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## Office of the Governor

June 12, 2017

The Honorable Barbara Cegavske  
Nevada Secretary of State  
101 North Carson Street  
Carson City, NV 89701

### **RE: Assembly Bill 259 of the 79<sup>th</sup> Legislative Session**

Dear Secretary of State Cegavske:

I am herewith forwarding to you, for filing within the constitutional time limit and without my approval, Assembly Bill 259 ("AB 259"), which is entitled:

AN ACT relating to criminal procedure; providing for the vacating of certain judgments of conviction and sealing of certain records relating to marijuana; authorizing a court to depart from prescribed minimum terms of imprisonment for the possession of controlled substances in certain circumstances and providing other matters properly relating thereto.

There is much to commend in AB 259. Individuals with prior convictions for possession of marijuana in amounts now legal in Nevada should be able to get their criminal records cleared expeditiously. However, AB 259 does more than create a new process for certain, limited marijuana offenses. It also adds other marijuana crimes to its reach, makes even more changes to Nevada's record-sealing law (law already changed substantially with at least two other bills this Legislative Session), and gives judges discretion to depart from statutory minimum prison sentences in almost all other drug-possession cases. As such, I cannot support AB 259.

First, AB 259 requires judges to seal records and vacate judgments for convictions involving possession of up to one ounce of marijuana. Until the 2016 passage of Ballot Question Two: Initiative to Regulate and Tax Marijuana, the first three convictions for possessing less than one ounce of marijuana for non-medical use resulted in a misdemeanor. The fourth conviction was a gross misdemeanor, and the fifth and subsequent convictions were category E felonies. Now, if purchased and used according to law, a person may legally possess up to one ounce of marijuana for recreational use. AB 259 would allow a person with convictions under prior law to have his or her criminal record vacated and sealed.

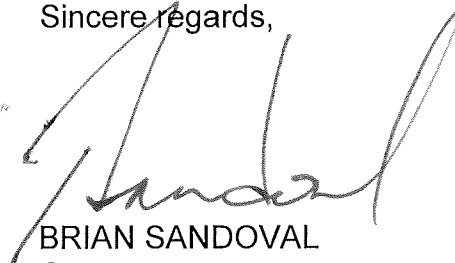
To the extent that there are individuals suffering under criminal records for conduct now legal in Nevada, those cases are best handled on a case-by-case basis. Senate Bill 125 and Assembly Bill 327, both of which I recently signed into law, substantially reformed the record-sealing process, and there is no reason why persons with prior marijuana convictions cannot take advantage of those new procedures. When records are sealed, the offense is legally deemed never to have occurred. (See NRS 179.285.) Given the new reforms to the record-sealing process, there is no need for a separate procedure for marijuana-related crimes.

Second, AB 259 would also allow a court to vacate and seal records related to any other offense involving marijuana if based on acts that became lawful as of January 1, 2017. The bill itself is unclear on what these "other offenses" may be. Presumably this provision would permit vacated judgments and record sealing for all marijuana conduct that is now lawful, potentially including marijuana trafficking and possession of large quantities of marijuana, since such activity is now allowed in Nevada, although limited and subject to significant regulation and licensing requirements.

Finally, AB 259 also gives judges discretion to depart from mandatory minimum prison sentences in other drug possession cases, except those involving date rape drugs. Although there is little doubt that Nevada's judges will soundly exercise their discretion in these cases, it would be better to tackle what problems may exist with statutory minimums in drug possession cases in a broad, uniform manner. Simply giving judges the statutory discretion to depart from otherwise mandatory statutory sentencing requirements is an incomplete solution, and one that opens the door for potential inequities depending on the preferences and practices of each individual judge.

For these reasons, I veto Assembly Bill 259 and return it without my signature or approval.

Sincere regards,



BRIAN SANDOVAL  
Governor

*Enclosure*

cc:    *The Honorable Mark Hutchison, President of the Senate (without enclosure)*  
      *The Honorable Jason Frierson, Speaker of the Assembly (without enclosure)*  
      *The Honorable Aaron Ford, Senate Majority Leader (without enclosure)*  
      *Claire J. Clift, Secretary of the Senate (without enclosure)*  
      *Susan Furlong, Chief Clerk of the Assembly (without enclosure)*  
      *Brenda Erdoes, Esq., Legislative Counsel (without enclosure)*