 and must not be more than \$5,000; and

(c) For a third violation and for each additional violation, must not be less than \$500 and must not be more than \$10,000.

5. The sanctions authorized by this section are separate from, and in addition to, any other remedy, civil or criminal, authorized by this chapter.

6. The failure of an unlicensed person to comply with a citation or order after it is final is a misdemeanor. If an unlicensed person does not pay an administrative fine imposed pursuant to this section or make satisfactory payment arrangements, as approved by the Board, within 60 days after the order of the Board becomes final, the order may be executed upon in the same manner as a judgment issued by a court.

Sec. 8. 1. If a person is issued a written administrative citation pursuant to section 7 of this act, the person may request a hearing before the Board to contest the citation by filing a written request with the Board:

(a) Not later than 15 business days after the date on which the citation is ~~issued to~~ received by the person; or

(b) If the Board, for good cause shown, extends the time allowed to file a written request for a hearing to contest the citation, on or before the later date specified by the Board.

2. If the person files a written request for a hearing to contest the citation within the time allowed pursuant to this section:

(a) The Board shall provide notice of and conduct the hearing in the same manner as other disciplinary proceedings; and

(b) At the hearing, the person may contest, without limitation:

(1) *The facts forming the basis for the determination that the person has committed an act which constitutes a violation of this chapter or the regulations of the Board;*

(2) *The time allowed to take any corrective action ordered;*

(3) *The amount of any administrative fine ordered;*

(4) *The amount of any order to reimburse the Board for the expenses incurred to investigate the violation; and*

(5) *Whether any corrective action described in the citation is reasonable.*

3. *If the person does not file a written request for a hearing to contest the citation within the time allowed pursuant to this section, the citation shall be deemed a final order of the Board ~~and not subject to review by any court or agency.~~*

4. *For the purposes of this section, a citation shall be deemed to have been ~~issued to~~ received by a person ~~on~~*

(a) ~~The~~ *On the* date on which the citation is personally delivered to the person; or

(b) *If the citation is mailed, 3 days after the date on which the citation is mailed by certified mail to the last known business or residential address of the person.*

Sec. 9. NRS 640C.020 is hereby amended to read as follows:

640C.020 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 640C.030 to 640C.060, inclusive, *and section 2 of this act* have the meanings ascribed to them in those sections.

Sec. 10. NRS 640C.320 is hereby amended to read as follows:

640C.320 The Board shall adopt regulations to carry out the provisions of this chapter. The regulations must include, without limitation, provisions that:

1. Establish the requirements for continuing education for the renewal of a license;

2. Establish the requirements for the approval of a course of continuing education, including, without limitation, a course on a specialty technique of massage therapy;

3. Establish the requirements for the approval of an instructor of a course of continuing education;

4. Establish requirements relating to sanitation, hygiene and safety relating to the practice of massage therapy;

5. Except as otherwise provided in NRS 622.090, prescribe the requirements for any practical, oral or written examination for a license that the Board may require, including, without limitation, the passing grade for such an examination; ~~and~~

6. Establish the period within which the Board or its designee must report the results of the investigation of an applicant ~~to~~; and

7. *Prescribe the form of a written administrative citation pursuant to section 7 of this act.*

Sec. 11. NRS 640C.450 is hereby amended to read as follows:

640C.450 1. Each licensee shall display his *original* license in a conspicuous manner at each location where he practices massage therapy. *If a licensee practices massage therapy in more than one place, he must carry his original license with him and display it wherever he is actually working.*

2. *A licensee shall obtain a replacement of his original license from the Board if his:*

(a) *Original license is destroyed, misplaced or mutilated; or*

(b) *Name or address as printed on the original license has changed.*

3. *To obtain a replacement license, the licensee must:*

(a) *File an affidavit with the Board, on the form prescribed by the Board, which states that his original license was destroyed, misplaced or mutilated or that his name or address as printed on the original license has changed; and*

(b) *Pay the fee prescribed by the Board pursuant to NRS 640C.520.*

Sec. 12. NRS 640C.520 is hereby amended to read as follows:

640C.520 1. The Board shall establish a schedule of fees and charges. The fees for the following items must not exceed the following amounts:

| | |
|--|-------|
| An examination established by the Board pursuant to this chapter | \$600 |
| An application for a license | 300 |
| An application for a license without an examination..... | 300 |
| A background check of an applicant..... | 600 |
| The issuance of a license | 400 |
| The renewal of a license | 200 |
| The restoration of an expired license..... | 500 |
| The reinstatement of a suspended or revoked license..... | 500 |
| The issuance of a duplicate replacement license..... | 75 |
| The restoration of an inactive license | 300 |

2. The total fees collected by the Board pursuant to this section must not exceed the amount of money necessary for the operation of the Board and for the maintenance of an adequate reserve.

Sec. 13. NRS 640C.700 is hereby amended to read as follows:

640C.700 The Board may refuse to issue a license to an applicant, or may initiate disciplinary action against a holder of a license, if the applicant or holder of the license:

1. Has submitted false, fraudulent or misleading information to the Board or any agency of this State, any other state, a territory or possession of the United States, the District of Columbia or the Federal Government;

2. Has violated any provision of this chapter or any regulation adopted pursuant thereto;

3. Has been convicted of a crime involving violence, prostitution or any other sexual offense, a crime involving any type of larceny, a crime relating to a controlled substance, a crime involving any federal or state law or regulation relating to massage therapy or a substantially similar business, or a

crime involving moral turpitude within the immediately preceding 10 years ;
~~[-]~~

4. Has engaged in or solicited sexual activity during the course of practicing massage on a person, with or without the consent of the person, including, without limitation, if the applicant or holder of the license:

(a) Made sexual advances toward the person;
 (b) Requested sexual favors from the person; or
 (c) Massaged, touched or applied any instrument to the breasts of the person, unless the person has signed a written consent form provided by the Board;

5. Has habitually abused alcohol or is addicted to a controlled substance;

6. Is, in the judgment of the Board, guilty of gross negligence in his practice of massage therapy;

7. Is determined by the Board to be professionally incompetent to engage in the practice of massage therapy;

8. Has failed to provide information requested by the Board within 60 days after he received the request;

9. Has, in the judgment of the Board, engaged in unethical or unprofessional conduct as it relates to the practice of massage therapy;

10. Has been disciplined in another state, a territory or possession of the United States or the District of Columbia for conduct that would be a violation of the provisions of this chapter or any regulations adopted pursuant thereto if the conduct were committed in this State;

11. Has solicited or received compensation for services relating to the practice of massage therapy that he did not provide;

12. If the holder of the license is on probation, has violated the terms of his probation; ~~[-]~~

13. Has engaged in false, deceptive or misleading advertising, including, without limitation, falsely, deceptively or misleadingly advertising that he has received training in a specialty technique of massage for which he has not received training, practicing massage therapy under an assumed name and impersonating a licensed massage therapist ~~[-]~~ ;

14. *Has failed to comply with a written administrative citation issued pursuant to section 7 of this act within the time permitted for compliance set forth in the citation or, if a hearing is held pursuant to section 8 of this act, within 15 business days after the hearing; or*

15. *Except as otherwise provided in subsection 14, has failed to pay or make arrangements to pay, as approved by the Board, an administrative fine imposed pursuant to this chapter within ~~[-]~~ 60 days after:*

(a) Receiving notice of the imposition of the fine; or

(b) The final administrative or judicial decision affirming the imposition of the fine,

➡ whichever occurs later.

Sec. 14. NRS 640C.710 is hereby amended to read as follows:

640C.710 1. If, after notice and a hearing as required by law, the Board finds one or more grounds for taking disciplinary action, the Board may:

- (a) Place the applicant or holder of the license on probation for a specified period or until further order of the Board;
- (b) Administer to the applicant or holder of the license a public reprimand;
- (c) Refuse to issue, renew, reinstate or restore the license;
- (d) Suspend or revoke the license;
- (e) ~~Impose~~ *Except as otherwise provided in section 5 of this act, impose an administrative fine of not more than \$1,000 per day for each day for which the Board determines that a violation occurred;* \$5,000 for each violation;
- (f) Require the applicant or holder of the license to pay the costs incurred by the Board to conduct the investigation and hearing; or
- (g) Impose any combination of actions set forth in paragraphs (a) to (f), inclusive.

2. The order of the Board may contain such other terms, provisions or conditions as the Board deems appropriate.

3. The order of the Board and the findings of fact and conclusions of law supporting that order are public records.

4. The Board shall not issue a private reprimand.

Sec. 15. NRS 640C.720 is hereby amended to read as follows:

640C.720 Notwithstanding any other statute to the contrary:

1. If the Board finds , *based upon evidence in its possession*, that immediate action is necessary to protect the health, safety or welfare of the public, the Board may, upon providing notice ~~by certified mail~~ to the massage therapist, temporarily suspend his license *without a prior hearing* for a period not to exceed ~~30 days. For good cause, 60~~ 30 days. *The massage therapist may file a written request for a hearing to challenge the necessity of the temporary suspension. The written request must be filed not later than 20 business days after the date on which the Board mails the message therapist receives notice of the temporary suspension. If the massage therapist:*

(a) *Files a timely written request for a hearing, the Board shall hold a hearing and render a final decision regarding the necessity of the temporary suspension as promptly as is practicable but not later than 30 days after the date on which the Board mails provides notice of the temporary suspension. After holding such a hearing, the Board may extend the period of the temporary suspension if the Board deems finds, for good cause shown, that such action to be is necessary to protect the health, safety or welfare of the public pending proceedings for disciplinary action. In any such case, a*

(b) *Does not file a timely written request for a hearing and the Board wants to consider extending the period of the temporary suspension, the Board shall schedule a hearing and notify the massage therapist immediately by certified mail of the date of the hearing. The hearing must be held and a final decision rendered regarding whether to extend the period of the*

temporary suspension *as promptly as is practicable but not later than 30 ~~60~~ days* after the date on which the Board ~~[notifies the massage therapist]~~ ~~[mails]~~ *provides notice* of the initial temporary suspension. *After holding such a hearing, the Board may extend the period of the temporary suspension if the Board finds, for good cause shown, that such action is necessary to protect the health, safety or welfare of the public pending proceedings for disciplinary action.*

2. If a massage therapist is charged with or cited for a crime involving violence, prostitution or any other sexual offense, the appropriate law enforcement agency shall report the charge or citation to the Executive Director ~~[.]~~ *of the Board*. Upon receiving such a report, the Executive Director shall immediately issue *by certified mail to the massage therapist* a cease and desist order temporarily suspending the license of the massage therapist ~~[.]~~ *without a prior hearing*. The temporary suspension of the license is effective immediately ~~[upon issuance]~~ *after the massage therapist receives notice* of the cease and desist order and must not exceed ~~[15 days. For good cause,]~~ 60 days. *The massage therapist may file a written request for a hearing to challenge the necessity of the temporary suspension. The written request must be filed not later than 20 days after the date on which the Executive Director mails the cease and desist order. If the massage therapist:*

(a) *Files a timely written request for a hearing, the Board shall hold a hearing and render a final decision regarding the necessity of the temporary suspension as promptly as is practicable but not later than 60 days after the date on which the Executive Director mails the cease and desist order. After holding such a hearing, the Board may extend the period of the temporary suspension if the Board ~~[deems]~~ finds, for good cause shown, that such action ~~[to be]~~ is necessary to protect the health, safety or welfare of the public pending proceedings for disciplinary action. ~~[In any such case, a]~~*

(b) *Does not file a timely written request for a hearing and the Board wants to consider extending the period of the temporary suspension, the Board shall schedule a hearing and notify the massage therapist immediately by certified mail of the date of the hearing. The hearing must be held and a final decision rendered regarding whether to extend the period of the temporary suspension as promptly as is practicable but not later than ~~[15]~~ 60 days after the date on which the Executive Director ~~[issues]~~ mails the cease and desist order. After holding such a hearing, the Board may extend the period of the temporary suspension if the Board finds, for good cause shown, that such action is necessary to protect the health, safety or welfare of the public pending proceedings for disciplinary action.*

3. If the Board or the Executive Director issues an order temporarily suspending the license of a massage therapist pending proceedings for disciplinary action, a court shall not stay that order.

4. *When conducting an investigation of a massage therapist pursuant to this chapter, the Board or the Executive Director may request from state and local law enforcement agencies records relating to any charge or citation*

against the massage therapist for a crime involving violence, prostitution or any other sexual offense. Such records include, without limitation, a record of criminal history as defined in NRS 179A.070.

5. Upon receiving a request from the Board or the Executive Director pursuant to subsection 4, the law enforcement agency shall provide the requested records to the Board or the Executive Director as soon as reasonably practicable. The law enforcement agency may redact from the records produced pursuant to this subsection any descriptions of techniques and strategies and other information relating to law enforcement that are deemed confidential by the agency. Upon receiving the records from the law enforcement agency, the Board and the Executive Director:

(a) Shall maintain the confidentiality of the records if such confidentiality is required by federal or state law; and

(b) May use the records for the sole and limited purpose of determining whether to take disciplinary action against the massage therapist pursuant to this chapter.

6. For purposes of this section, a person is deemed to have notice of a temporary suspension of his license:

(a) On the date on which the notice is personally delivered to the person;
or

(b) If the notice is mailed, 3 days after the date on which the notice is mailed by certified mail to the last known business or residential address of the person.

Sec. 16. NRS 640C.910 is hereby amended to read as follows:

640C.910 1. If a person is not licensed to practice massage therapy pursuant to this chapter, the person shall not:

(a) Engage in the practice of massage therapy; ~~for~~

(b) Use in connection with his name the words or letters "L.M.T.," "licensed massage therapist," "licensed massage technician," "M.T.," "massage technician" or "massage therapist," or any other letters, words or insignia indicating or implying that he is licensed to practice massage therapy, or in any other way, orally, or in writing or print, or by sign, directly or by implication, use the word "massage" or represent himself as licensed or qualified to engage in the practice of massage therapy ~~for~~; or

(c) List or cause to have listed in any directory, including, without limitation, a telephone directory, his name or the name of his company under the heading "massage," "massage therapy," "massage therapist," "massage technician" or any other term that indicates or implies that he is licensed or qualified to practice massage therapy.

2. If a person's license to practice massage therapy pursuant to this chapter has expired or has been suspended or revoked by the Board, the person shall not:

(a) Engage in the practice of massage therapy; ~~for~~

(b) Use in connection with his name the words or letters "L.M.T.," "licensed massage therapist," "licensed massage technician," "M.T.,"

"massage technician" or "massage therapist," or any other letters, words or insignia indicating or implying that he is licensed to practice massage therapy, or in any other way, orally, or in writing or print, or by sign, directly or by implication, use the word "massage" or represent himself as licensed or qualified to engage in the practice of massage therapy ~~§~~ ; or

(c) List or cause to have listed in any directory, including, without limitation, a telephone directory, his name or the name of his company under the heading "massage," "massage therapy," "massage therapist," "massage technician" or any other term that indicates or implies that he is licensed or qualified to practice massage therapy.

3. A person who violates any provision of this section is guilty of a misdemeanor.

Sec. 17. NRS 179A.100 is hereby amended to read as follows:

179A.100 1. The following records of criminal history may be disseminated by an agency of criminal justice without any restriction pursuant to this chapter:

- (a) Any which reflect records of conviction only; and
- (b) Any which pertain to an incident for which a person is currently within the system of criminal justice, including parole or probation.

2. Without any restriction pursuant to this chapter, a record of criminal history or the absence of such a record may be:

- (a) Disclosed among agencies which maintain a system for the mutual exchange of criminal records.
- (b) Furnished by one agency to another to administer the system of criminal justice, including the furnishing of information by a police department to a district attorney.
- (c) Reported to the Central Repository.

3. An agency of criminal justice shall disseminate to a prospective employer, upon request, records of criminal history concerning a prospective employee or volunteer which:

- (a) Reflect convictions only; or
- (b) Pertain to an incident for which the prospective employee or volunteer is currently within the system of criminal justice, including parole or probation.

4. In addition to any other information to which an employer is entitled or authorized to receive, the Central Repository shall disseminate to a prospective or current employer, or a person or entity designated to receive the information on behalf of such an employer, the information contained in a record of registration concerning an employee, prospective employee, volunteer or prospective volunteer who is a sex offender or an offender convicted of a crime against a child, regardless of whether the employee, prospective employee, volunteer or prospective volunteer gives his written consent to the release of that information. The Central Repository shall disseminate such information in a manner that does not reveal the name of an individual victim of an offense. A request for information pursuant to this

subsection must conform to the requirements of the Central Repository and must include:

(a) The name and address of the employer, and the name and signature of the person or entity requesting the notice on behalf of the employer;

(b) The name and address of the employer's facility in which the employee, prospective employee, volunteer or prospective volunteer is employed or volunteers or is seeking to become employed or volunteer; and

(c) The name and other identifying information of the employee, prospective employee, volunteer or prospective volunteer.

5. In addition to any other information to which an employer is entitled or authorized to receive, the Central Repository shall disseminate to a prospective or current employer, or a person or entity designated to receive the information on behalf of such an employer, the information described in subsection 4 of NRS 179A.190 concerning an employee, prospective employee, volunteer or prospective volunteer who gives his written consent to the release of that information if the employer submits a request in the manner set forth in NRS 179A.200 for obtaining a notice of information. The Central Repository shall search for and disseminate such information in the manner set forth in NRS 179A.210 for the dissemination of a notice of information.

6. Except as otherwise provided in subsection 5, the provisions of NRS 179A.180 to 179A.240, inclusive, do not apply to an employer who requests information and to whom information is disseminated pursuant to subsections 4 and 5.

7. Records of criminal history must be disseminated by an agency of criminal justice, upon request, to the following persons or governmental entities:

(a) The person who is the subject of the record of criminal history for the purposes of NRS 179A.150.

(b) The person who is the subject of the record of criminal history or his attorney of record when the subject is a party in a judicial, administrative, licensing, disciplinary or other proceeding to which the information is relevant.

(c) The State Gaming Control Board.

(d) The State Board of Nursing.

(e) The Private Investigator's Licensing Board to investigate an applicant for a license.

(f) A public administrator to carry out his duties as prescribed in chapter 253 of NRS.

(g) A public guardian to investigate a ward or proposed ward or persons who may have knowledge of assets belonging to a ward or proposed ward.

(h) Any agency of criminal justice of the United States or of another state or the District of Columbia.

(i) Any public utility subject to the jurisdiction of the Public Utilities Commission of Nevada when the information is necessary to conduct a

security investigation of an employee or prospective employee, or to protect the public health, safety or welfare.

(j) Persons and agencies authorized by statute, ordinance, executive order, court rule, court decision or court order as construed by appropriate state or local officers or agencies.

(k) Any person or governmental entity which has entered into a contract to provide services to an agency of criminal justice relating to the administration of criminal justice, if authorized by the contract, and if the contract also specifies that the information will be used only for stated purposes and that it will be otherwise confidential in accordance with state and federal law and regulation.

(l) Any reporter for the electronic or printed media in his professional capacity for communication to the public.

(m) Prospective employers if the person who is the subject of the information has given written consent to the release of that information by the agency which maintains it.

(n) For the express purpose of research, evaluative or statistical programs pursuant to an agreement with an agency of criminal justice.

(o) An agency which provides child welfare services, as defined in NRS 432B.030.

(p) The Division of Welfare and Supportive Services of the Department of Health and Human Services or its designated representative.

(q) The Aging Services Division of the Department of Health and Human Services or its designated representative.

(r) An agency of this or any other state or the Federal Government that is conducting activities pursuant to Part D of Subchapter IV of Chapter 7 of Title 42 of the Social Security Act, 42 U.S.C. §§ 651 et seq.

(s) The State Disaster Identification Team of the Division of Emergency Management of the Department.

(t) The Commissioner of Insurance.

(u) The Board of Medical Examiners.

(v) The State Board of Osteopathic Medicine.

(w) *The Board of Massage Therapists and its Executive Director.*

8. Agencies of criminal justice in this State which receive information from sources outside this State concerning transactions involving criminal justice which occur outside Nevada shall treat the information as confidentially as is required by the provisions of this chapter.

Sec. 18. NRS 703.175 is hereby amended to read as follows:

703.175 1. Upon receiving a request *to disconnect a telephone number* from the State Contractors' Board ~~{to disconnect a telephone number}~~ pursuant to NRS 624.720, *the Board of Massage Therapists pursuant to section 4 of this act or the Nevada Transportation Authority pursuant to NRS 706.758*, the Commission shall issue an order to the appropriate provider of telephone service to disconnect the telephone number.

2. Compliance in good faith by a provider of telephone service with an order of the Commission to terminate service issued pursuant to this section shall constitute a complete defense to any civil or criminal action brought against the provider of telephone service arising from the termination of service.

3. As used in this section, "provider of telephone service" has the meaning ascribed to it in NRS 707.355.

Sec. 19. NRS 707.355 is hereby amended to read as follows:

707.355 1. Each provider of telephone service in this State shall, when notified that:

(a) A court has ordered the disconnection of a telephone number pursuant to NRS 706.2855; or

(b) The Public Utilities Commission of Nevada has ordered the disconnection of a telephone number pursuant to NRS ~~[624.720 and]~~ 703.175, *after receiving a request to disconnect the telephone number from the State Contractors' Board pursuant to NRS 624.720, the Board of Massage Therapists pursuant to section 4 of this act or the Nevada Transportation Authority pursuant to NRS 706.758,*

➔ take such action as is necessary to carry out the order of the court or the Public Utilities Commission of Nevada.

2. A provider of telephone service shall not:

(a) Forward or offer to forward the telephone calls of a telephone number disconnected from service pursuant to the provisions of this section; or

(b) Provide or offer to provide a recorded message that includes the new telephone number for a business whose telephone number was disconnected from service pursuant to the provisions of this section.

3. As used in this section, "provider of telephone service" includes, but is not limited to:

(a) A public utility furnishing telephone service.

(b) A provider of cellular or other service to a telephone that is installed in a vehicle or is otherwise portable.

Amendment No. 936.

"SUMMARY—Revises provisions governing massage therapists. (BDR 54-162)"

"AN ACT relating to professions; revising provisions governing the regulation of massage therapists by the Board of Massage Therapists; prohibiting certain misleading and deceptive practices relating to massage therapy; revising provisions governing the discipline of massage therapists; authorizing the Board to issue administrative citations and to impose administrative fines for certain violations; revising provisions governing the temporary suspension of licenses of massage therapists; requiring ~~law enforcement~~ governmental agencies and courts of competent jurisdiction to provide certain records to the Board or its Executive Director upon request; authorizing ~~law enforcement~~ governmental agencies and courts of competent jurisdiction to redact certain confidential information from records

provided to the Board or its Executive Director; providing remedies and penalties; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Under existing law, massage therapists must be licensed by the Board of Massage Therapists. (Chapter 640C of NRS) Sections 2, 3 and 11 of this bill require a massage therapist to display his original license, not a copy or replica, at each location where he practices massage therapy. (NRS 640C.450) Section 3 prohibits a person from: (1) forging or counterfeiting a license; (2) altering, copying or replicating a license for the purpose of aiding or abetting an unlawful act; or (3) using or displaying a license that has been forged or counterfeited or has been altered, copied or replicated for the purpose of aiding or abetting an unlawful act.

Sections 4 and 16 of this bill prohibit an unlicensed person from advertising as a massage therapist and prohibit a licensed person from using any false or misleading statements in advertising. (NRS 640C.910) Sections 4 and 16 also prohibit an unlicensed person from having his name listed in a telephone directory under a heading such as "massage" which indicates or implies that he is licensed or qualified to practice massage therapy. Sections 4 and 16 also authorize the Board to issue an order to cease and desist from engaging in unlawful advertising. Sections 4, 18 and 19 of this bill contain provisions whereby the Board can have telephone numbers for any type of telephone, messaging or paging service disconnected because they are included in unlawful advertising. (NRS 703.175, 707.355)

Existing law authorizes the Board to take disciplinary action by imposing administrative fines. (NRS 640C.710) Section 14 of this bill provides that the Board may impose an administrative fine of not more than \$5,000 for each violation, unless a greater fine is required pursuant to section 5 of this bill. Section 5 requires the Board to impose, based on the number of violations, increasing administrative fines of not more than \$10,000 against a licensee who ~~has engaged in or solicited sexual activity during a massage therapy session or~~ has been convicted of a crime involving violence, prostitution or any other sexual offense that occurred during a massage therapy session.

~~Section 7 of this bill authorizes the Board to issue administrative citations for any statutory or regulatory violations relating to massage therapy and provides that an unlicensed person who fails to comply with a citation is guilty of a misdemeanor. A citation may include an order to: (1) pay an administrative fine; (2) correct a condition resulting from a violation; and (3) reimburse the Board for expenses incurred to investigate the violation. Section 8 of this bill allows a person to request a hearing before the Board to contest an administrative citation.]~~

Existing law provides for the temporary suspension of a massage therapy license without a prior hearing for a period of 15 or 30 days under certain exigent circumstances. (NRS 640C.720) Generally, procedural due process entitles a licensee to a hearing before his license is suspended. (*Barry v. Barchi*, 443 U.S. 55, 99 S. Ct. 2642 (1979); U.S. Const. Amend. XIV, § 1;

Nev. Const. Art. 1, § 8) However, when exigent circumstances justify immediate action, a statute may provide for the temporary suspension of a license without a prior hearing if the statute requires a post-suspension administrative review where a hearing is held and a final decision is rendered as promptly as is practicable. (*Federal Deposit Insurance Corporation v. Mallen*, 486 U.S. 230, 108 S. Ct. 1780 (1988); *Sierra Life Insurance Company v. Rottman*, 95 Nev. 654 (1979)) Section 15 of this bill: (1) provides for the temporary suspension of a massage therapy license without a prior hearing for a period not to exceed ~~30~~ 15 business days under certain exigent circumstances; (2) authorizes the licensee to request a post-suspension administrative review; and (3) requires the Board to hold a hearing and render a final decision as promptly as is practicable but not later than ~~30~~ 10 business days after the date of the initial suspension. (NRS 640C.720)

Section 15 of this bill also authorizes the Board and its Executive Director to request from ~~[state and local law enforcement agencies]~~ the appropriate governmental agency or court of competent jurisdiction records relating to any ~~[charge or citation against]~~ conviction of a massage therapist for a crime involving violence, prostitution or any other sexual offense and authorizes those ~~[law enforcement]~~ governmental agencies and courts of competent jurisdiction to redact from those records certain information which the agencies or courts deem confidential. (NRS 640C.720) Sections 15 and 17 of this bill require ~~[a law enforcement]~~ the governmental agency or court of competent jurisdiction to provide the requested records as soon as reasonably practicable. (NRS 179A.100) Section 15 also provides that the Board and its Executive Director: (1) must maintain the confidentiality of the records; and (2) may use the records for the sole and limited purpose of determining whether to take disciplinary action against the massage therapist.

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

Section 1. Chapter 640C of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this act.

Sec. 2. 1. "Original license" means the actual license which is issued to the licensee by the Board and which is current and valid.

2. The term does not include any photocopy print, photostat or other replica of such a license.

Sec. 3. 1. A person shall not:

(a) Counterfeit or forge or attempt to counterfeit or forge a license to practice massage therapy; or

(b) For the purpose of aiding or abetting an unlawful act:

(1) Alter or attempt to alter a license to practice massage therapy; or

(2) Make or attempt to make any photocopy print, photostat or other replica of a license to practice massage therapy.

2. A person shall not use or display a license to practice massage therapy that:

- (a) Is not the original license issued to the person;*
- (b) Has been counterfeited or forged;*
- (c) Has been altered, copied or replicated for the purpose of aiding or abetting an unlawful act; or*
- (d) Has been issued to another person.*

3. A person who violates any provision of this section is guilty of a misdemeanor.

Sec. 4. 1. A person shall not advertise as a massage therapist in this State unless the person is licensed to practice massage therapy pursuant to this chapter.

2. A person licensed to practice massage therapy pursuant to this chapter shall not disseminate, as part of any advertising by the massage therapist, any false or misleading statement or representation of material fact that is intended, directly or indirectly, to induce another person to use the services of the massage therapist.

3. All advertising by a licensed massage therapist must include his name and the name of his company, if applicable. All advertising in a telephone directory or a newspaper must also include the number of his license.

4. A person who violates any provision of subsection 1 or 2 is guilty of a misdemeanor.

5. If, after notice and a hearing as required by law, the Board determines that a person has willfully engaged in advertising in a manner that violates the provisions of this section or NRS 640C.910, the Board may, in addition to any penalty, punishment or disciplinary action authorized by the provisions of this chapter, order the person to cease and desist the unlawful advertising. The provisions of this subsection do not apply to any person whose license has been expired for less than 90 days or is temporarily suspended.

6. The Board may order any person convicted of a crime involving violence, prostitution or any other sexual offense to cause any telephone number included in the advertising to be disconnected from service. If the Board orders the person to cause any telephone number to be disconnected from service and the person fails to comply within 5 days after the date on which he is served with the order, the Board may:

(a) If the provider is regulated by the Public Utilities Commission of Nevada, request the Commission to order the provider to disconnect the telephone number from service pursuant to NRS 703.175 and 707.355; or

(b) If the provider is not regulated by the Public Utilities Commission of Nevada, request the provider to disconnect the telephone number from service and inform the provider that the request is made pursuant to this section. Upon receiving such a request, the provider shall take such action as is necessary to disconnect the telephone number from service.

7. A provider shall not:

(a) Forward or offer to forward the telephone calls of a telephone number disconnected from service pursuant to this section; or

(b) Provide or offer to provide a message that includes a new telephone number for the person whose telephone number was disconnected from service pursuant to this section.

8. If a provider complies in good faith with a request to disconnect a telephone number from service pursuant to this section, such good-faith compliance shall constitute a complete defense to any civil or criminal action brought against the provider arising from the disconnection or termination of service.

9. As used in this section:

(a) "Advertising" means the intentional placement or issuance of any sign, card or device, or the permitting or allowing of any sign or marking on a motor vehicle, in any building, structure, newspaper, magazine or airway transmission, on the Internet or in any directory under the listing of "massage therapist" or "massage."

(b) "Provider" means a provider of any type of telephone, messaging or paging service.

(c) "Provider of messaging or paging service" means an entity that provides any type of messaging or paging service to any type of communication device.

(d) "Provider of telephone service" has the meaning ascribed to it in NRS 707.355.

(e) "Telephone number" means any sequence of numbers or characters, or both, used by a provider to provide any type of telephone, messaging or paging service.

Sec. 5. 1. In addition to any other actions authorized by NRS 640C.710, if, after notice and a hearing as required by law, the Board determines that a licensee ~~has engaged in or solicited sexual activity during the course of practicing massage on a person or~~ has been convicted of a crime involving violence, prostitution or any other sexual offense that occurred during the course of practicing massage on a person, the Board shall:

(a) For a first violation, impose an administrative fine of not less than \$100 and not more than \$1,000;

(b) For a second violation, impose an administrative fine of not less than \$250 and not more than \$5,000; and

(c) For a third violation and for each additional violation, impose an administrative fine of not less than \$500 and not more than \$10,000.

2. The Board shall, by regulation, establish standards for use by the Board in determining the amount of an administrative fine imposed pursuant to this section. The standards must include, without limitation, provisions requiring the Board to consider:

(a) The gravity of the violation;

(b) The good faith of the licensee; and

(c) Any history of previous violations of the provisions of this chapter committed by the licensee.

Sec. 6. The expiration of a license by operation of law or by order or decision of the Board or a court, or the voluntary surrender of a license by a licensee, does not deprive the Board of jurisdiction to proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

Sec. 7. ~~1. If the Board or its designee, based upon a preponderance of the evidence, has reason to believe that a person has committed an act which constitutes a violation of this chapter or the regulations of the Board, the Board or its designee, as appropriate, may issue or authorize the issuance of a written administrative citation to the person. A citation issued pursuant to this section may include, without limitation:~~

~~(a) An order to take action to correct a condition resulting from an act that constitutes a violation of this chapter or the regulations of the Board, at the person's cost;~~

~~(b) An order to pay an administrative fine for each violation; and~~

~~(c) An order to reimburse the Board for the amount of the expenses incurred to investigate each violation.~~

~~2. If the citation includes an order to take action to correct a condition resulting from an act that constitutes a violation of this chapter or the regulations of the Board, the citation must:~~

~~(a) State the time permitted for compliance, which must not be less than 15 business days after the date on which the citation is received by the person; and~~

~~(b) Describe, in specific detail, the action required to be taken.~~

~~3. If the citation is issued to a licensee and includes an order to pay an administrative fine for one or more violations, the amount of the administrative fine must not exceed the maximum amount authorized by NRS 640C.710 or section 5 of this act, as appropriate for each violation.~~

~~4. If the citation is issued to an unlicensed person and includes an order to pay an administrative fine for one or more violations, the amount of the administrative fine:~~

~~(a) For a first violation, must not be less than \$100 and must not be more than \$1,000;~~

~~(b) For a second violation, must not be less than \$250 and must not be more than \$5,000; and~~

~~(c) For a third violation and for each additional violation, must not be less than \$500 and must not be more than \$10,000.~~

~~5. The sanctions authorized by this section are separate from, and in addition to, any other remedy, civil or criminal, authorized by this chapter.~~

~~6. The failure of an unlicensed person to comply with a citation or order after it is final is a misdemeanor. If an unlicensed person does not pay an administrative fine imposed pursuant to this section or make satisfactory payment arrangements, as approved by the Board, within 60 days after the order of the Board becomes final, the order may be executed upon in the same manner as a judgment issued by a court. (Deleted by amendment.)~~

Sec. 8. ~~[1. If a person is issued a written administrative citation pursuant to section 7 of this act, the person may request a hearing before the Board to contest the citation by filing a written request with the Board:~~

~~(a) Not later than 15 business days after the date on which the citation is received by the person; or~~

~~(b) If the Board, for good cause shown, extends the time allowed to file a written request for a hearing to contest the citation, on or before the later date specified by the Board.~~

~~2. If the person files a written request for a hearing to contest the citation within the time allowed pursuant to this section:~~

~~(a) The Board shall provide notice of and conduct the hearing in the same manner as other disciplinary proceedings; and~~

~~(b) At the hearing, the person may contest, without limitation:~~

~~(1) The facts forming the basis for the determination that the person has committed an act which constitutes a violation of this chapter or the regulations of the Board;~~

~~(2) The time allowed to take any corrective action ordered;~~

~~(3) The amount of any administrative fine ordered;~~

~~(4) The amount of any order to reimburse the Board for the expenses incurred to investigate the violation; and~~

~~(5) Whether any corrective action described in the citation is reasonable.~~

~~3. If the person does not file a written request for a hearing to contest the citation within the time allowed pursuant to this section, the citation shall be deemed a final order of the Board.~~

~~4. For the purposes of this section, a citation shall be deemed to have been received by a person:~~

~~(a) On the date on which the citation is personally delivered to the person; or~~

~~(b) If the citation is mailed, 3 days after the date on which the citation is mailed by certified mail to the last known business or residential address of the person. (Deleted by amendment.)~~

Sec. 9. NRS 640C.020 is hereby amended to read as follows:

640C.020 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 640C.030 to 640C.060, inclusive, and section 2 of this act have the meanings ascribed to them in those sections.

Sec. 10. ~~[NRS 640C.320 is hereby amended to read as follows:~~

~~640C.320 The Board shall adopt regulations to carry out the provisions of this chapter. The regulations must include, without limitation, provisions that:~~

~~1. Establish the requirements for continuing education for the renewal of a license;~~

~~2. Establish the requirements for the approval of a course of continuing education, including, without limitation, a course on a specialty technique of massage therapy;~~

~~3. Establish the requirements for the approval of an instructor of a course of continuing education;~~

~~4. Establish requirements relating to sanitation, hygiene and safety relating to the practice of massage therapy;~~

~~5. Except as otherwise provided in NRS 622.090, prescribe the requirements for any practical, oral or written examination for a license that the Board may require, including, without limitation, the passing grade for such an examination; [and]~~

~~6. Establish the period within which the Board or its designee must report the results of the investigation of an applicant [.] ; and~~

~~7. Prescribe the form of a written administrative citation pursuant to section 7 of this act. (Deleted by amendment.)~~

Sec. 11. NRS 640C.450 is hereby amended to read as follows:

640C.450 1. Each licensee shall display his *original* license in a conspicuous manner at each location where he practices massage therapy. *If a licensee practices massage therapy in more than one place, he must carry his original license with him and display it wherever he is actually working.*

2. *A licensee shall obtain a replacement of his original license from the Board if his:*

(a) Original license is destroyed, misplaced or mutilated; or

(b) Name or address as printed on the original license has changed.

3. *To obtain a replacement license, the licensee must:*

(a) File an affidavit with the Board, on the form prescribed by the Board, which states that his original license was destroyed, misplaced or mutilated or that his name or address as printed on the original license has changed; and

(b) Pay the fee prescribed by the Board pursuant to NRS 640C.520.

Sec. 12. NRS 640C.520 is hereby amended to read as follows:

640C.520 1. The Board shall establish a schedule of fees and charges.

The fees for the following items must not exceed the following amounts:

| | |
|--|-------|
| An examination established by the Board pursuant to this chapter | \$600 |
| An application for a license | 300 |
| An application for a license without an examination..... | 300 |
| A background check of an applicant..... | 600 |
| The issuance of a license | 400 |
| The renewal of a license | 200 |
| The restoration of an expired license..... | 500 |
| The reinstatement of a suspended or revoked license..... | 500 |
| The issuance of a (duplicate) replacement license..... | 75 |
| The restoration of an inactive license | 300 |

2. The total fees collected by the Board pursuant to this section must not exceed the amount of money necessary for the operation of the Board and for the maintenance of an adequate reserve.

Sec. 13. NRS 640C.700 is hereby amended to read as follows:

640C.700 The Board may refuse to issue a license to an applicant, or may initiate disciplinary action against a holder of a license, if the applicant or holder of the license:

1. Has submitted false, fraudulent or misleading information to the Board or any agency of this State, any other state, a territory or possession of the United States, the District of Columbia or the Federal Government;

2. Has violated any provision of this chapter or any regulation adopted pursuant thereto;

3. Has been convicted of a crime involving violence, prostitution or any other sexual offense, a crime involving any type of larceny, a crime relating to a controlled substance, a crime involving any federal or state law or regulation relating to massage therapy or a substantially similar business, or a crime involving moral turpitude within the immediately preceding 10 years ;
[-]

4. Has engaged in or solicited sexual activity during the course of practicing massage on a person, with or without the consent of the person, including, without limitation, if the applicant or holder of the license:

(a) Made sexual advances toward the person;

(b) Requested sexual favors from the person; or

(c) Massaged, touched or applied any instrument to the breasts of the person, unless the person has signed a written consent form provided by the Board;

5. Has habitually abused alcohol or is addicted to a controlled substance;

6. Is, in the judgment of the Board, guilty of gross negligence in his practice of massage therapy;

7. Is determined by the Board to be professionally incompetent to engage in the practice of massage therapy;

8. Has failed to provide information requested by the Board within 60 days after he received the request;

9. Has, in the judgment of the Board, engaged in unethical or unprofessional conduct as it relates to the practice of massage therapy;

10. Has been disciplined in another state, a territory or possession of the United States or the District of Columbia for conduct that would be a violation of the provisions of this chapter or any regulations adopted pursuant thereto if the conduct were committed in this State;

11. Has solicited or received compensation for services relating to the practice of massage therapy that he did not provide;

12. If the holder of the license is on probation, has violated the terms of his probation; [-]

13. Has engaged in false, deceptive or misleading advertising, including, without limitation, falsely, deceptively or misleadingly advertising that he has received training in a specialty technique of massage for which he has not received training, practicing massage therapy under an assumed name and impersonating a licensed massage therapist [-] ; or

~~14. Has failed to comply with a written administrative citation issued pursuant to section 7 of this act within the time permitted for compliance set forth in the citation or, if a hearing is held pursuant to section 8 of this act, within 15 business days after the hearing; or~~

~~15. Except as otherwise provided in subsection 14, has failed to pay or make arrangements to pay, as approved by the Board, an administrative fine imposed pursuant to this chapter within 60 days after:~~

(a) Receiving notice of the imposition of the fine; or
(b) The final administrative or judicial decision affirming the imposition of the fine,

➤ *whichever occurs later.*

Sec. 14. NRS 640C.710 is hereby amended to read as follows:

640C.710 1. If, after notice and a hearing as required by law, the Board finds one or more grounds for taking disciplinary action, the Board may:

(a) Place the applicant or holder of the license on probation for a specified period or until further order of the Board;

(b) Administer to the applicant or holder of the license a public reprimand;

(c) Refuse to issue, renew, reinstate or restore the license;

(d) Suspend or revoke the license;

(e) ~~Impose~~ *Except as otherwise provided in section 5 of this act, impose an administrative fine of not more than \$1,000 per day for each day for which the Board determines that a violation occurred; \$5,000 for each violation;*

(f) Require the applicant or holder of the license to pay the costs incurred by the Board to conduct the investigation and hearing; or

(g) Impose any combination of actions set forth in paragraphs (a) to (f), inclusive.

2. The order of the Board may contain such other terms, provisions or conditions as the Board deems appropriate.

3. The order of the Board and the findings of fact and conclusions of law supporting that order are public records.

4. The Board shall not issue a private reprimand.

Sec. 15. NRS 640C.720 is hereby amended to read as follows:

640C.720 Notwithstanding any other statute to the contrary:

1. If the Board finds, *based upon evidence in its possession*, that immediate action is necessary to protect the health, safety or welfare of the public, the Board may, upon providing notice to the massage therapist, temporarily suspend his license *without a prior hearing* for a period not to exceed ~~30 days. For good cause, 30~~ 15 business days. *The massage therapist may file a written request for a hearing to challenge the necessity of the temporary suspension. The written request must be filed not later than 10 business days after the date on which the massage therapist receives notice of the temporary suspension. If the massage therapist:*

(a) *Files a timely written request for a hearing, the Board shall extend the temporary suspension until a hearing is held. The Board shall hold a hearing*

and render a final decision regarding the necessity of the temporary suspension as promptly as is practicable but not later than ~~20~~ 15 business days after the date on which the Board ~~provides notice of the temporary suspension.~~ receives the written request. After holding such a hearing, the Board may extend the period of the temporary suspension if the Board ~~deems~~ finds, for good cause shown, that such action ~~to be~~ is necessary to protect the health, safety or welfare of the public pending proceedings for disciplinary action. ~~In any such case, a~~

(b) Does not file a timely written request for a hearing and the Board wants to consider extending the period of the temporary suspension, the Board shall schedule a hearing and notify the massage therapist immediately by certified mail of the date of the hearing. The hearing must be held and a final decision rendered regarding whether to extend the period of the temporary suspension as promptly as is practicable but not later than 30 days after the date on which the Board ~~notifies the massage therapist~~ provides notice of the initial temporary suspension. After holding such a hearing, the Board may extend the period of the temporary suspension if the Board finds, for good cause shown, that such action is necessary to protect the health, safety or welfare of the public pending proceedings for disciplinary action.

2. If a massage therapist is charged with or cited for a crime involving violence, prostitution or any other sexual offense, the appropriate law enforcement agency shall report the charge or citation to the Executive Director ~~of the Board~~. Upon receiving such a report, the Executive Director shall immediately issue by certified mail to the massage therapist a cease and desist order temporarily suspending the license of the massage therapist ~~without a prior hearing~~. The temporary suspension of the license is effective immediately ~~upon issuance~~ after the massage therapist receives notice of the cease and desist order and must not exceed ~~15 days. For good cause,~~ ~~60~~ 15 business days. The massage therapist may file a written request for a hearing to challenge the necessity of the temporary suspension. The written request must be filed not later than ~~20~~ 10 business days after the date on which the Executive Director mails the cease and desist order. If the massage therapist:

(a) Files a timely written request for a hearing, the Board shall extend the temporary suspension until a hearing is held. The Board shall hold a hearing and render a final decision regarding the necessity of the temporary suspension as promptly as is practicable but not later than ~~60~~ 15 business days after the date on which the ~~Executive Director mails the cease and desist order.~~ Board receives the written request. After holding such a hearing, the Board may extend the period of the temporary suspension if the Board ~~deems~~ finds, for good cause shown, that such action ~~to be~~ is necessary to protect the health, safety or welfare of the public pending proceedings for disciplinary action. ~~In any such case, a~~

(b) Does not file a timely written request for a hearing and the Board wants to consider extending the period of the temporary suspension, the

Board shall schedule a hearing and notify the massage therapist immediately by certified mail of the date of the hearing. The hearing must be held and a final decision rendered regarding whether to extend the period of the temporary suspension as promptly as is practicable but not later than 15 ~~60~~ business days after the date on which the Executive Director ~~issues~~ mails the cease and desist order. After holding such a hearing, the Board may extend the period of the temporary suspension if the Board finds, for good cause shown, that such action is necessary to protect the health, safety or welfare of the public pending proceedings for disciplinary action.

3. If the Board or the Executive Director issues an order temporarily suspending the license of a massage therapist pending proceedings for disciplinary action, a court shall not stay that order.

4. When conducting an investigation of a massage therapist pursuant to this chapter, the Board or the Executive Director may request from ~~state and local law enforcement agencies~~ the appropriate governmental agency or court of competent jurisdiction records relating to any ~~charge or citation against~~ conviction of the massage therapist for a crime involving violence, prostitution or any other sexual offense. Such records include, without limitation, a record of criminal history as defined in NRS 179A.070.

5. Upon receiving a request from the Board or the Executive Director pursuant to subsection 4, the ~~law enforcement~~ governmental agency or court of competent jurisdiction shall provide the requested records to the Board or the Executive Director as soon as reasonably practicable. The ~~law enforcement~~ governmental agency or court of competent jurisdiction may redact from the records produced pursuant to this subsection any ~~descriptions of techniques and strategies and other~~ information relating to ~~law enforcement that are~~ the agency or court that is deemed confidential by the agency ~~or~~ or court. Upon receiving the records from the ~~law enforcement agency~~ governmental agency or court, the Board and the Executive Director:

(a) Shall maintain the confidentiality of the records if such confidentiality is required by federal or state law; and

(b) May use the records for the sole and limited purpose of determining whether to take disciplinary action against the massage therapist pursuant to this chapter.

6. For purposes of this section, a person is deemed to have notice of a temporary suspension of his license:

(a) On the date on which the notice is personally delivered to the person; or

(b) If the notice is mailed, 3 days after the date on which the notice is mailed by certified mail to the last known business or residential address of the person.

Sec. 16. NRS 640C.910 is hereby amended to read as follows:

640C.910 1. If a person is not licensed to practice massage therapy pursuant to this chapter, the person shall not:

(a) Engage in the practice of massage therapy; ~~for~~

(b) Use in connection with his name the words or letters "L.M.T.," "licensed massage therapist," "licensed massage technician," "M.T.," "massage technician" or "massage therapist," or any other letters, words or insignia indicating or implying that he is licensed to practice massage therapy, or in any other way, orally, or in writing or print, or by sign, directly or by implication, use the word "massage" or represent himself as licensed or qualified to engage in the practice of massage therapy ~~for~~; or

(c) List or cause to have listed in any directory, including, without limitation, a telephone directory, his name or the name of his company under the heading "massage," "massage therapy," "massage therapist," "massage technician" or any other term that indicates or implies that he is licensed or qualified to practice massage therapy.

2. If a person's license to practice massage therapy pursuant to this chapter has expired or has been suspended or revoked by the Board, the person shall not:

(a) Engage in the practice of massage therapy; ~~for~~

(b) Use in connection with his name the words or letters "L.M.T.," "licensed massage therapist," "licensed massage technician," "M.T.," "massage technician" or "massage therapist," or any other letters, words or insignia indicating or implying that he is licensed to practice massage therapy, or in any other way, orally, or in writing or print, or by sign, directly or by implication, use the word "massage" or represent himself as licensed or qualified to engage in the practice of massage therapy ~~for~~; or

(c) List or cause to have listed in any directory, including, without limitation, a telephone directory, his name or the name of his company under the heading "massage," "massage therapy," "massage therapist," "massage technician" or any other term that indicates or implies that he is licensed or qualified to practice massage therapy.

3. A person who violates any provision of this section is guilty of a misdemeanor.

Sec. 17. NRS 179A.100 is hereby amended to read as follows:

179A.100 1. The following records of criminal history may be disseminated by an agency of criminal justice without any restriction pursuant to this chapter:

(a) Any which reflect records of conviction only; and

(b) Any which pertain to an incident for which a person is currently within the system of criminal justice, including parole or probation.

2. Without any restriction pursuant to this chapter, a record of criminal history or the absence of such a record may be:

(a) Disclosed among agencies which maintain a system for the mutual exchange of criminal records.

(b) Furnished by one agency to another to administer the system of criminal justice, including the furnishing of information by a police department to a district attorney.

(c) Reported to the Central Repository.

3. An agency of criminal justice shall disseminate to a prospective employer, upon request, records of criminal history concerning a prospective employee or volunteer which:

(a) Reflect convictions only; or

(b) Pertain to an incident for which the prospective employee or volunteer is currently within the system of criminal justice, including parole or probation.

4. In addition to any other information to which an employer is entitled or authorized to receive, the Central Repository shall disseminate to a prospective or current employer, or a person or entity designated to receive the information on behalf of such an employer, the information contained in a record of registration concerning an employee, prospective employee, volunteer or prospective volunteer who is a sex offender or an offender convicted of a crime against a child, regardless of whether the employee, prospective employee, volunteer or prospective volunteer gives his written consent to the release of that information. The Central Repository shall disseminate such information in a manner that does not reveal the name of an individual victim of an offense. A request for information pursuant to this subsection must conform to the requirements of the Central Repository and must include:

(a) The name and address of the employer, and the name and signature of the person or entity requesting the notice on behalf of the employer;

(b) The name and address of the employer's facility in which the employee, prospective employee, volunteer or prospective volunteer is employed or volunteers or is seeking to become employed or volunteer; and

(c) The name and other identifying information of the employee, prospective employee, volunteer or prospective volunteer.

5. In addition to any other information to which an employer is entitled or authorized to receive, the Central Repository shall disseminate to a prospective or current employer, or a person or entity designated to receive the information on behalf of such an employer, the information described in subsection 4 of NRS 179A.190 concerning an employee, prospective employee, volunteer or prospective volunteer who gives his written consent to the release of that information if the employer submits a request in the manner set forth in NRS 179A.200 for obtaining a notice of information. The Central Repository shall search for and disseminate such information in the manner set forth in NRS 179A.210 for the dissemination of a notice of information.

6. Except as otherwise provided in subsection 5, the provisions of NRS 179A.180 to 179A.240, inclusive, do not apply to an employer who requests information and to whom information is disseminated pursuant to subsections 4 and 5.

7. Records of criminal history must be disseminated by an agency of criminal justice, upon request, to the following persons or governmental entities:

(a) The person who is the subject of the record of criminal history for the purposes of NRS 179A.150.

(b) The person who is the subject of the record of criminal history or his attorney of record when the subject is a party in a judicial, administrative, licensing, disciplinary or other proceeding to which the information is relevant.

(c) The State Gaming Control Board.

(d) The State Board of Nursing.

(e) The Private Investigator's Licensing Board to investigate an applicant for a license.

(f) A public administrator to carry out his duties as prescribed in chapter 253 of NRS.

(g) A public guardian to investigate a ward or proposed ward or persons who may have knowledge of assets belonging to a ward or proposed ward.

(h) Any agency of criminal justice of the United States or of another state or the District of Columbia.

(i) Any public utility subject to the jurisdiction of the Public Utilities Commission of Nevada when the information is necessary to conduct a security investigation of an employee or prospective employee, or to protect the public health, safety or welfare.

(j) Persons and agencies authorized by statute, ordinance, executive order, court rule, court decision or court order as construed by appropriate state or local officers or agencies.

(k) Any person or governmental entity which has entered into a contract to provide services to an agency of criminal justice relating to the administration of criminal justice, if authorized by the contract, and if the contract also specifies that the information will be used only for stated purposes and that it will be otherwise confidential in accordance with state and federal law and regulation.

(l) Any reporter for the electronic or printed media in his professional capacity for communication to the public.

(m) Prospective employers if the person who is the subject of the information has given written consent to the release of that information by the agency which maintains it.

(n) For the express purpose of research, evaluative or statistical programs pursuant to an agreement with an agency of criminal justice.

(o) An agency which provides child welfare services, as defined in NRS 432B.030.

(p) The Division of Welfare and Supportive Services of the Department of Health and Human Services or its designated representative.

(q) The Aging Services Division of the Department of Health and Human Services or its designated representative.

(r) An agency of this or any other state or the Federal Government that is conducting activities pursuant to Part D of Subchapter IV of Chapter 7 of Title 42 of the Social Security Act, 42 U.S.C. §§ 651 et seq.

(s) The State Disaster Identification Team of the Division of Emergency Management of the Department.

(t) The Commissioner of Insurance.

(u) The Board of Medical Examiners.

(v) The State Board of Osteopathic Medicine.

(w) *The Board of Massage Therapists and its Executive Director.*

8. Agencies of criminal justice in this State which receive information from sources outside this State concerning transactions involving criminal justice which occur outside Nevada shall treat the information as confidentially as is required by the provisions of this chapter.

Sec. 18. NRS 703.175 is hereby amended to read as follows:

703.175 1. Upon receiving a request *to disconnect a telephone number* from the State Contractors' Board ~~[to disconnect a telephone number]~~ pursuant to NRS 624.720, *the Board of Massage Therapists pursuant to section 4 of this act or the Nevada Transportation Authority pursuant to NRS 706.758*, the Commission shall issue an order to the appropriate provider of telephone service to disconnect the telephone number.

2. Compliance in good faith by a provider of telephone service with an order of the Commission to terminate service issued pursuant to this section shall constitute a complete defense to any civil or criminal action brought against the provider of telephone service arising from the termination of service.

3. As used in this section, "provider of telephone service" has the meaning ascribed to it in NRS 707.355.

Sec. 19. NRS 707.355 is hereby amended to read as follows:

707.355 1. Each provider of telephone service in this State shall, when notified that:

(a) A court has ordered the disconnection of a telephone number pursuant to NRS 706.2855; or

(b) The Public Utilities Commission of Nevada has ordered the disconnection of a telephone number pursuant to NRS ~~[624.720 and]~~ 703.175, *after receiving a request to disconnect the telephone number from the State Contractors' Board pursuant to NRS 624.720, the Board of Massage Therapists pursuant to section 4 of this act or the Nevada Transportation Authority pursuant to NRS 706.758,*

➤ take such action as is necessary to carry out the order of the court or the Public Utilities Commission of Nevada.

2. A provider of telephone service shall not:

(a) Forward or offer to forward the telephone calls of a telephone number disconnected from service pursuant to the provisions of this section; or

(b) Provide or offer to provide a recorded message that includes the new telephone number for a business whose telephone number was disconnected from service pursuant to the provisions of this section.

3. As used in this section, "provider of telephone service" includes, but is not limited to:

(a) A public utility furnishing telephone service.

(b) A provider of cellular or other service to a telephone that is installed in a vehicle or is otherwise portable.

Senator Carlton moved that the Senate do not concur in the Assembly amendments to Senate Bill No. 119.

Remarks by Senator Carlton.

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

The Assembly amendments did more damage than they thought they did, so we need to have a conference committee meeting.

Motion carried.

Bill ordered transmitted to the Assembly.

Senate Bill No. 295.

The following Assembly amendment was read:

Amendment No. 932.

"SUMMARY—Revises provisions relating to dentistry. (BDR 54-913)"

"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 ~~[sets forth a list of certain acts which are]~~ provides that a person or entity is not precluded by the provisions of chapter 631 of NRS ~~[, including certain management services and the ownership of certain assets used in]~~ 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 4 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.

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, ~~3 and 4~~ to 4.5, inclusive, of this act.

Sec. 2. *Nothing in this chapter precludes a person or entity not licensed by the Board from ~~+~~*

~~1. Owning or leasing any tangible or intangible assets used in a dental practice, office or clinic. These assets include, without limitation, real property, furnishings, equipment and inventory. These assets do not include patients' dental records as they relate to clinical care.~~

~~2. Employing or contracting for the services of personnel other than licensed dentists and hygienists.~~

~~3. Managing} providing goods or services for the support of the business of a dental practice, office or clinic ~~{but}~~ if the person or entity does not manage or control the clinical practice of dentistry.~~

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. 4. ~~{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.} (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), (2) or (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 of Taxation.*

2. Upon receipt of a request for a revocation of a state business license pursuant to subsection 1, the Department of Taxation 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 as if the holder of the license had failed to comply with a provision of NRS 360.760 to 360.798, 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.

3. The Department of Taxation shall not issue a new license to the former holder of a state business license revoked pursuant to this section unless the Department 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), (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.

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~~ 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 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~~*(4) *~~The~~ 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 ~~relieve~~*(b) *Relieve a licensed dentist of responsibility for ~~oversight of all~~ the clinical aspects of the dental practice.*

~~f (II) The formation or approval of any contract for the provision of dental services to a patient by a licensed dentist.~~

~~(III) The hiring or firing of licensed dentists or hygienists or the material clinical terms of the relationship between a licensed dentist and other licensed dentists or hygienists.~~

~~(IV) The referrals by a licensed dentist to another licensed dentist or place any restriction or limitation on referral of patients to a specialist or any other practitioner a licensed dentist determines is necessary.~~

~~(V) A licensed dentist's use of any type of procedure on a patient or establishment of a treatment plan for a patient.~~

~~(VI) Patient records to the exclusion of the applicable licensed dentist or the applicable patient.~~

~~(VII) A licensed dentist's schedule, including time spent with any patient, or place conditions on the number of patients a licensed dentist may see in a period of time.~~

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.

Senator Carlton moved that the Senate do not concur in the Assembly amendment to Senate Bill No. 295.

Remarks by Senator Carlton.

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

The Dental Board wants to have jurisdiction over businesses, and we disagree.

Motion carried.

Bill ordered transmitted to the Assembly.

RECEDE FROM SENATE AMENDMENTS

Senator Care moved that the Senate do not recede from its action on Assembly Bill No. 46, that a conference be requested, and that Mr. President

appoint a Conference Committee consisting of three members to meet with a like committee of the Assembly.

Motion carried.

Bill ordered transmitted to the Assembly.

APPOINTMENT OF CONFERENCE COMMITTEES

President Krolicki appointed Senators Wiener, McGinness and Copenig as a Conference Committee to meet with a like committee of the Assembly for the further consideration of Assembly Bill No. 46.

RECEDE FROM SENATE AMENDMENTS

Senator Care moved that the Senate do not recede from its action on Assembly Bill No. 259, that a conference be requested, and that Mr. President appoint a Conference Committee consisting of three members to meet with a like committee of the Assembly.

Motion carried.

Bill ordered transmitted to the Assembly.

APPOINTMENT OF CONFERENCE COMMITTEES

President Krolicki appointed Senators Parks, Wiener and Washington as a Conference Committee to meet with a like committee of the Assembly for the further consideration of Assembly Bill No. 259.

RECEDE FROM SENATE AMENDMENTS

Senator Care moved that the Senate do not recede from its action on Assembly Bill No. 350, that a conference be requested, and that Mr. President appoint a Conference Committee consisting of three members to meet with a like committee of the Assembly.

Motion carried.

Bill ordered transmitted to the Assembly.

APPOINTMENT OF CONFERENCE COMMITTEES

President Krolicki appointed Senators Parks, Copenig and Washington as a Conference Committee to meet with a like committee of the Assembly for the further consideration of Assembly Bill No. 350.

President Krolicki appointed Senators Care, Copenig and Raggio as a Conference Committee to meet with a like committee of the Assembly for the further consideration of Senate Bill No. 101.

SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the President and Secretary signed Senate Bills Nos. 41, 60, 73, 103, 108, 109, 114, 137, 176, 227, 243, 245, 261, 277, 313, 333, 350, 351, 358, 360, 363, 370, 371, 394, 421, 426, 428, 429, 431, 433; Assembly Bills Nos. 10, 15, 22, 25, 54, 80, 90, 102, 111, 135, 141, 144, 147, 149, 151, 152, 162, 225, 227, 238, 246, 248, 249, 254, 262, 266, 281, 283, 287, 294, 304, 314, 319, 337, 349, 359, 378, 381, 387, 401, 426, 463, 467, 474, 488, 497, 513, 534, 535, 543, 547, 548, 549, 552, 556, 557, 560, 562.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Wiener, the privilege of the floor of the Senate Chamber for this day was extended to Gina Polovina and Antonio Gutierrez.

Senator Horsford moved that the Senate adjourn until Thursday, May 28, 2009, at 11 a.m. and that it do so in memory of Commander Luther Hook III and his daughters; Kaitlyn Elizabeth Hook, Rachel Katherine Hook and Mackenzie Elena Hook, as requested by Senator McGinness.

Motion carried.

Senate adjourned at 12:51 p.m.

Approved:

BRIAN K. KROLICKI
President of the Senate

Attest: CLAIRE J. CLIFT
Secretary of the Senate