

Amendment No. 914

Assembly Amendment to Senate Bill No. 56 Second Reprint	(BDR 15-479)
Proposed by: Assemblyman Gardner	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.

BAW



Date: 5/21/2015

S.B. No. 56—Revises provisions governing graffiti. (BDR 15-479)



SENATE BILL NO. 56—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE CITY OF RENO)

PREFILED DECEMBER 20, 2014

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing graffiti. (BDR 15-479)

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 graffiti; revising the definition of “graffiti”; expanding the list of items that are considered graffiti implements which are unlawful to carry in certain places; clarifying that a governmental entity may bring a civil action for damages to public property; authorizing the governing body of a city to adopt ordinances to address covering and removing certain graffiti on residential and nonresidential property; revising provisions governing money in a city’s graffiti reward and abatement fund; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law makes it a crime to place graffiti on or otherwise deface the public or private property, real or personal, of another, without the permission of the owner. (NRS 206.330) **Sections 5, 8.2 and 16** of this bill revise the definition of “graffiti” to: (1) clarify that estrays and livestock are included within the scope of property to which the offense of graffiti applies; and (2) exclude certain items which are affixed to property.

Existing law makes it a misdemeanor for a person to carry on his or her person, in certain public places, a graffiti implement with the intent to vandalize, place graffiti on or deface property. (NRS 206.335) **Section 7** of this bill revises the definition of “graffiti implement” to include any item that may be used to etch or deface property.

Existing law requires a person who is ordered to pay restitution for placing graffiti on public property to pay the restitution to the governmental entity that has incurred expenses for abating the graffiti. (NRS 206.345) **Section 8** of this bill authorizes the payment of restitution to a governmental entity for future expenses to abate the graffiti. Existing law also authorizes the owner of public or private property that has been damaged by graffiti to bring a civil action against the person who placed the graffiti and recover damages in an amount up to three times the amount of any loss in value to property and up to three times the cost of restoring the property plus attorney’s fees and costs. (NRS 206.345) **Section 8** clarifies that a governmental entity may also bring a civil action to recover such damages from a person who placed graffiti on property if the governmental entity owns or is otherwise responsible for the damaged property.

Existing law authorizes a board of county commissioners to provide by ordinance for the covering or removal of certain graffiti on certain types of property. (NRS 244.36935) **Sections 8.4 and 8.6** of this bill revise provisions governing the covering or removal of certain graffiti that is placed on residential property. **Section 14** of this bill authorizes the governing body of

a city to similarly provide by ordinance for the covering or removal of certain graffiti on residential property.

Existing law authorizes a board of county commissioners to provide by ordinance procedures pursuant to which the board may order an owner of nonresidential property to cover or remove certain graffiti on the owner's property. (NRS 244.3694) **Section 8.8** of this bill revises provisions governing the covering or removal of graffiti that is placed on nonresidential property. **Section 15** of this bill similarly authorizes the governing body of a city to provide by ordinance procedures pursuant to which the governing body may order an owner of nonresidential property to cover or remove certain graffiti on the owner's property.

Existing law requires the governing body of each city to create a fund to pay, upon approval by the governing body of the city, a reward to certain persons who provide information which results in the identification, apprehension and conviction of a person who violated a city ordinance prohibiting graffiti or other defacement of property. (NRS 268.4085) **Section 18** of this bill expands the authorized use of money in the fund: (1) to purchase supplies or pay for other graffiti abatement costs incurred by the city; (2) to be paid for information which results in the identification, apprehension or conviction of a person who is alleged to have violated a city ordinance that prohibits graffiti or defacement of property; and (3) to be paid upon approval of the city manager, the authorized designee of the city manager or, if the city does not have a city manager, the governing body of the city.

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

Section 1. Chapter 206 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 206.005 and sections 3 and 4 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *"Estray" means any livestock running at large upon public or private lands in this State whose owner is unknown in the section where the animal is found.*

Sec. 4. *"Livestock" has the meaning ascribed to it in NRS 205.219.*

Sec. 5. NRS 206.005 is hereby amended to read as follows:

206.005 ~~{As used in this chapter, "graffiti"}~~

1. *"Graffiti" means any unauthorized inscription, word, figure or design that is marked, etched, scratched, drawn, painted on or affixed to the public or private property, real or personal, of another, including, without limitation, an estray or one or more head of livestock, which defaces the property.*

2. *The term does not include any item affixed to property which may be removed:*

(a) By hand without defacing the property;

(b) Through the use of a chemical or cleaning solvent commonly used for removing an adhesive substance without defacing the property; or

(c) Without the use of a decal remover tool.

3. *As used in this section, "decal remover tool" means any device using power or heat to remove an adhesive substance.*

Sec. 6. NRS 206.150 is hereby amended to read as follows:

206.150 1. Except as otherwise provided in subsections 2 and 3, any person who willfully and maliciously kills, maims or disfigures any animal belonging to another, or exposes any poison or noxious substance with intent that it should be taken by the animal is guilty of a category D felony and shall be punished as provided in NRS 193.130, and may be further punished by a fine of not more than \$10,000.

2. Except as otherwise provided in NRS 205.220, a person who willfully and maliciously kills an estray or one or more head of livestock, without the authority to do so, is guilty of a category C felony and shall be punished as provided in NRS 193.130.

3. The provisions of subsection 1 do not apply to any person who kills a dog pursuant to NRS 575.020.

~~4. As used in this section:~~

~~(a) "Estray" means any livestock running at large upon public or private lands in this state, whose owner is unknown in the section where the animal is found.~~

~~(b) "Livestock" has the meaning ascribed to it in NRS 205.249.~~

Sec. 7. NRS 206.335 is hereby amended to read as follows:

206.335 1. Any person who carries on his or her person a graffiti implement with the intent to vandalize, place graffiti on or otherwise deface public or private property, real or personal, of another:

(a) While on or under any overpass or bridge or in any flood channel;

(b) At any public facility, community center, park, playground, swimming pool, transportation facility, beach or recreational area whereon a sign is posted in a location reasonably expected to be viewed by the public which states that it is a misdemeanor to possess a graffiti implement at that public location without valid authorization; or

(c) In a public transportation vehicle wherein a sign is posted that is easily viewed by passengers which states that it is a misdemeanor to possess a graffiti implement in the vehicle without valid authorization,

is guilty of a misdemeanor unless the person has first received valid authorization from the governmental entity which has jurisdiction over the public area or other person who is designated to provide such authorization.

2. As used in this section:

(a) "Broad-tipped indelible marker" means any felt-tipped marker or similar implement which contains a fluid that is not soluble in water and which has a flat or angled writing surface of a width of one-half inch or greater.

(b) "Graffiti implement" means any broad-tipped indelible marker, ~~to~~ aerosol paint container, *carbide-tipped instrument* or other item that may be used to ~~propel~~:

(1) *Propel* or apply ~~fluid~~ *any substance* that is not soluble in water ~~to~~;
or

(2) *Etch or deface property.*

(c) "Public transportation vehicle" means a bus, train or other vehicle or instrumentality used to transport persons from a transportation facility to another location.

(d) "Transportation facility" means an airport, marina, bus terminal, train station, bus stop or other facility where a person may go to obtain transportation.

Sec. 8. NRS 206.345 is hereby amended to read as follows:

206.345 1. A court may, in addition to any other fine or penalty imposed, order a person who places graffiti on or otherwise defaces public or private property in violation of NRS 206.125 or 206.330 to participate in counseling, and if the person is less than 18 years of age, order the parent or legal guardian of the person to attend or participate in counseling pursuant to NRS 62E.290.

2. If a court orders a person who violates the provisions of NRS 206.125 or 206.330 to pay restitution, the person shall pay the restitution to:

(a) The owner of the property which was affected by the violation; or

(b) If the violation involved the placing of graffiti on any public property, the governmental entity that incurred *or will incur* expenses for removing, covering or cleaning up the graffiti.

3. The owner of ~~public or private~~ *the* property that has been damaged by graffiti *or a governmental entity that is otherwise responsible for the property* may bring a civil action against the person who placed the graffiti on such property. The court may award to the *governmental entity or other* property owner damages in an amount up to three times the amount of any loss in value to the property and up to three times the cost of restoring the property plus attorney's fees and costs, which may be recovered from the offender or, if the offender is less than 18 years of age, from the parent or legal guardian of the offender.

Sec. 8.2. NRS 244.36915 is hereby amended to read as follows:

244.36915 1. "Graffiti" means any unauthorized inscription, word, figure or design that is marked, etched, scratched, drawn, ~~to~~ painted on *or affixed to* the public or private property, real or personal, of another, *including, without limitation, an estray or one or more head of livestock*, which defaces such property.

2. *The term does not include any item affixed to property which may be removed:*

(a) *By hand without defacing the property;*

(b) *Through the use of a chemical or cleaning solvent commonly used for removing an adhesive substance without defacing the property; or*

(c) *Without the use of a decal remover tool.*

3. *As used in this section:*

(a) *"Decal remover tool" means any device using power or heat to remove an adhesive substance.*

(b) *"Estray" has the meaning ascribed to it in section 3 of this act.*

(c) *"Livestock" has the meaning ascribed to it in NRS 205.219.*

Sec. 8.4. NRS 244.3692 is hereby amended to read as follows:

244.3692 "Residential property" means a parcel of land, including all structures thereon, that is ~~zoned for~~ *an owner-occupied* single-family ~~residential use~~ *residence*.

Sec. 8.6. NRS 244.36935 is hereby amended to read as follows:

244.36935 1. The board of county commissioners may adopt by ordinance procedures pursuant to which officers, employees or other designees of the county may cover or remove graffiti that is ~~to~~:

~~(a) Placed~~ *placed* on ~~the exterior of a fence or wall located on the perimeter of~~ residential property. ~~to~~; and

~~(b) Visible from a public right-of-way.~~

2. An ordinance adopted pursuant to subsection 1 must provide that:

(a) Officers, employees or other designees of the county shall not cover or remove the graffiti unless:

(1) The owner of the residential property consents to the covering or removal of the graffiti; or

(2) If the board of county commissioners or its designee is unable to contact the owner of the residential property to obtain the owner's consent, the board first provides the owner of the property with written notice that is:

(I) Sent by certified mail, return receipt requested; and

(II) Posted on the residential property on which the graffiti will be covered or from which the graffiti will be removed,

➤ at least 5 days before the officers, employees or other designees of the county cover or remove the graffiti.

(b) The county shall pay the cost of covering or removing the graffiti.

Sec. 8.8. NRS 244.3694 is hereby amended to read as follows:

244.3694 1. The board of county commissioners of a county may adopt by ordinance procedures pursuant to which the board or its designee may order an

owner of nonresidential property within the county to cover or remove graffiti that is ~~+~~

~~(a) Placed~~ placed on that nonresidential property ~~+~~ and

~~(b) Visible from a public right-of-way;~~

~~+~~ to protect the public health, safety and welfare of the residents of the county and to prevent blight upon the community.

2. An ordinance adopted pursuant to subsection 1 must:

(a) Contain procedures pursuant to which the owner of the property is:

(1) Sent notice, by certified mail, return receipt requested, of the existence on the owner's property of graffiti and the date by which the owner must cover or remove the graffiti; and

(2) Afforded an opportunity for a hearing and an appeal before the board or its designee.

(b) Provide that the date specified in the notice by which the owner must cover or remove the graffiti is tolled for the period during which the owner requests a hearing and receives a decision.

(c) Provide the manner in which the county will recover money expended for labor and materials used to cover or remove the graffiti if the owner fails to cover or remove the graffiti.

3. The board or its designee may direct the county to cover or remove the graffiti and may recover the amount expended by the county for labor and materials used to cover or remove the graffiti if:

(a) The owner has not requested a hearing within the time prescribed in the ordinance adopted pursuant to subsection 1 and has failed to cover or remove the graffiti within the period specified in the notice;

(b) After a hearing in which the owner did not prevail, the owner has not filed an appeal within the time prescribed in the ordinance adopted pursuant to subsection 1 and has failed to cover or remove the graffiti within the period specified in the order; or

(c) The board has denied the appeal of the owner and the owner has failed to cover or remove the graffiti within the period specified in the order.

4. In addition to any other reasonable means of recovering money expended by the county to cover or remove the graffiti, the board may:

(a) Provide that the cost of covering or removing the graffiti is a lien upon the nonresidential property on which the graffiti was covered or from which the graffiti was removed; or

(b) Make the cost of covering or removing the graffiti a special assessment against the nonresidential property on which the graffiti was covered or from which the graffiti was removed.

5. A lien authorized pursuant to paragraph (a) of subsection 4 must be perfected by:

(a) Mailing by certified mail a notice of the lien, separately prepared for each lot affected, addressed to the last known owner of the property at his or her last known address, as determined by the real property assessment roll in the county in which the nonresidential property is located; and

(b) Filing with the county recorder of the county in which the nonresidential property is located, a statement of the amount due and unpaid and describing the property subject to the lien.

6. A special assessment authorized pursuant to paragraph (b) of subsection 4 may be collected at the same time and in the same manner as ordinary county taxes are collected, and is subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary county taxes. All laws applicable to

the levy, collection and enforcement of county taxes are applicable to such a special assessment.

7. As used in this section, "nonresidential property" means all real property other than residential property. The term does not include real property owned by a governmental entity.

Sec. 9. Chapter 268 of NRS is hereby amended by adding thereto the provisions set forth as sections 10 to 15, inclusive, of this act.

Sec. 10. *As used in NRS 268.4075 to 268.4085, inclusive, and sections 10 to 15, inclusive, of this act, unless the context otherwise requires, the words and terms defined in NRS 268.4075 and sections 11, 12 and 13 of this act have the meanings ascribed to them in those sections.*

Sec. 11. *"Estray" has the meaning ascribed to it in section 3 of this act.*

Sec. 12. *"Livestock" has the meaning ascribed to it in NRS 205.219.*

Sec. 13. *"Residential property" means a parcel of land, including all structures thereon, that is an owner-occupied single-family residence.*

Sec. 14. 1. *The governing body of a city may adopt by ordinance procedures pursuant to which officers, employees or other designees of the city may cover or remove graffiti that is placed on residential property.*

2. *An ordinance adopted pursuant to subsection 1 must provide that:*

(a) *Officers, employees or other designees of the city may not cover or remove the graffiti unless:*

(1) *The owner of the residential property consents to the covering or removal of the graffiti; or*

(2) *If the governing body of the city or its designee is unable to contact the owner of the residential property to obtain the owner's consent, the governing body first provides the owner of the property with written notice that is:*

(I) *Sent by certified mail, return receipt requested; and*

(II) *Posted on the residential property on which the graffiti will be covered or from which the graffiti will be removed,*

at least 5 days before the officers, employees or other designees of the city cover or remove the graffiti.

(b) *The city shall pay the cost of covering or removing the graffiti.*

Sec. 15. 1. *The governing body of a city may adopt by ordinance procedures pursuant to which the governing body or its designee may order an owner of nonresidential property within the city to cover or remove graffiti that is placed on that nonresidential property to protect the public health, safety and welfare of the residents of the city and to prevent blight upon the community.*

2. *An ordinance adopted pursuant to subsection 1 must:*

(a) *Contain procedures pursuant to which the owner of the property is:*

(1) *Sent notice, by certified mail, return receipt requested, of the existence on the owner's property of graffiti and the date by which the owner must cover or remove the graffiti; and*

(2) *Afforded an opportunity for a hearing and an appeal before the governing body of the city or its designee.*

(b) *Provide that the date specified in the notice by which the owner must cover or remove the graffiti is tolled for the period during which the owner requests a hearing and receives a decision.*

(c) *Provide the manner in which the city will recover money expended for labor and materials used to cover or remove the graffiti if the owner fails to cover or remove the graffiti.*

3. *The governing body of the city or its designee may direct the city to cover or remove the graffiti and may recover the amount expended by the city for labor and materials used to cover or remove the graffiti if:*

(a) The owner has not requested a hearing within the time prescribed in the ordinance adopted pursuant to subsection 1 and has failed to cover or remove the graffiti within the period specified in the notice;

(b) After a hearing in which the owner did not prevail, the owner has not filed an appeal within the time prescribed in the ordinance adopted pursuant to subsection 1 and has failed to cover or remove the graffiti within the period specified in the order; or

(c) The governing body has denied the appeal of the owner and the owner has failed to cover or remove the graffiti within the period specified in the order.

~~4. In addition to any other reasonable means of recovering money expended by the city to cover or remove the graffiti, the governing body of the city may make the cost of covering or removing the graffiti a special assessment against the nonresidential property on which the graffiti was covered or from which the graffiti was removed.~~

~~5. A special assessment authorized pursuant to subsection 4 may be collected at the same time and in the same manner as ordinary county taxes are collected, and is subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary county taxes. All laws applicable to the levy, collection and enforcement of county taxes are applicable to such a special assessment.~~

~~6. As used in this section, "nonresidential property" means all real property other than residential property. The term does not include real property owned by a governmental entity.~~

Sec. 16. NRS 268.4075 is hereby amended to read as follows:

268.4075 ~~[As used in this section, NRS 268.408 and 268.4085, "graffiti"]~~

1. "Graffiti" means any unauthorized inscription, word, figure or design that is marked, etched, scratched, drawn, ~~for~~ painted on or affixed to the public or private property, real or personal, of another, *including, without limitation, an estray or one or more head of livestock*, which defaces such property.

2. The term does not include any item affixed to property which may be removed:

(a) By hand without defacing the property;

(b) Through the use of a chemical or cleaning solvent commonly used for removing an adhesive substance without defacing the property; or

(c) Without the use of a decal remover tool.

3. As used in this section, "decal remover tool" means any device using power or heat to remove an adhesive substance.

Sec. 17. NRS 268.408 is hereby amended to read as follows:

268.408 1. The governing body of a city shall remove or cover all evidence that graffiti has been placed on any real or personal property which it owns or otherwise controls within 15 days after it discovers the graffiti or as soon as practicable.

2. The governing body of a city may bring an action against a person responsible for placing graffiti on the property of the city to recover a civil penalty and damages ~~for the cost of removing or covering the graffiti placed on such property~~ pursuant to the provisions of NRS 206.345.

Sec. 18. NRS 268.4085 is hereby amended to read as follows:

268.4085 1. The governing body of each city shall create a graffiti reward and abatement fund. The money in the fund must be used *to purchase supplies or pay for other costs incurred by the city which are directly related to graffiti abatement* or to pay a reward to a person who, in response to the offer of a reward, provides information which results in the identification, apprehension ~~and~~ or

conviction of a person who *is alleged to have* violated *or who violates* a city ordinance that prohibits graffiti or other defacement of property.

2. When a defendant pleads or is found guilty or guilty but mentally ill of violating a city ordinance that prohibits graffiti or other defacement of property, the court shall include an administrative assessment of \$250 for each violation in addition to any other fine or penalty. The money collected must be paid by the clerk of the court to the city treasurer on or before the fifth day of each month for credit to the graffiti reward and abatement fund.

3. If sufficient money is available in the graffiti reward and abatement fund, a law enforcement agency for the city may offer a reward, not to exceed \$1,000, for information leading to the identification, apprehension ~~and~~ *or* conviction of a person who *is alleged to have violated or who* violates a city ordinance that prohibits graffiti or other defacement of property.

4. The *money to purchase supplies or pay for other costs incurred by the city which are directly related to graffiti abatement or to pay a* reward must be paid out of the graffiti reward and abatement fund upon approval of the *city manager, the authorized designee of the city manager or, if the city does not have a city manager, the* governing body of the city.

Sec. 19. Nothing in this act may be construed to limit the ability of a county or city to enforce any ordinance or regulation relating to the abatement of graffiti adopted before, on or after October 1, 2015.