

Amendment No. CA1

Conference Committee Amendment to (BDR 38-782)
Assembly Bill No. 362 Second Reprint

Proposed by: Conference Committee

Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

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.

RBL



Date: 5/30/2011

A.B. No. 362—Revises provisions governing education. (BDR 38-782)



ASSEMBLY BILL NO. 362—ASSEMBLYMEN DIAZ, CARRILLO, FRIERSON, DONDERO LOOP, SHERWOOD; AIZLEY, ATKINSON, BENITEZ-THOMPSON, BOBZIEN, BUSTAMANTE ADAMS, DALY, FLORES, HORNE, KIRKPATRICK, NEAL, OHRENSCHALL, PIERCE, SEGERBLOM AND SMITH

MARCH 21, 2011

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions governing ~~education;~~ certain programs that supervise children. (BDR 38-782)

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

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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 education; establishing the Interim Task Force on Out-of-School-Time Programs; requiring the Task Force to prescribe standards for out-of-school-time programs and to make certain recommendations relating to out-of-school-time programs; exempting ~~from~~ out-of-school-time ~~program~~ programs, out-of-school recreation programs and seasonal or temporary recreation programs from licensure and regulation as ~~a~~ child care ~~facility;~~ facilities; requiring certain out-of-school recreation programs to obtain a permit; establishing certain requirements for the operation of an out-of-school recreation program; authorizing an out-of-school-time program to report certain information to the Bureau of Services for Child Care of the Division of Child and Family Services of the Department of Health and Human Services; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires a child care facility to be licensed by an agency created by a city or county for the licensing of child care facilities or by the Bureau of Services for Child Care of the Division of Child and Family Services of the Department of Health and Human Services. (NRS 432A.131, 432A.141) Section 13 of this bill removes the licensure requirements for out-of-school-time programs, out-of-school recreation programs and seasonal or temporary recreation programs by excluding those terms from the definition of "child care facility."

Section 2 of this bill defines an "out-of-school-time program" as a program that operates for 10 or more hours per week, is offered on a continuing basis, provides supervision of children who are of school age and provides regularly scheduled, structured and supervised activities where learning opportunities take place during times when a child is not in school. ~~Section 5 of this bill exempts an out-of-school-time program from the licensing requirements~~

for and regulation as a child care facility by excluding an out-of-school-time program from the definition of a "child care facility." Sections 6-8 of this bill ensure that the existing definition of "child care facility" is not changed for certain other purposes.] Section 4 of this bill defines an "out-of-school recreation program" which is similar to an out-of-school-time program, but which is operated or sponsored by a local government in a facility which is owned, operated or leased by the local government. Section 5 of the bill defines "seasonal or temporary recreation programs" which include certain programs offered to children for a limited time or duration.

In lieu of the requirements for licensure as a child care facility, sections 6-11 of this bill provide specific requirements for out-of-school recreation programs. Section 6 requires a local government to obtain a permit to operate an out-of-school recreation program. To obtain a permit, the local government must complete an application, pay a fee and meet certain requirements. Section 7 requires a local government that operates an out-of-school recreation program to comply with certain health and safety standards and to comply with other requirements relating to the safety of participants. Section 8 provides certain requirements for the staff of an out-of-school recreation program. Section 8 also limits the number of participants in such a program and establishes certain components that must be included in the program. Section 9 requires an out-of-school recreation program to maintain certain records about participants in the program. Section 10 requires a local government that operates an out-of-school recreation program to provide copies of certain inspections of the facility where the program is conducted according to a schedule established by the Bureau. If the local government submits such records, section 10 prohibits the Bureau from conducting any additional on-site inspections of the facility. Section 11 authorizes the Bureau to adopt any regulations necessary to provide for the permits to operate an out-of-school recreation program.

Section ~~14~~ 17 of this bill establishes the Interim Task Force on Out-of-School-Time Programs and requires the Task Force to prescribe standards for out-of-school-time programs and make certain other recommendations concerning out-of-school-time programs. Section ~~14~~ 17 also requires the Task Force to submit a report of its recommendations to the Governor and to the Director of the Legislative Counsel Bureau for transmittal to the 77th Session of the Nevada Legislature.

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

Section 1. Chapter 432A of NRS is hereby amended by adding thereto the provisions set forth as sections ~~1.2 and 3.1~~ 1.5 to 1.11, inclusive, of this act.

Sec. 1.5. "Local government" means any political subdivision of this State, including, without limitation, a city, county, town, school district or other district.

Sec. 2. "Out-of-school-time program" means a program, other than an out-of-school recreation program, that operates for 10 or more hours per week, is offered on a continuing basis, provides supervision of children who are of the age to attend school from kindergarten through 12th grade and provides regularly scheduled, structured and supervised activities where learning opportunities take place:

1. Before or after school;
2. On the weekend;
3. During the summer or other seasonal breaks in the school calendar; or
4. Between sessions for children who attend a school which operates on a year-round calendar.

Sec. 3. (Deleted by amendment.)

1 Sec. 4. 1. "Out-of-school recreation program" means a recreation
2 program operated or sponsored by a local government in a facility which is
3 owned, operated or leased by the local government and which provides
4 enrichment activities to children of school age;

5 (a) Before or after school;

6 (b) During the summer or other seasonal breaks in the school calendar; or

7 (c) Between sessions for children who attend a school which operates on a
8 year-round calendar.

9 2. The term does not include a seasonal or temporary recreation program.

10 Sec. 5. "Seasonal or temporary recreation program" means a recreation
11 program that is offered to children for a limited time or duration and may
12 include, without limitation:

13 1. A special sports event, which may include, without limitation, a camp,
14 clinic, demonstration or workshop which focuses on a particular sport;

15 2. A therapeutic program for children with disabilities, which may include,
16 without limitation, social activities, outings and other inclusion activities;

17 3. An athletic training program, which may include, without limitation, a
18 baseball or other sports league and exercise instruction; and

19 4. Other special interest programs, which may include, without limitation,
20 an arts and crafts workshop, a theater camp and dance competition.

21 Sec. 6. 1. To operate an out-of-school recreation program, a local
22 government must obtain a permit. The local government may apply for the
23 issuance or renewal of a permit by submitting an application on a form
24 prescribed by the Bureau. The Bureau shall issue a permit to operate an out-of-
25 school recreation program to the local government upon payment of the fee
26 prescribed in subsection 2 and upon satisfaction that the program complies with
27 the requirements set forth in sections 1.5 to 11, inclusive, of this act, and any
28 regulations adopted pursuant thereto.

29 2. The Bureau shall charge a fee for a permit to operate an out-of-school
30 recreation program based upon the number of sites operated by the out-of-school
31 recreation program. If the out-of-school recreation program has:

32 (a) At least 1 but not more than 5 sites, the Bureau shall charge a fee of
33 \$100.

34 (b) At least 6 but not more than 20 sites, the Bureau shall charge a fee of
35 \$250.

36 (c) At least 21 but not more than 40 sites, the Bureau shall charge a fee of
37 \$500.

38 (d) At least 41 but not more than 60 sites, the Bureau shall charge a fee of
39 \$750.

40 (e) At least 61 but not more than 80 sites, the Bureau shall charge a fee of
41 \$1,000.

42 (f) At least 81 sites, the Bureau shall charge a fee of \$1,250.

43 3. A permit issued pursuant to this section is nontransferable and is valid:

44 (a) For 3 years from the date of issuance; and

45 (b) Only as to a site specifically identified on the permit.

46 Sec. 7. A local government that operates an out-of-school recreation
47 program shall ensure that each site:

48 1. Complies with applicable laws and regulations concerning safety
49 standards;

50 2. Complies with applicable laws and regulations concerning health
51 standards;

1 3. Has a complete first-aid kit accessible on-site that complies with the
2 requirements of the Occupational Safety and Health Administration of the United
3 States Department of Labor;

4 4. Has an emergency exit plan posted on-site in a conspicuous place; and

5 5. Has not less than two staff members on-site and available during the
6 hours of operation who are certified and receive annual training in the use and
7 administration of first aid, including, without limitation, cardiopulmonary
8 resuscitation.

9 Sec. 8. A local government that operates an out-of-school recreation
10 program shall:

11 1. Complete, for each member of the staff of the out-of-school recreation
12 program:

13 (a) A background and personal history check; and

14 (b) A child abuse and neglect screening through the Statewide Central
15 Registry for the Collection of Information Concerning the Abuse or Neglect of a
16 Child established by NRS 432.100 to determine whether there has been a
17 substantiated report of child abuse or neglect made against the staff member.

18 2. Ensure that each member of the staff of the out-of-school recreation
19 program:

20 (a) Meets the minimum requirements that have been established for the
21 position; and

22 (b) Receives an orientation and training concerning the abuse and neglect of
23 children.

24 3. Ensure that the number of participants in the out-of-school recreation
25 program:

26 (a) Does not exceed a ratio of one person supervising every 20 participants;
27 and

28 (b) Will not cause the facility where the program is operated to exceed the
29 maximum occupancy as determined by the State Fire Marshal or the local
30 governmental entity that has the authority to determine the maximum occupancy
31 of the facility.

32 4. Ensure that the out-of-school recreation program includes, without
33 limitation:

34 (a) An inclusion component for participants who qualify under the
35 Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq.;

36 (b) Structured activities, including, without limitation, arts and crafts, games
37 and sports;

38 (c) Nonstructured activities, which may include, without limitation, free time
39 for playing;

40 (d) Regular restroom breaks; and

41 (e) Nutrition breaks.

42 Sec. 9. 1. The out-of-school recreation program shall maintain records
43 containing pertinent information regarding each participant in the program.
44 Such information must include, without limitation:

45 (a) The full legal name of the child and the preferred name of the child;

46 (b) The date of birth of the child;

47 (c) The current address where the child resides;

48 (d) The name, address and telephone number of each parent or legal
49 guardian of the child and any special instructions for contacting the parent or
50 legal guardian during the hours when the child participates in the program;

51 (e) Information concerning the health of the child, including, without
52 limitation, any special needs of the child; and

(f) Any other information requested by the Bureau.

2. The distribution of any information maintained pursuant to this section is subject to the limitations set forth in NRS 239.0105.

Sec. 10. 1. A local government that operates an out-of-school recreation program shall provide a copy of each report of an inspection conducted by a governmental entity that is authorized to conduct an inspection of the facility where the program is operated, including, without limitation, the report of an inspection by a local building department, a fire department, the State Fire Marshal or a district board of health.

2. The Bureau shall establish a schedule for the submission of such reports which requires submission of a report of an on-site inspection once every 2 years and shall provide a checklist to the local government which identifies the reports that must be submitted to the Bureau.

3. The Bureau shall not require any additional inspections of the facility of an out-of-school recreation program which complies with the provisions of this section.

Sec. 11. The Bureau shall adopt any regulations necessary to carry out the provisions of sections 1.5 to 11, inclusive, of this act.

~~[Sec. 4.]~~ Sec. 12. NRS 432A.020 is hereby amended to read as follows:

432A.020 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 432A.0205 to 432A.028, inclusive, ~~and [section]~~ sections 1.5, 2, 4 and 5 of this act have the meanings ascribed to them in those sections.

~~[Sec. 5.]~~ Sec. 13. NRS 432A.024 is hereby amended to read as follows:

432A.024 1. "Child care facility" means:

(a) An establishment operated and maintained for the purpose of furnishing care on a temporary or permanent basis, during the day or overnight, to five or more children under 18 years of age, if compensation is received for the care of any of those children;

(b) An on-site child care facility;

(c) A child care institution; or

(d) An outdoor youth program.

2. "Child care facility" does not include:

(a) The home of a natural parent or guardian, foster home as defined in NRS 424.014 or maternity home;

(b) A home in which the only children received, cared for and maintained are related within the third degree of consanguinity or affinity by blood, adoption or marriage to the person operating the facility; ~~or~~

(c) A home in which a person provides care for the children of a friend or neighbor for not more than 4 weeks if the person who provides the care does not regularly engage in that activity ~~or~~; ~~or~~

(d) A location at which an out-of-school-time program is operated ~~or~~;

(e) A seasonal or temporary recreation program; or

(f) An out-of-school recreation program.

~~[Sec. 6.]~~ Sec. 14. NRS 202.2483 is hereby amended to read as follows:

202.2483 1. Except as otherwise provided in subsection 3, smoking tobacco in any form is prohibited within indoor places of employment including, but not limited to, the following:

(a) Child care facilities;

(b) Movie theatres;

(c) Video arcades;

(d) Government buildings and public places;

(e) Malls and retail establishments;
(f) All areas of grocery stores; and
(g) All indoor areas within restaurants.

2. Without exception, smoking tobacco in any form is prohibited within school buildings and on school property.

3. Smoking tobacco is not prohibited in:

(a) Areas within casinos where loitering by minors is already prohibited by state law pursuant to NRS 463.350;

(b) Stand-alone bars, taverns and saloons;

(c) Strip clubs or brothels;

(d) Retail tobacco stores;

(e) Private residences, including private residences which may serve as an office workplace, except if used as a child care, an adult day care or a health care facility; and

(f) The area of a convention facility in which a meeting or trade show is being held, during the time the meeting or trade show is occurring, if the meeting or trade show:

(1) Is not open to the public;

(2) Is being produced or organized by a business relating to tobacco or a professional association for convenience stores; and

(3) Involves the display of tobacco products.

4. In areas or establishments where smoking is not prohibited by this section, nothing in state law shall be construed to prohibit the owners of said establishments from voluntarily creating nonsmoking sections or designating the entire establishment as smoke free.

5. Nothing in state law shall be construed to restrict local control or otherwise prohibit a county, city or town from adopting and enforcing local tobacco control measures that meet or exceed the minimum applicable standards set forth in this section.

6. "No Smoking" signs or the international "No Smoking" symbol shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this section. Each public place and place of employment where smoking is prohibited shall post, at every entrance, a conspicuous sign clearly stating that smoking is prohibited. All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited.

7. Health authorities, police officers of cities or towns, sheriffs and their deputies shall, within their respective jurisdictions, enforce the provisions of this section and shall issue citations for violations of this section pursuant to NRS 202.2492 and 202.2495.

8. No person or employer shall retaliate against an employee, applicant or customer for exercising any rights afforded by, or attempts to prosecute a violation of, this section.

9. For the purposes of this section, the following terms have the following definitions:

(a) "Casino" means an entity that contains a building or large room devoted to gambling games or wagering on a variety of events. A casino must possess a nonrestricted gaming license as described in NRS 463.0177 and typically uses the word 'casino' as part of its proper name.

(b) "Child care facility" has the meaning ascribed to it in NRS ~~432A.024~~ **441A.030**.

(c) "Completely enclosed area" means an area that is enclosed on all sides by any combination of solid walls, windows or doors that extend from the floor to the ceiling.

(d) "Government building" means any building or office space owned or occupied by:

(1) Any component of the Nevada System of Higher Education and used for any purpose related to the System;

(2) The State of Nevada and used for any public purpose; or

(3) Any county, city, school district or other political subdivision of the State and used for any public purpose.

(e) "Health authority" has the meaning ascribed to it in NRS 202.2485.

(f) "Incidental food service or sales" means the service of prepackaged food items including, but not limited to, peanuts, popcorn, chips, pretzels or any other incidental food items that are exempt from food licensing requirements pursuant to subsection 2 of NRS 446.870.

(g) "Place of employment" means any enclosed area under the control of a public or private employer which employees frequent during the course of employment including, but not limited to, work areas, restrooms, hallways, employee lounges, cafeterias, conference and meeting rooms, lobbies and reception areas.

(h) "Public places" means any enclosed areas to which the public is invited or in which the public is permitted.

(i) "Restaurant" means a business which gives or offers for sale food, with or without alcoholic beverages, to the public, guests or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere.

(j) "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

(k) "School building" means all buildings on the grounds of any public school described in NRS 388.020 and any private school as defined in NRS 394.103.

(l) "School property" means the grounds of any public school described in NRS 388.020 and any private school as defined in NRS 394.103.

(m) "Stand-alone bar, tavern or saloon" means an establishment devoted primarily to the sale of alcoholic beverages to be consumed on the premises, in which food service is incidental to its operation, and provided that smoke from such establishments does not infiltrate into areas where smoking is prohibited under the provisions of this section. In addition, a stand-alone bar, tavern or saloon must be housed in either:

(1) A physically independent building that does not share a common entryway or indoor area with a restaurant, public place or any other indoor workplaces where smoking is prohibited by this section; or

(2) A completely enclosed area of a larger structure, such as a strip mall or an airport, provided that indoor windows must remain shut at all times and doors must remain closed when not actively in use.

(n) "Video arcade" has the meaning ascribed to it in paragraph (d) of subsection 3 of NRS 453.3345.

10. Any statute or regulation inconsistent with this section is null and void.

11. The provisions of this section are severable. If any provision of this section or the application thereof is declared by a court of competent jurisdiction to be invalid or unconstitutional, such declaration shall not affect the validity of the

section as a whole or any provision thereof other than the part declared to be invalid or unconstitutional.

~~[Sec. 7.]~~ **Sec. 15.** NRS 441A.030 is hereby amended to read as follows:

441A.030 1. "Child care facility" ~~has the meaning ascribed to it in NRS 432A.024~~ means:

(a) *An establishment operated and maintained for the purpose of furnishing care on a temporary or permanent basis, during the day or overnight, to five or more children under 18 years of age, if compensation is received for the care of any of those children;*

(b) *An on-site child care facility as defined in NRS 432A.0275;*

(c) *A child care institution as defined in NRS 432A.0245; or*

(d) *An outdoor youth program as defined in NRS 432A.028.*

2. "Child care facility" does not include:

(a) *The home of a natural parent or guardian, foster home as defined in NRS 424.014 or maternity home;*

(b) *A home in which the only children received, cared for and maintained are related within the third degree of consanguinity or affinity by blood, adoption or marriage to the person operating the facility; or*

(c) *A home in which a person provides care for the children of a friend or neighbor for not more than 4 weeks if the person who provides the care does not regularly engage in that activity.*

~~[Sec. 8.]~~ **Sec. 16.** NRS 444.065 is hereby amended to read as follows:

444.065 1. Except as otherwise provided in subsection 2, as used in NRS 444.065 to 444.120, inclusive, "public swimming pool" means any structure containing an artificial body of water that is intended to be used collectively by persons for swimming or bathing, regardless of whether a fee is charged for its use.

2. The term does not include any such structure at:

(a) A private residence if the structure is controlled by the owner or other authorized occupant of the residence and the use of the structure is limited to members of the family of the owner or authorized occupant of the residence or invited guests of the owner or authorized occupant of the residence.

(b) A family foster home as defined in NRS 424.013.

(c) A child care facility, as defined in NRS ~~[432A.024]~~ 441A.030, furnishing care to 12 children or less.

(d) Any other residence or facility as determined by the State Board of Health.

(e) Any location if the structure is a privately owned pool used by members of a private club or invited guests of the members.

~~[Sec. 9.]~~ **Sec. 17.** 1. There is hereby created the Interim Task Force on Out-of-School-Time Programs. The Task Force is composed of the following 12 members:

(a) A representative of the Bureau of Services for Child Care of the Division of Child and Family Services of the Department of Health and Human Services, appointed by the Administrator of the Division;

(b) A representative of local governmental agencies that provide public services for children, appointed by the Nevada Association of Counties or its successor organization;

(c) A representative of the Nevada System of Higher Education, appointed by the Board of Regents of the University of Nevada;

(d) A representative of the public schools in this State, appointed by the State Board of Education;

(e) A representative of a national nonprofit organization that provides services to children, appointed by the Legislative Commission;

(f) A representative of a nonprofit organization that is located in Nevada and provides services to children, appointed by the Legislative Commission;

(g) A representative of a nonprofit organization that is located in Nevada and provides support to an out-of-school-time program, appointed by the Legislative Commission;

(h) A representative of a private, for profit organization that is located in Nevada and provides services to children, appointed by the Legislative Commission;

(i) A representative of an agency that provides resources and referrals to out-of-school-time programs, appointed by the Legislative Commission;

(j) A representative of a faith-based organization that provides services to children, appointed by the Legislative Commission; and

(k) Two members who are parents of children in this State, appointed by the Legislative Commission.

2. The Administrator of the Division of Child and Family Services of the Department of Health and Human Services, the Nevada Association of Counties, the Board of Regents of the University of Nevada, the State Board of Education and the Legislative Commission shall appoint the members of the Task Force as soon as practicable after July 1, 2011. A vacancy on the Task Force must be filled in the same manner as the original appointment.

3. The Task Force shall meet on or before October 1, 2011, and at its first meeting the members of the Task Force shall elect a Chair from among the members. A majority of the members of the Task Force constitutes a quorum for the transaction of business, and a majority of those members present at any meeting is sufficient for any official action taken by the Task Force.

4. The Task Force shall meet at least once every 3 months and at the call of the Chair or a majority of the members of the Task Force.

5. Each member of the Task Force serves without compensation. Each member of the Task Force who is an officer or employee of the State or a local government must be relieved from his or her duties without loss of his or her regular compensation to prepare for and attend meetings of the Task Force and perform any work necessary to carry out the duties of the Task Force in the most timely manner practicable. A state agency or local government shall not require an officer or employee who is a member of the Task Force to make up the time the member is absent from work to carry out his or her duties as a member and shall not require the member to take annual vacation or compensatory time for the absence.

6. The Bureau of Services for Child Care of the Division of Child and Family Services of the Department of Health and Human Services shall provide administrative support to the Task Force and may accept assistance from a nonprofit organization in providing such support.

7. The Task Force shall:

(a) Prescribe standards for out-of-school-time programs;

(b) Make recommendations concerning out-of-school-time programs and the implementation of the standards prescribed by the Task Force, including, without limitation, recommendations for a pilot program for the standards; and

(c) Make recommendations concerning whether out-of-school-time programs should be licensed and regulated by the Bureau of Services for Child Care.

8. The Task Force shall, on or before June 30, 2012, submit a report to the Governor and to the Director of the Legislative Counsel Bureau for transmittal to the 77th Session of the Nevada Legislature. The report must include, without limitation:

1 (a) A full and detailed description of the standards for out-of-school-time
2 programs prescribed by the Task Force;

3 (b) Recommendations concerning the establishment of a pilot program for the
4 standards prescribed by the Task Force;

5 (c) Recommendations concerning whether out-of-school-time programs should
6 be licensed and regulated by the Bureau of Services for Child Care; and

7 (d) Any other recommendations for legislation relating to out-of-school-time
8 programs.

9 9. An out-of-school-time program may register with the Bureau of Services
10 for Child Care or other entity designated by the Bureau. By registering with the
11 Bureau, the out-of-school-time program agrees to comply with the standards
12 established by the Task Force and to participate in any pilot project established
13 pursuant to subsection 8.

14 10. As used in this section, “out-of-school-time program” has the meaning
15 ascribed to it in section 2 of this act.

16 ~~[Sec. 10.]~~ **Sec. 18.** 1. This act becomes effective on July 1, 2011.

17 2. Section ~~19~~ **17** of this act expires by limitation on June 30, 2013.