

Amendment No. 402

Senate Amendment to Senate Bill No. 293

(BDR 3-1011)

Proposed by: Senate Committee on Commerce, Labor and Energy**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

Adoption of this amendment will REMOVE the 2/3s majority vote requirement from S.B. 293.

ASSEMBLY ACTION		Initial and Date		SENATE ACTION		Initial and Date	
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

JMM/BJE



Date: 4/25/2011

S.B. No. 293—Makes various changes relating to certain nonprofit organizations.
(BDR 3-1011)



SENATE BILL NO. 293—SENATOR CEGAVSKE

MARCH 21, 2011

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Makes various changes relating to certain nonprofit organizations.
(BDR 3-1011)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to nonprofit organizations; ~~limiting the liability of~~ **requiring** nonprofit organizations which provide certain jobs and day training services or which operate certain rehabilitation facilities or workshops ~~[; requiring that an organization]~~ **to be [approved by] on file and in good standing with** the Secretary of State as a ~~[bona fide]~~ nonprofit organization **and meet certain other requirements** as a condition of participating in ~~[one of those]~~ **such** programs; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes nonprofit organizations to provide certain jobs and day training services or to operate certain rehabilitation facilities or workshops. (NRS 435.130-435.310, chapter 615 of NRS) ~~[Section 1 of this bill provides that nonprofit organizations which provide those services or operate those facilities or workshops and which are approved by the Secretary of State as bona fide nonprofit organizations have their liability in tort limited for their participation in those programs.]~~ **Section 2** of this bill requires organizations which provide certain jobs and day training services to ~~[apply to]~~ **be on file and in good standing with** the Secretary of State ~~[annually for approval that the organizations are bona fide]~~ **as** nonprofit organizations. ~~[;]~~ **and further requires such organizations to provide certain financial information to the Division of Mental Health and Developmental Services of the Department of Health and Human Services.** **Section 4** of this bill requires organizations which operate certain rehabilitation facilities or workshops to ~~[apply to]~~ **be on file and in good standing with** the Secretary of State ~~[annually for approval that the organizations are bona fide]~~ **as** nonprofit organizations. ~~[;]~~ **and further requires such organizations to provide certain financial information to the Department of Employment, Training and Rehabilitation.**

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

1 **Section 1.** ~~[Chapter 41 of NRS is hereby amended by adding thereto a new~~
2 ~~section to read as follows:~~

3 ~~1. An award for damages in an action sounding in tort brought against a~~
4 ~~nonprofit organization that:~~

5 ~~(a) Is a provider of jobs and day training services as defined in NRS 435.176~~
6 ~~which is recognized as exempt pursuant to the provisions of 26 U.S.C. §~~
7 ~~501(c)(3);~~

8 ~~(b) Has been issued a certificate by the Division of Mental Health and~~
9 ~~Developmental Services of the Department of Health and Human Services~~
10 ~~pursuant to NRS 435.130 to 435.310, inclusive, and section 2 of this act; and~~

11 ~~(c) Has been approved by the Secretary of State as a bona fide nonprofit~~
12 ~~organization pursuant to section 2 of this act;~~

13 ~~or against an employee of the nonprofit organization arising out of an act or~~
14 ~~omission within the scope of the employee's duties or employment with respect to~~
15 ~~the jobs and day training services may not exceed the sum of \$100,000, exclusive~~
16 ~~of interest computed from the date of judgment, to or for the benefit of the~~
17 ~~claimant. An award may not include any amount as exemplary or punitive~~
18 ~~damages.~~

19 ~~2. An award for damages in an action sounding in tort brought against a~~
20 ~~nonprofit organization that:~~

21 ~~(a) Is operating a rehabilitation facility or workshop established by the~~
22 ~~Department of Employment, Training and Rehabilitation pursuant to chapter 615~~
23 ~~of NRS; and~~

24 ~~(b) Has been approved by the Secretary of State as a bona fide nonprofit~~
25 ~~organization pursuant to section 4 of this act;~~

26 ~~or against an employee of the nonprofit organization arising out of an act or~~
27 ~~omission within the scope of the employee's duties or employment with respect to~~
28 ~~the facility or workshop may not exceed the sum of \$100,000, exclusive of interest~~
29 ~~computed from the date of judgment, to or for the benefit of the claimant. An~~
30 ~~award may not include any amount as exemplary or punitive damages.]~~ **(Deleted**
31 **by amendment.)**

32 **Sec. 2.** Chapter 435 of NRS is hereby amended by adding thereto a new
33 section to read as follows:

34 ~~[1.]~~ **Before being issued a certificate by the Division pursuant to NRS**
35 **435.225 and annually thereafter as a condition of certification, an organization**
36 **must [be approved by] :**

37 **1. Be on file and in good standing with the Secretary of State as a [bona**
38 **fide] nonprofit organization pursuant to [this section. The organization must file**
39 **an application for approval with the Office of the Secretary of State on a form**
40 **prescribed by the Secretary of State. The application must:**

41 ~~(a) Include a copy of the organization's federal income tax return for the~~
42 ~~most recent year and such other information as is required by the Secretary of~~
43 ~~State to make the determination required by subsection 2; and~~

44 ~~(b) Be accompanied by an application fee established by the Secretary of~~
45 ~~State which is estimated to cover the cost of making the determination required~~
46 ~~by subsection 2.~~

47 **2. If the Secretary of State determines that the organization:**

48 ~~(a) Operates exclusively for public benefit;~~

~~(b) Is not owned or controlled by a natural person or a for-profit entity and operated for the benefit of the person or entity; and~~

~~(c) Is in compliance with the laws of this State concerning nonprofit organizations;~~

~~the Secretary of State shall approve the applicant as a bona fide nonprofit organization; title 7 of NRS;~~

2. Submit to the Division an annual audit of the financial statements of the organization that is conducted by an independent certified public accountant; and

3. Submit to the Division the most recent federal tax return of the organization, including, without limitation, Form 990, or its successor form, and the Schedule L and Schedule R of such return, or the successor forms of such schedules, which include an itemization of:

(a) Any transaction during the federal tax year of the organization in which an economic benefit is provided by the organization to a director, officer or board member of the organization, or any other person who has substantial influence over the organization, and in which the value of the economic benefit provided by the organization exceeds the value of the consideration received by the organization;

(b) Any loans to or from the organization which are received by or from a director, officer or board member of the organization, a person who has substantial influence over the organization or a family member of such director, officer, board member or person and which remain outstanding at the end of the federal tax year of the organization;

(c) Any grants or other assistance from the organization during the federal tax year of the organization which benefit a director, officer or board member of the organization, a person who has substantial influence over the organization or a family member of such director, officer, board member or person;

(d) Business transactions during the federal tax year of the organization between the organization and a director, officer or board member of the organization, a person who has substantial influence over the organization or a family member of such director, officer, board member or person which exceed, in the aggregate, \$100,000, or a single business transaction that exceeds \$10,000; and

(e) All related party transactions including, without limitation, the receipt of interest, royalties, annuities or rent, the sale or purchase of assets or services, the sharing of facilities, equipment or employees, and the transfer of cash or property.

Sec. 3. NRS 435.140 is hereby amended to read as follows:

435.140 As used in NRS 435.130 to 435.310, inclusive, and section 2 of this act, unless the context otherwise requires, the words and terms defined in NRS 435.172, 435.176 and 435.179 have the meanings ascribed to them in those sections.

Sec. 4. Chapter 615 of NRS is hereby amended by adding thereto a new section to read as follows:

~~Before participating in a training or rehabilitative program of a rehabilitation facility or workshop established by the Department pursuant to this chapter and annually thereafter as a condition of participation, an organization must be approved by:~~

1. Be on file and in good standing with the Secretary of State as a bona fide nonprofit organization pursuant to this section. The organization must file an application for approval with the Office of the Secretary of State on a form prescribed by the Secretary of State. The application must:

~~(a) Include a copy of the organization's federal income tax return for the most recent year and such other information as is required by the Secretary of State to make the determination required by subsection 2; and~~

~~(b) Be accompanied by an application fee established by the Secretary of State which is estimated to cover the cost of making the determination required by subsection 2.~~

~~2. If the Secretary of State determines that the organization:~~

~~(a) Operates exclusively for public benefit;~~

~~(b) Is not owned or controlled by a natural person or a for-profit entity and operated for the benefit of the person or entity; and~~

~~(c) Is in compliance with the laws of this State concerning nonprofit organizations;~~

~~the Secretary of State shall approve the applicant as a bona fide nonprofit organization.] title 7 of NRS;~~

2. Submit to the Department an annual audit of the financial statements of the organization that is conducted by an independent certified public accountant; and

3. Submit to the Department the most recent federal tax return of the organization, including, without limitation, Form 990, or its successor form, and the Schedule L and Schedule R of such return, or the successor forms of such schedules, which include an itemization of:

(a) Any transaction during the federal tax year of the organization in which an economic benefit is provided by the organization to a director, officer or board member of the organization, or any other person who has substantial influence over the organization, and in which the value of the economic benefit provided by the organization exceeds the value of the consideration received by the organization;

(b) Any loans to or from the organization which are received by or from a director, officer or board member of the organization, a person who has substantial influence over the organization or a family member of such director, officer, board member or person and which remain outstanding at the end of the federal tax year of the organization;

(c) Any grants or other assistance from the organization during the federal tax year of the organization which benefit a director, officer or board member of the organization, a person who has substantial influence over the organization or a family member of such director, officer, board member or person;

(d) Business transactions during the federal tax year of the organization between the organization and a director, officer or board member of the organization, a person who has substantial influence over the organization or a family member of such director, officer, board member or person which exceed, in the aggregate, \$100,000, or a single business transaction that exceeds \$10,000; and

(e) All related party transactions including, without limitation, the receipt of interest, royalties, annuities or rent, the sale or purchase of assets or services, the sharing of facilities, equipment or employees, and the transfer of cash or property.

Sec. 5. Notwithstanding the provisions of sections 2 and 4 of this act, a nonprofit organization required to ~~be approved by the Secretary of State pursuant to~~ comply with section 2 or 4 of this act ~~as a bona fide nonprofit organization that is participating~~ to participate in a program pursuant to NRS 435.130 to 435.310, inclusive, or chapter 615 of NRS, respectively, may continue to participate in those programs until January 1, 2012. Such a nonprofit organization must ~~be approved by the Secretary of State as a bona fide nonprofit organization~~ comply with such

1 provisions on or before January 1, 2012. If such a nonprofit organization is not
2 ~~approved by the Secretary of State pursuant to~~ in compliance with the
3 appropriate section on or before January 1, 2012, it may not continue to participate
4 in the program after that date.

5 **Sec. 6.** This act becomes effective on July 1, 2011.