THE ONE HUNDRED AND SIXTEENTH DAY

CARSON CITY (Thursday), May 28, 2009

Assembly called to order at 11:28 a.m.

Madam Speaker presiding.

Roll called.

All present.

Prayer by the Chaplain, Pastor Albert Tilstra.

Our Father in Heaven, we pray for the members of this body, with their many responsibilities. Help them in their offices, in committees, and, above all, as they meet here in legislative session. May they never forget that what is said and done here is not done in a corner, but always for the people they represent and under Your watchful eye. May these, Your representatives, feel the weight of a good example, that all who come to this place may have a stronger faith in government of the people, by the people, for the people. May they so speak and act, that all who wait upon them may be inspired rather than disillusioned by what they see and hear and are asked to do. Make Yourself real to these men and women, that each may feel You sitting beside them, and hear Your voice, and win Your approval in all things. We ask this in Your Name.

AMEN.

Pledge of allegiance to the Flag.

Assemblyman Conklin moved that further reading of the Journal be dispensed with, and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

REPORTS OF COMMITTEES

Madam Speaker:

Your Committee on Health and Human Services, to which were referred Senate Bills Nos. 78, 382, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Health and Human Services, to which was referred Senate Bill No. 24, has had the same under consideration, and begs leave to report the same back with the recommendation: Rerefer to the Committee on Ways and Means.

DEBBIE SMITH, *Chair*

Madam Speaker:

Your Committee on Ways and Means, to which was referred Assembly Bill No. 561, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Ways and Means, to which was referred Senate Bill No. 403 has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Ways and Means, to which were rereferred Assembly Bills Nos. 214, 385 has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Ways and Means, to which were rereferred Senate Bills Nos. 7, 152, 293 has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MORSE ARBERRY JR., *Chair*

MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, May 22, 2009

To the Honorable the Assembly:

I have the honor to inform your honorable body that the Senate on this day concurred in the Assembly Amendment No. 879 to Senate Bill No. 394.

SHERRY L. RODRIGUEZ
Assistant Secretary of the Senate

SECOND READING AND AMENDMENT

Assembly Bill No. 214.

Bill read second time.

The following amendment was proposed by the Committee on Ways and Means:

Amendment No. 956.

AN ACT relating to public employees; including certain employees of the Department of Public Safety and certain park rangers and employees of the Division of State Parks of the State Department of Conservation and Natural Resources in the definition of "police officer" for various purposes relating to industrial injuries and occupational diseases; **making an appropriation;** and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for certain police officers suffering from certain occupational diseases to receive disability benefits. (NRS 617.135, 617.455, 617.457, 617.485, 617.487) Existing law defines "police officer" for the purpose of providing those disability benefits to include various law enforcement officers in this State. (NRS 617.135) Existing law also grants the powers of peace officers to certain park rangers and employees of the Division of State Parks of the State Department of Conservation and Natural Resources. (NRS 289.260) ~~[This]~~

Section 1 of this bill expands the definition of "police officer" to make certain employees of the Department of Public Safety and certain park rangers and division employees of the State Department of Conservation and Natural Resources eligible for the disability benefits provided to police officers.

Section 1.5 of this bill makes an appropriation to the Division of State Parks to provide for any physical examinations or blood tests required pursuant to this bill in the next biennium.

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

Section 1. NRS 617.135 is hereby amended to read as follows:

617.135 "Police officer" includes:

1. A sheriff, deputy sheriff, officer of a metropolitan police department or city policeman;

2. A chief, inspector, supervisor, commercial officer or trooper of the Nevada Highway Patrol Division of the Department of Public Safety;

3. A chief, investigator or agent of the Investigation Division of the Department of Public Safety;

4. ***A chief, supervisor, investigator or training officer of the Training Division of the Department of Public Safety;***

5. A chief or investigator of an office of the Department of Public Safety that conducts internal investigations of employees of the Department of Public Safety or investigates other issues relating to the professional responsibility of those employees;

6. A chief or investigator of the Department of Public Safety whose duties include, without limitation:

(a) The execution, administration or enforcement of the provisions of chapter 179A of NRS; and

(b) The provision of technology support services to the Director and the divisions of the Department of Public Safety;

7. An officer or investigator of the Section for the Control of Emissions From Vehicles and the Enforcement of Matters Related to the Use of Special Fuel of the Department of Motor Vehicles;

~~[5.]~~ ***8.*** An investigator of the Division of Compliance Enforcement of the Department of Motor Vehicles;

~~[6.]~~ ***9.*** A member of the police department of the Nevada System of Higher Education;

~~[7.]~~ ***10.*** A:

(a) Uniformed employee of; or

(b) Forensic specialist employed by,

➥ the Department of Corrections whose position requires regular and frequent contact with the offenders imprisoned and subjects the employee to recall in emergencies;

~~[8.]~~ ***11.*** A parole and probation officer of the Division of Parole and Probation of the Department of Public Safety;

~~[9.]~~ ***12.*** A forensic specialist or correctional officer employed by the Division of Mental Health and Developmental Services of the Department of Health and Human Services at facilities for mentally disordered offenders;

~~[10.]~~ ***13.*** The State Fire Marshal, his assistant and his deputies; ~~[and~~

~~11.]~~ ***14.*** A game warden of the Department of Wildlife who has the powers of a peace officer pursuant to NRS 289.280 ~~[.]~~ ***; and***

15. A ranger or employee of the Division of State Parks of the State Department of Conservation and Natural Resources who has the powers of a peace officer pursuant to NRS 289.260.

Sec. 1.5. **1. There is hereby appropriated from the State General Fund to the Division of State Parks of the State Department of Conservation and Natural Resources to carry out any physical examinations or blood tests required pursuant to this act:**

For the Fiscal Year 2009-2010 .....$16,615

For the Fiscal Year 2010-2011 .....$16,615

2. Any balance of the sums appropriated by subsection 1 remaining at the end of the respective fiscal years must not be committed for expenditure after June 30 of the respective fiscal years by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 17, 2010, and September 16, 2011, respectively, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September 17, 2010, and September 16, 2011, respectively.

Sec. 2. 1. A person who, on July 1, 2009, is employed as a ranger or employee of the Division of State Parks of the State Department of Conservation and Natural Resources who has the powers of a peace officer pursuant to NRS 289.260 shall submit to a physical examination pursuant to NRS 617.454, 617.455 and 617.457 and a blood test to screen for hepatitis C pursuant to NRS 617.485 and 617.487 on or after July 1, 2009, but on or before September 30, 2009. Each physical examination and blood test must be paid for by the Department.

2. Notwithstanding the provisions of NRS 617.455, 617.457, 617.485 and 617.487, if a person fails to submit to a physical examination or blood test required pursuant to subsection 1, the conclusive presumption relating to diseases of the lungs created by NRS 617.455, diseases of the heart created by NRS 617.457 and infections of hepatitis and hepatitis C pursuant to NRS 617.485 and 617.487 shall be deemed, with regard to that person and for the purposes of those sections, to create a rebuttable presumption that the disease of the lungs or heart or infection of hepatitis or hepatitis C arose out of and in the course of the employment of the person as a ranger or employee specified in subsection 1.

Sec. 3. This act becomes effective on July 1, 2009.

Assemblyman Arberry moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 561.

Bill read second time.

The following amendment was proposed by the Committee on Ways and Means:

Amendment No. 951.

SUMMARY—Eliminates the Consumer Affairs Division of the Department of Business and Industry **for the 2009-2011 biennium** and transfers certain duties and powers of the Division. (BDR 18-1201)

AN ACT relating to reorganization of State Government; **temporarily** eliminating the Consumer Affairs Division of the Department of Business and Industry; **temporarily** eliminating the position of Commissioner of

Consumer Affairs; transferring certain duties and powers of the Division and the Commissioner; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the chief of each division of the Department of Business and Industry to administer the provisions of law relating to his division, subject to the administrative supervision of the Director of the Department. (NRS 232.530) **Sections 3 and 4** of this bill **temporarily** eliminate the Consumer Affairs Division of the Department and the position of Commissioner of Consumer Affairs ~~[.]~~ **for the 2009-2011 biennium.**

Existing law provides for the regulation of garages, garagemen and body shops by the Commissioner of Consumer Affairs and for the registration or licensure of garages, garagemen and body shops with the Department of Motor Vehicles. (NRS 487.530-487.570, 487.600-487.690, 597.480-597.590) **Sections 8-26** of this bill transfer authority for the regulation of garages, garagemen and body shops to the Department of Motor Vehicles and provide for the enforcement of those provisions by the Director of the Department. **Section 6** of this bill allows the Department of Motor Vehicles to impose a fine on a person who engages in certain deceptive trade practices relating to the sale or lease of a vehicle under certain circumstances. **Section 1** of this bill creates a revolving account administered by the Consumer's Advocate, to be used to pay the costs of conducting certain undercover investigations.

Existing law requires the Consumer Affairs Division to administer certain provisions of law governing credit service organizations. (NRS 598.701-598.787) Sections 52-56 of this bill transfer the powers and duties of the Consumer Affairs Division relating to credit service organizations to the Division of Mortgage Lending of the Department of Business and Industry.

Sections 36-47 and 49 of this bill **temporarily** transfer the powers and duties of the Commissioner of Consumer Affairs relating to deceptive trade practices to the Attorney General.

Existing law requires the Consumer Affairs Division to administer certain provisions of law governing sellers of travel, sightseeing tours, ~~[credit service organizations,]~~ organizations for buying goods or services, and dance studios and health clubs. (NRS 598.305-598.966) **Section 51** of this bill provides that complaints concerning the charges for a sightseeing tour may be directed to the Attorney General. ~~[Sections 52-56 of this bill transfer the powers and duties of the Consumer Affairs Division relating to credit service organizations to the Division of Mortgage Lending of the Department of Business and Industry.]~~ **Sections 57-61** of this bill **temporarily** authorize the Attorney General **solely** to enforce certain provisions relating to organizations for buying goods or services at a discount, dance studios and health clubs.

~~[Section 62 of this bill transfers the duty to administer chapter 598C of NRS relating to consumer reporting from the Commissioner of Consumer Affairs to the Attorney General.]~~

Sections 63-75 of this bill authorize the Attorney General to enforce certain provisions relating to solicitation by telephone.

Section 80 of this bill restores the Consumer Affairs Division, the position of the Commissioner of Consumer Affairs and the powers and duties of the Division and the Commissioner relating to deceptive trade practices, sellers of travel, sightseeing tours, organizations for buying goods or services, and dance studios and health clubs effective July 1, 2011.

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

Section 1. 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 any provision of sections 10 to 26, 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 any provision of sections 10 to 26, 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. 2. NRS 228.300 is hereby amended to read as follows:

228.300 As used in NRS 228.300 to 228.390, inclusive, ***and section 1 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. 3. NRS 232.510 is hereby amended to read as follows:

232.510 1. The Department of Business and Industry is hereby created.

2. The Department consists of a Director and the following:

(a) **[**Consumer Affairs Division.

~~(b)~~**]** Division of Financial Institutions.

[~~(c)~~**]** ***(b)*** Housing Division.

[~~(d)~~**]** ***(c)*** Manufactured Housing Division.

[~~(e)~~**]** ***(d)*** Real Estate Division.

[~~(f)~~**]** ***(e)*** Division of Insurance.

[~~(g)~~**]** ***(f)*** Division of Industrial Relations.

[~~(h)~~**]** ***(g)*** Office of Labor Commissioner.

[~~(i)~~**]** ***(h)*** Taxicab Authority.

[~~(j)~~**]** ***(i)*** Nevada Athletic Commission.

[~~(k)~~**]** ***(j)*** Office of the Nevada Attorney for Injured Workers.

[~~(l)~~**]** ***(k)*** Nevada Transportation Authority.

[~~(m)~~**]** ***(l)*** Division of Mortgage Lending.

[~~(n)~~**]** ***(m)*** Any other office, commission, board, agency or entity created or placed within the Department pursuant to a specific statute, the budget approved by the Legislature or an executive order, or an entity whose budget or activities have been placed within the control of the Department by a specific statute.

Sec. 4. NRS 232.520 is hereby amended to read as follows:

232.520 The Director:

1. Shall appoint a chief or executive director, or both of them, of each of the divisions, offices, commissions, boards, agencies or other entities of the Department, unless the authority to appoint such a chief or executive director, or both of them, is expressly vested in another person, board or commission by a specific statute. In making the appointments, the Director may obtain lists of qualified persons from professional organizations, associations or other groups recognized by the Department, if any. The ~~**[**chief of the Consumer Affairs Division is the Commissioner of Consumer Affairs, the**]**~~ chief of the Division of Financial Institutions is the Commissioner of Financial Institutions, the chief of the Housing Division is the Administrator of the Housing Division, the chief of the Manufactured Housing Division is the Administrator of the Manufactured Housing Division, the chief of the Real Estate Division is the Real Estate Administrator, the chief of the Division of Insurance is the Commissioner of Insurance, the chief of the Division of Industrial Relations is the Administrator of the Division of Industrial Relations, the chief of the Office of Labor Commissioner is the Labor Commissioner, the chief of the Taxicab Authority is the Taxicab Administrator, the chief of the Nevada Transportation Authority is the Chairman of the Authority, the chief of the Division of Mortgage Lending is the Commissioner of Mortgage Lending and the chief of any other entity of the Department has the title specified by the Director, unless a different title is specified by a specific statute.

2. Is responsible for the administration of all provisions of law relating to the jurisdiction, duties and functions of all divisions and other entities within

the Department. The Director may, if he deems it necessary to carry out his administrative responsibilities, be considered as a member of the staff of any division or other entity of the Department for the purpose of budget administration or for carrying out any duty or exercising any power necessary to fulfill the responsibilities of the Director pursuant to this subsection. This subsection does not allow the Director to preempt any authority or jurisdiction granted by statute to any division or other entity within the Department or to act or take on a function that would contravene a rule of court or a statute.

3. May:

(a) Establish uniform policies for the Department, consistent with the policies and statutory responsibilities and duties of the divisions and other entities within the Department, relating to matters concerning budgeting, accounting, planning, program development, personnel, information services, dispute resolution, travel, workplace safety, the acceptance of gifts or donations, the management of records and any other subject for which a uniform departmental policy is necessary to ensure the efficient operation of the Department.

(b) Provide coordination among the divisions and other entities within the Department, in a manner which does not encroach upon their statutory powers and duties, as they adopt and enforce regulations, execute agreements, purchase goods, services or equipment, prepare legislative requests and lease or use office space.

(c) Define the responsibilities of any person designated to carry out the duties of the Director relating to financing, industrial development or business support services.

4. May, within the limits of the financial resources made available to him, promote, participate in the operation of, and create or cause to be created, any nonprofit corporation, pursuant to chapter 82 of NRS, which he determines is necessary or convenient for the exercise of the powers and duties of the Department. The purposes, powers and operation of the corporation must be consistent with the purposes, powers and duties of the Department.

5. For any bonds which he is otherwise authorized to issue, may issue bonds the interest on which is not exempt from federal income tax or excluded from gross revenue for the purposes of federal income tax.

6. May, except as otherwise provided by specific statute, adopt by regulation a schedule of fees and deposits to be charged in connection with the programs administered by him pursuant to chapters 348A and 349 of NRS. Except as otherwise provided by specific statute, the amount of any such fee or deposit must not exceed 2 percent of the principal amount of the financing.

7. May designate any person within the Department to perform any of the duties or responsibilities, or exercise any of the authority, of the Director on his behalf.

8. May negotiate and execute agreements with public or private entities which are necessary to the exercise of the powers and duties of the Director or the Department.

9. May establish a trust account in the State Treasury for depositing and accounting for money that is held in escrow or is on deposit with the Department for the payment of any direct expenses incurred by the Director in connection with any bond programs administered by the Director. The interest and income earned on money in the trust account, less any amount deducted to pay for applicable charges, must be credited to the trust account. Any balance remaining in the account at the end of a fiscal year may be:

(a) Carried forward to the next fiscal year for use in covering the expense for which it was originally received; or

(b) Returned to any person entitled thereto in accordance with agreements or regulations of the Director relating to those bond programs.

Sec. 5. NRS 482.5434 is hereby amended to read as follows:

482.5434 "Body shop" has the meaning ascribed to it in ~~[NRS 487.600.]~~ ***section 8 of this act.***

Sec. 6. 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.]~~ ***in addition to any other remedy provided by 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. 7. Chapter 487 of NRS is hereby amended by adding thereto the provisions set forth as sections 8 to 26, inclusive, of this act.

Sec. 8. ***"Body shop" means any place where the body of a motor vehicle is painted, fixed, repaired or replaced for compensation.***

Sec. 9. ***"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. 10. ***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 12 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 17 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 17 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 13 of this act)

YOU have the right to receive a COMPLETED STATEMENT OF CHARGES for repairs made to your vehicle. (cite to section 23 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 12 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 17 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 17 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 13 of this act)

YOU have the right to receive a COMPLETED STATEMENT OF CHARGES for repairs made to your vehicle. (cite to section 23 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. 11. ***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 12 to 24, inclusive, of this act.***

Sec. 12. ***1. Except as otherwise provided in section 14 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. 13. ***Except as otherwise provided in section 14 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 12 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. 14. ***The person authorizing the repairs may waive the estimate or statement required pursuant to the provisions of section 12 of this act or the notification required by section 13 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. 15. ***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 the repairs.***

Sec. 16. ***1. An owner and the insurer of a motor vehicle who have been notified of additional charges pursuant to section 13 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 24 hours after the election, the body shop or garageman may charge for storage of the vehicle.

Sec. 17. ***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. 18. ***The body shop or garageman shall retain copies of any estimate, statement or waiver required by sections 12 to 24, 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. 19. ***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 12 to 24, 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 12 to 24, inclusive, of this act.

Sec. 20. ***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. 21. ***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 10 to 26, 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 10 to 26, 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. 22. ***1. In addition to any other remedy or 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 20 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 in addition to any other remedy provided by 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. 23. ***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. 24. ***1. On or before December 31 of each year, the Director 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 December 31 of each odd-numbered year, the Director shall submit the report required pursuant to subsection 1 to the Legislative Commission. On or before December 31 of each even-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 Transportation; and

(b) The Assembly Standing Committee on Transportation.

Sec. 25. ***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 12 to 24, inclusive, of this act, to enjoin any violation of the provisions of sections 12 to 24, inclusive, of this act.***

Sec. 26. ***Any person who knowingly violates any provision of sections 11 to 24, 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. 27. 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. 28. 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 8 to 26, 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 8 and 9 of this act*** have the meanings ascribed to them in those sections.

Sec. 29. 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 8 to 26, 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. 30. 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 10 to 26, 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. 31. 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 10 to 26, 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. 32. 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. 33. 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 10 to 26, 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 10 to 26, 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. 34. 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 10 to 26, 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. 35. NRS 487.690 is hereby amended to read as follows:

487.690 Any person who violates any of the provisions of ***sections 10 to 26, inclusive, of this act or*** NRS ~~[487.600]~~ ***487.530*** to 487.680, inclusive, is guilty of a misdemeanor.

Sec. 35.1. **Chapter 598 of NRS is hereby amended by adding thereto the provisions set forth as sections 35.2 to 35.95, inclusive, of this act.**

Sec. 35.2. ***1. Each organization for buying goods or services at a discount regulated by the provisions of this section, NRS 598.840 to 598.930, inclusive, and sections 35.3, 35.4 and 35.5 of this act shall apply for registration on the form prescribed by the Division.***

2. At the time of application for registration, the applicant must pay to the Division an administrative fee of $25 and deposit the required security with the Division.

3. Upon receipt of the security in the proper form and the payment of the administrative fee required by this section, the Division shall issue a certificate of registration to the applicant. A certificate of registration:

(a) Is not transferable or assignable; and

(b) Expires 1 year after it is issued.

4. A registrant must renew a certificate of registration issued pursuant to this section before the certificate expires by submitting to the Division an application for the renewal of the certificate on a form prescribed by the Division.

Sec. 35.3. ***1. Each registrant shall deposit with the Division:***

(a) A bond executed by a corporate surety approved by the Commissioner and licensed to do business in this State;

(b) An irrevocable letter of credit for which the registrant is the obligor, issued by a bank whose deposits are federally insured; or

(c) A certificate of deposit in a financial institution which is doing business in this State and which is federally insured or insured by a private insurer approved pursuant to NRS 678.755. The certificate of deposit may be withdrawn only on the order of the Commissioner, except that the interest may accrue to the registrant.

2. The term of the bond, letter of credit or certificate of deposit, or any renewal thereof, must be not less than 1 year.

3. If the registrant deposits a bond, the registrant shall keep accurate records of the bond and the payments made on the premium. The records must be open to inspection by the Division during business hours. The

registrant shall notify the Division not later than 30 days before the date of expiration of the bond and provide written proof of the renewal of the bond to the Division.

4. The Commissioner may reject any bond, letter of credit or certificate of deposit which fails to conform to the requirements of this section, NRS 598.840 to 598.930, inclusive, and sections 35.2, 35.4 and 35.5 of this act.

5. A registrant may change the form of security which he has deposited with the Division. If the registrant changes the form of the security, the Commissioner may retain for not more than 1 year any portion of the security previously deposited by the registrant as security for claims arising during the time the previous security was in effect.

6. If the amount of the deposited security falls below the amount required by this section, NRS 598.840 to 598.930, inclusive, and sections 35.2, 35.4 and 35.5 of this act for that security, the registrant shall be deemed not to be registered as required by section 35.2 of this act for the purposes of this section, NRS 598.840 to 598.930, inclusive, and sections 35.2, 35.4 and 35.5 of this act.

Sec. 35.4. 1. The security required to be deposited by a registrant pursuant to section 35.3 of this act must be held in trust for consumers injured by the bankruptcy of the registrant or the registrant's breach of any agreement entered into in his capacity as a registrant.

2. A consumer so injured may bring and maintain an action in any court of competent jurisdiction to recover against the security.

3. The Division may bring an action for interpleader against all claimants upon the security. If the Division brings such an action, the Division shall publish notice of the action at least once each week for 2 weeks in a newspaper of general circulation in the county in which the organization has its principal place of business. The Division may deduct its costs of the action, including the costs of the publication of the notice, from the amount of the security. All claims against the security have equal priority. If the security is insufficient to pay all the claims in full, the claims must be paid pro rata. If the registrant has posted a bond with the Division, the surety is then relieved of all liability under the bond.

4. The Division may, in lieu of bringing an action for interpleader pursuant to subsection 3, conduct a hearing to determine the distribution of the security to claimants. The Division shall adopt regulations to provide for adequate notice and the conduct of the hearing. If the registrant has posted a bond with the Division, distribution pursuant to this subsection relieves the surety of all liability under the bond.

5. If the security is sufficient to pay all claims against the security in full, the Division may deduct from the amount of the security, the cost of any investigation or hearing it conducted to determine the distribution of the security.

Sec. 35.5. 1. If no claims have been filed against the security deposited with the Division pursuant to section 35.3 of this act within 6

months after the registrant ceases to operate or his registration expires, whichever occurs later, the Commissioner shall release the security to the registrant and shall not audit any claims filed against the security thereafter by consumers.

2. If one or more claims have been filed against the security within 6 months after the registrant ceases to operate or his registration expires, whichever occurs later, the proceeds must not be released to the registrant or distributed to any consumer earlier than 1 year after the registrant ceases to operate or his registration expires, whichever occurs later.

3. For the purposes of this section, the Commissioner shall determine the date on which a registrant ceases to operate.

Sec. 35.6. "Registrant" means a dance studio or a health club which is required to register and post security with the Division pursuant to the provisions of this section, NRS 598.940 to 598.966, inclusive, and sections 35.7 to 35.95, inclusive, of this act.

Sec. 35.7. 1. Each dance studio and health club regulated by the provisions of this section, NRS 598.940 to 598.966, inclusive, and sections 35.6, 35.8, 35.9 and 35.95 of this act shall apply for registration on the form prescribed by the Division.

2. At the time of application for registration, the applicant must pay to the Division an administrative fee of $25 and deposit the required security with the Division.

3. Upon receipt of the security in the proper form and the payment of the administrative fee required by this section, the Division shall issue a certificate of registration to the applicant. A certificate of registration:

(a) Is not transferable or assignable; and

(b) Expires 1 year after it is issued.

4. A registrant must renew a certificate of registration issued pursuant to this section before the certificate expires by submitting to the Division an application for the renewal of the certificate on a form prescribed by the Division.

Sec. 35.8. 1. Each registrant shall deposit with the Division:

(a) A bond executed by a corporate surety approved by the Commissioner and licensed to do business in this State;

(b) An irrevocable letter of credit for which the registrant is the obligor, issued by a bank whose deposits are federally insured; or

(c) A certificate of deposit in a financial institution which is doing business in this State and which is federally insured or insured by a private insurer approved pursuant to NRS 678.755. The certificate of deposit may be withdrawn only on the order of the Commissioner, except that the interest may accrue to the registrant.

2. The term of the bond, letter of credit or certificate of deposit, or any renewal thereof, must be not less than 1 year.

3. If the registrant deposits a bond, the registrant shall keep accurate records of the bond and the payments made on the premium. The records

must be open to inspection by the Division during business hours. The registrant shall notify the Division not later than 30 days before the date of expiration of the bond and provide written proof of the renewal of the bond to the Division.

4. The Commissioner may reject any bond, letter of credit or certificate of deposit which fails to conform to the requirements of this section, NRS 598.940 to 598.966, inclusive, and sections 35.6, 35.7, 35.9 and 35.95 of this act.

5. A registrant may change the form of security which he has deposited with the Division. If the registrant changes the form of the security, the Commissioner may retain for not more than 1 year any portion of the security previously deposited by the registrant as security for claims arising during the time the previous security was in effect.

6. If the amount of the deposited security falls below the amount required by this chapter for that security, the registrant shall be deemed not to be registered as required by section 35.7 of this act for the purposes of this section, NRS 598.940 to 598.966, inclusive, and sections 35.6, 35.7, 35.9 and 35.95 of this act.

Sec. 35.9. 1. The security required to be deposited by a registrant pursuant to section 35.8 of this act must be held in trust for consumers injured by the bankruptcy of the registrant or the registrant's breach of any agreement entered into in his capacity as a registrant.

2. A consumer so injured may bring and maintain an action in any court of competent jurisdiction to recover against the security.

3. The Division may bring an action for interpleader against all claimants upon the security. If the Division brings such an action, the Division shall publish notice of the action at least once each week for 2 weeks in a newspaper of general circulation in the county in which the organization has its principal place of business. The Division may deduct its costs of the action, including the costs of the publication of the notice, from the amount of the security. All claims against the security have equal priority. If the security is insufficient to pay all the claims in full, the claims must be paid pro rata. If the registrant has posted a bond with the Division, the surety is then relieved of all liability under the bond.

4. The Division may, in lieu of bringing an action for interpleader pursuant to subsection 3, conduct a hearing to determine the distribution of the security to claimants. The Division shall adopt regulations to provide for adequate notice and the conduct of the hearing. If the registrant has posted a bond with the Division, distribution pursuant to this subsection relieves the surety of all liability under the bond.

5. If the security is sufficient to pay all claims against the security in full, the Division may deduct from the amount of the security, the cost of any investigation or hearing it conducted to determine the distribution of the security.

Sec. 35.95. 1. If no claims have been filed against the security deposited with the Division pursuant to section 35.8 of this act within 6 months after the registrant ceases to operate or his registration expires, whichever occurs later, the Commissioner shall release the security to the registrant and shall not audit any claims filed against the security thereafter by consumers.

2. If one or more claims have been filed against the security within 6 months after the registrant ceases to operate or his registration expires, whichever occurs later, the proceeds must not be released to the registrant or distributed to any consumer earlier than 1 year after the registrant ceases to operate or his registration expires, whichever occurs later.

3. For the purposes of this section, the Commissioner shall determine the date on which a registrant ceases to operate.

Sec. 36. NRS 598.0925 is hereby amended to read as follows:

598.0925 1. Except as otherwise provided in this section, a person engages in a "deceptive trade practice" when, in the course of his business or occupation, he:

(a) Makes an assertion of scientific, clinical or quantifiable fact in an advertisement which would cause a reasonable person to believe that the assertion is true, unless, at the time the assertion is made, the person making it has possession of factually objective scientific, clinical or quantifiable evidence which substantiates the assertion; or

(b) Fails upon request of the **[**~~Commissioner or~~**]** Attorney General to produce within 6 working days the substantiating evidence in his possession at the time the assertion of scientific, clinical or quantifiable fact was made.

2. This section does not apply to general assertions of opinion as to quality, value or condition made without the intent to mislead another person.

Sec. 37. NRS 598.096 is hereby amended to read as follows:

598.096 When the **[**~~Commissioner, Director or~~**]** Attorney General has cause to believe that any person has engaged or is engaging in any deceptive trade practice, he may:

1. Request the person to file a statement or report in writing under oath or otherwise, on such forms as may be prescribed by the **[**~~Commissioner, Director or~~**]** Attorney General, as to all facts and circumstances concerning the sale or advertisement of property by the person, and such other data and information as the **[**~~Commissioner, Director or~~**]** Attorney General may deem necessary.

2. Examine under oath any person in connection with the sale or advertisement of any property.

3. Examine any property or sample thereof, record, book, document, account or paper as he may deem necessary.

4. Make true copies, at the expense of the **[**~~Consumer Affairs Division of the Department of Business and Industry,~~**]** ***Attorney General,*** of any record, book, document, account or paper examined pursuant to subsection 3, which

copies may be offered into evidence in lieu of the originals thereof in actions brought pursuant to NRS 598.097 . [and 598.0979.]

5. Pursuant to an order of any district court, impound any sample of property which is material to the deceptive trade practice and retain the property in his possession until completion of all proceedings as provided in NRS 598.0903 to 598.0999, inclusive. An order may not be issued pursuant to this subsection unless:

(a) The [Commissioner, Director or] Attorney General [,] and the court give the accused full opportunity to be heard; and

(b) The [Commissioner, Director or] Attorney General proves by clear and convincing evidence that the business activities of the accused will not be impaired thereby.

Sec. 38. NRS 598.0963 is hereby amended to read as follows:

598.0963 1. [Whenever the Attorney General is requested in writing by the Commissioner or the Director to represent him in instituting a legal proceeding against a person who has engaged or is engaging in a deceptive trade practice, the Attorney General may bring an action in the name of the State of Nevada against that person on behalf of the Commissioner or Director.

2.] The Attorney General may institute criminal proceedings to enforce the provisions of NRS 598.0903 to 598.0999, inclusive. The Attorney General is not required to obtain leave of the court before instituting criminal proceedings pursuant to this subsection.

[3.] ***2.*** If the Attorney General has reason to believe that a person has engaged or is engaging in a deceptive trade practice, the Attorney General may bring an action in the name of the State of Nevada against that person to obtain a temporary restraining order, a preliminary or permanent injunction, or other appropriate relief.

[4.] ***3.*** If the Attorney General has cause to believe that a person has engaged or is engaging in a deceptive trade practice, the Attorney General may issue a subpoena to require the testimony of any person or the production of any documents, and may administer an oath or affirmation to any person providing such testimony. The subpoena must be served upon the person in the manner required for service of process in this State or by certified mail with return receipt requested. An employee of the Attorney General may personally serve the subpoena.

Sec. 39. NRS 598.097 is hereby amended to read as follows:

598.097 If any person fails to cooperate with any investigation, as provided in NRS 598.096, or if any person fails to obey a subpoena issued by the [Commissioner, Director or] Attorney General pursuant to NRS 598.0963 [or 598.0967, the Commissioner, Director or] ***, the*** Attorney General may apply to any district court for equitable relief. The application must state reasonable grounds showing that the relief is necessary to terminate or prevent a deceptive trade practice. If the court is satisfied of the reasonable grounds, the court may:

1. Grant injunctive relief restraining the sale or advertisement of any property by the person.

2. Require the attendance of or the production of documents by the person, or both.

3. Grant other relief necessary to compel compliance by the person.

Sec. 40. ~~[NRS 598.0971 is hereby amended to read as follows:~~

~~598.0971 1. If, after an investigation, the~~ [Commissioner] ~~*Attorney General* has reasonable cause to believe that any person has been engaged or is engaging in any deceptive trade practice in violation of NRS 598.0903 to 598.0999, inclusive, the~~ [Commissioner] ~~*Attorney General* may issue an order directed to the person to show cause why the~~ [Commissioner] ~~*Attorney General* should not order the person to cease and desist from engaging in the practice. The order must contain a statement of the charges and a notice of a hearing to be held thereon. The order must be served upon the person directly or by certified or registered mail, return receipt requested.~~

~~2. If, after conducting a hearing pursuant to the provisions of subsection 1, the~~ [Commissioner] ~~*Attorney General* determines that the person has violated any of the provisions of NRS 598.0903 to 598.0999, inclusive, or if the person fails to appear for the hearing after being properly served with the statement of charges and notice of hearing, the~~ [Commissioner] ~~*Attorney General* may make a written report of his findings of fact concerning the violation and cause to be served a copy thereof upon the person and any intervener at the hearing. If the~~ [Commissioner] ~~*Attorney General* determines in the report that such a violation has occurred, he may order the violator to:~~

~~(a) Cease and desist from engaging in the practice or other activity constituting the violation;~~

~~(b) Pay the costs of conducting the investigation, costs of conducting the hearing, costs of reporting services, fees for experts and other witnesses, charges for the rental of a hearing room if such a room is not available to the~~ [Commissioner] ~~*Attorney General* free of charge, charges for providing an independent hearing officer, if any, and charges incurred for any service of process, if the violator is adjudicated to have committed a violation of NRS 598.0903 to 598.0999, inclusive; and~~

~~(c) Provide restitution for any money or property improperly received or obtained as a result of the violation.~~

~~→ The order must be served upon the person directly or by certified or registered mail, return receipt requested. The order becomes effective upon service in the manner provided in this subsection.~~

~~3. Any person whose pecuniary interests are directly and immediately affected by an order issued pursuant to subsection 2 or who is aggrieved by the order may petition for judicial review in the manner provided in chapter 233B of NRS. Such a petition must be filed within 30 days after the service of the order. The order becomes final upon the filing of the petition.~~

~~4. If a person fails to comply with any provision of an order issued pursuant to subsection 2, [the Commissioner may, through] the Attorney General [,] *may,* at any time after 30 days after the service of the order, cause an action to be instituted in the district court of the county wherein the person resides or has his principal place of business requesting the court to enforce the provisions of the order or to provide any other appropriate injunctive relief.~~

~~5. If the court finds that:~~

~~(a) The violation complained of is a deceptive trade practice;~~

~~(b) The proceedings by the [Commissioner] *Attorney General* concerning the written report and any order issued pursuant to subsection 2 are in the interest of the public; and~~

~~(c) The findings of the [Commissioner] *Attorney General* are supported by the weight of the evidence,~~

~~↵ the court shall issue an order enforcing the provisions of the order of the [Commissioner.] *Attorney General.*~~

~~6. Except as otherwise provided in NRS 598.0974, an order issued pursuant to subsection 5 may include:~~

~~(a) A provision requiring the payment to the [Commissioner] *Attorney General* of a penalty of not more than $5,000 for each act amounting to a failure to comply with the [Commissioner's] order [;] *of the Attorney General;* or~~

~~(b) Such injunctive or other equitable or extraordinary relief as is determined appropriate by the court.~~

~~7. Any aggrieved party may appeal from the final judgment, order or decree of the court in a like manner as provided for appeals in civil cases.~~

~~8. Upon the violation of any judgment, order or decree issued pursuant to subsection 5 or 6, the [Commissioner,] *Attorney General,* after a hearing thereon, may proceed in accordance with the provisions of NRS 598.0999.]~~ **(Deleted by amendment.)**

Sec. 41. NRS 598.0974 is hereby amended to read as follows:

598.0974 A civil penalty must not be imposed against any person who engages in a deceptive trade practice pursuant to NRS 598.0903 to 598.0999, inclusive, in a civil proceeding brought by the ~~[Commissioner, Director or]~~ Attorney General if a fine has previously been imposed against that person by the Department of Motor Vehicles pursuant to NRS 482.554 ~~[,]~~ for the same act.

Sec. 42. NRS 598.0975 is hereby amended to read as follows:

598.0975 1. Except as otherwise provided in subsection 3 and in subsection 1 of NRS 598.0999, all fees, civil penalties and any other money collected pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive:

(a) In an action brought by the Attorney General, ~~[Commissioner or Director,]~~ must be deposited in the State General Fund and may only be used to offset the costs of administering and enforcing the provisions of NRS 598.0903 to 598.0999, inclusive.

(b) In an action brought by the district attorney of a county, must be deposited with the county treasurer of that county and accounted for separately in the county general fund.

2. Money in the account created pursuant to paragraph (b) of subsection 1 must be used by the district attorney of the county for:

(a) The investigation and prosecution of deceptive trade practices against elderly persons or persons with disabilities; and

(b) Programs for the education of consumers which are directed toward elderly persons or persons with disabilities, law enforcement officers, members of the judicial system, persons who provide social services and the general public.

3. The provisions of this section do not apply to:

(a) Criminal fines imposed pursuant to NRS 598.0903 to 598.0999, inclusive; or

(b) Restitution ordered pursuant to NRS 598.0903 to 598.0999, inclusive, in an action brought by the Attorney General. Money collected for restitution ordered in such an action must be deposited by the Attorney General and credited to the appropriate account of the **[**~~Consumer Affairs Division of the Department of Business and Industry or the~~**]** Attorney General for distribution to the person for whom the restitution was ordered.

Sec. 43. **[**~~NRS 598.0979 is hereby amended to read as follows:~~

~~598.0979 1. Notwithstanding the requirement of knowledge as an element of a deceptive trade practice, when the~~ **[**~~Commissioner or Director~~**]** ***Attorney General*** ~~has cause to believe that a person has engaged or is engaging in any deceptive trade practice, knowingly or otherwise, he may~~ **[**~~request in writing that the Attorney General represent him in instituting~~**]** ***institute*** ~~an appropriate legal proceeding, including, without limitation, an application for an injunction or temporary restraining order prohibiting the person from continuing the practices. The court may make orders or judgments necessary to prevent the use by the person of any such deceptive trade practice or to restore to any other person any money or property which may have been acquired by the deceptive trade practice.~~

~~2. Where the~~ **[**~~Commissioner or Director~~**]** ~~*Attorney General* has the authority to institute a civil action or other proceeding, in lieu thereof or as a part thereof, he may accept an assurance of discontinuance of any deceptive trade practice. This assurance may include a stipulation for the payment by the alleged violator of:~~

~~(a) The costs of investigation and the costs of instituting the action or proceeding;~~

~~(b) Any amount of money which he may be required to pay pursuant to the provisions of NRS 598.0971 in lieu of any administrative fine; and~~

~~(c) The restitution of any money or property acquired by any deceptive trade practice.~~

~~3. Except as otherwise provided in this subsection and NRS 239.0115, any assurance of discontinuance accepted by the~~ **[**~~Commissioner or Director~~**]**

~~***Attorney General*** and any stipulation filed with the court is confidential to the parties to the action or proceeding and to the court and its employees. Upon final judgment by the court that an injunction or a temporary restraining order, issued as provided in subsection 1, has been violated, an assurance of discontinuance has been violated or a person has engaged in the same deceptive trade practice as had previously been enjoined, the assurance of discontinuance or stipulation becomes a public record. Proof by a preponderance of the evidence of a violation of an assurance constitutes prima facie evidence of a deceptive trade practice for the purpose of any civil action or proceeding brought thereafter by the **[**Commissioner or Director,**]** ***Attorney General,*** whether a new action or a subsequent motion or petition in any pending action or proceeding.**]**~~ **(Deleted by amendment.)**

Sec. 44. ~~**[**NRS 598.098 is hereby amended to read as follows:~~

~~598.098 1. **[**NRS 598.0903 to 598.0999, inclusive, do not prohibit the Commissioner or Director from disclosing to the Attorney General, any district attorney or any law enforcement officer the fact that a crime has been committed by any person, if this fact has become known as a result of any investigation conducted pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive.~~

~~2.**]** Subject to the provisions of subsection 2 of NRS 598.0979 and except as otherwise provided in this section, the **[**Commissioner or Director**]** ***Attorney General*** may not make public the name of any person alleged to have committed a deceptive trade practice. This subsection does not:~~

~~(a) Prevent the **[**Commissioner or Director**]** ***Attorney General*** from issuing public statements describing or warning of any course of conduct which constitutes a deceptive trade practice.~~

~~(b) Apply to a person who is subject to an order issued pursuant to subsection 5 of NRS 598.0971.~~

~~**[**3.**]** ***2.*** Upon request, the **[**Commissioner**]** ***Attorney General*** may:~~

~~(a) Disclose the number of written complaints received by the **[**Commissioner**]** ***Attorney General*** during the current and immediately preceding 3 fiscal years. A disclosure made pursuant to this paragraph must include the disposition of the complaint disclosed.~~

~~(b) Make public any order to cease and desist issued pursuant to subsection 5 of NRS 598.0971.~~

~~➥ This subsection does not authorize the **[**Commissioner**]** ***Attorney General*** to disclose or make public the contents of any complaint described in paragraph (a) or the record of or any other information concerning a hearing conducted in relation to the issuance of an order to cease and desist described in paragraph (b).~~

~~**[**4. The Commissioner may adopt regulations authorizing the disclosure of information concerning any complaint or number of complaints received by the Commissioner or Director relating to a person who has been convicted of violating a provision of NRS 598.0903 to 598.0999, inclusive.**]**~~ **(Deleted by amendment.)**

Sec. 45. NRS 598.0983 is hereby amended to read as follows:

598.0983 1. Before instituting any action pursuant to NRS 598.0985 to 598.0997, inclusive, the district attorney shall ascertain whether or not the action in question is subject to the regulatory authority of any state agency, board, official or other authority established by virtue of the Nevada Revised Statutes except the regulatory or administrative authority provided to the ~~[Commissioner, Director or]~~ Attorney General by NRS 598.0903 to 598.0999, inclusive.

2. If the action is subject to such regulatory authority or any regulation adopted or any statutes administered by any state regulatory agency, board, official or other authority as provided in subsection 1, the district attorney shall not institute any proceeding under NRS 598.0985 to 598.0997, inclusive, until the state agency, board, official or other state regulatory authority has had reasonable time to investigate or take any appropriate action with respect to the alleged facts.

3. For the purposes of this section, a reasonable time has elapsed if no final action or other disposition is made of any matter otherwise falling within the provisions of NRS 598.0903 to 598.0999, inclusive, within 30 days after the matter is referred to or brought to the attention of any state agency, board, official or other regulatory authority except the ~~[Commissioner, Director or]~~ Attorney General.

4. This section does not prohibit the district attorney of any county from filing an action pursuant to the provisions of NRS 598.0985 to 598.099, inclusive, if the referral of any matters subject to the provisions of NRS 598.0903 to 598.0999, inclusive, to any state agency, board, official or other regulatory authority would cause immediate harm to the public of this state or endanger the public health, safety or welfare, and such facts are shown by affidavit or by verified complaint.

Sec. 46. NRS 598.0985 is hereby amended to read as follows:

598.0985 Notwithstanding the requirement of knowledge as an element of a deceptive trade practice, and notwithstanding the enforcement powers granted to the ~~[Commissioner or Director]~~ ***Attorney General*** pursuant to NRS 598.0903 to 598.0999, inclusive, whenever the district attorney of any county has reason to believe that any person is using, has used or is about to use any deceptive trade practice, knowingly or otherwise, he may bring an action in the name of the State of Nevada against that person to obtain a temporary or permanent injunction against the deceptive trade practice.

Sec. 47. NRS 598.099 is hereby amended to read as follows:

598.099 Whenever the district attorney or the Attorney General has reason to believe that the delay caused by complying with the notice requirement of NRS 598.0987 or the requirements of subsection ~~[3]~~ ***2*** of NRS 598.0963 would cause immediate harm to the public of this state or endanger the public welfare, he may immediately institute an action for injunctive relief, including a request for a temporary restraining order, upon proof of specific facts shown by affidavit or by verified complaint or

otherwise that such immediate harm will be or is likely to be caused by the delay. ~~[The Attorney General shall give written notice of the filing by him of such an action to the Commissioner or Director.]~~ The Nevada Rules of Civil Procedure pertaining to the issuance of temporary restraining orders govern all actions instituted pursuant to this section.

Sec. 47.5. **NRS 598.0993 is hereby amended to read as follows:**

598.0993 The court in which an action is brought pursuant to NRS ~~[598.0979 and]~~ 598.0985 to 598.099, inclusive, may make such additional orders or judgments as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any deceptive trade practice which violates any of the provisions of NRS 598.0903 to 598.0999, inclusive, but such additional orders or judgments may be entered only after a final determination has been made that a deceptive trade practice has occurred.

Sec. 48. NRS 598.0995 is hereby amended to read as follows:

598.0995 1. In proceeding pursuant to subsection ~~[3]~~ ***2*** of NRS 598.0963 or NRS 598.0987 to 598.0995, inclusive, the district attorney or Attorney General may accept an assurance of discontinuance with respect to any method, act or practice deemed to be a deceptive trade practice from any person who is engaged or is about to engage in the method, act or practice **.** ~~[by following the procedures set forth in subsection 2 of NRS 598.0979.]~~

2. Any assurance made pursuant to subsection 1 must be in writing and must be filed with and subject to the approval of the district court in the county in which the alleged violator resides or has his principal place of business, or the district court in any county where any deceptive trade practice has occurred or is about to occur or the district court agreed to by the parties.

3. An assurance of discontinuance made pursuant to subsections 1 and 2 is not an admission of violation for any purpose **.** ~~[, but is subject to the terms, limitations and conditions of NRS 598.0979.]~~

Sec. 49. NRS 598.0999 is hereby amended to read as follows:

598.0999 1. Except as otherwise provided in NRS 598.0974, a person who violates a court order or injunction issued pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive, upon a complaint brought by ~~[the Commissioner, the Director,]~~ the district attorney of any county of this State or the Attorney General shall forfeit and pay to the State General Fund a civil penalty of not more than $10,000 for each violation. For the purpose of this section, the court issuing the order or injunction retains jurisdiction over the action or proceeding. Such civil penalties are in addition to any other penalty or remedy available for the enforcement of the provisions of NRS 598.0903 to 598.0999, inclusive.

2. Except as otherwise provided in NRS 598.0974, in any action brought pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive, if the court finds that a person has willfully engaged in a deceptive trade practice,

~~[the Commissioner, the Director,]~~ the district attorney of any county in this State or the Attorney General bringing the action may recover a civil penalty not to exceed $5,000 for each violation. The court in any such action may, in addition to any other relief or reimbursement, award reasonable attorney's fees and costs.

3. A natural person, firm, or any officer or managing agent of any corporation or association who knowingly and willfully engages in a deceptive trade practice:

(a) For the first offense, is guilty of a misdemeanor.

(b) For the second offense, is guilty of a gross misdemeanor.

(c) For the third and all subsequent offenses, is guilty of a category D felony and shall be punished as provided in NRS 193.130.

➥ The court may require the natural person, firm, or officer or managing agent of the corporation or association to pay to the aggrieved party damages on all profits derived from the knowing and willful engagement in a deceptive trade practice and treble damages on all damages suffered by reason of the deceptive trade practice.

4. Any offense which occurred within 10 years immediately preceding the date of the principal offense or after the principal offense constitutes a prior offense for the purposes of subsection 3 when evidenced by a conviction, without regard to the sequence of the offenses and convictions.

5. If a person violates any provision of NRS 598.0903 to 598.0999, inclusive, 598.100 to 598.2801, inclusive, ~~[598.305 to 598.395, inclusive, 598.405 to 598.525, inclusive,]~~ ***598.475,*** 598.741 to 598.787, inclusive, or 598.840 to 598.966, inclusive, fails to comply with a judgment or order of any court in this State concerning a violation of such a provision, or fails to comply with an assurance of discontinuance or other agreement concerning an alleged violation of such a provision, ~~[the Commissioner or]~~ the district attorney of any county may bring an action in the name of the State of Nevada seeking:

(a) The suspension of the person's privilege to conduct business within this State; or

(b) If the defendant is a corporation, dissolution of the corporation.

➥ The court may grant or deny the relief sought or may order other appropriate relief.

6. If a person violates any provision of NRS 228.500 to 228.640, inclusive, fails to comply with a judgment or order of any court in this State concerning a violation of such a provision, or fails to comply with an assurance of discontinuance or other agreement concerning an alleged violation of such a provision, the Attorney General may bring an action in the name of the State of Nevada seeking:

(a) The suspension of the person's privilege to conduct business within this State; or

(b) If the defendant is a corporation, dissolution of the corporation.

➥ The court may grant or deny the relief sought or may order other appropriate relief.

Sec. 50. NRS 598.135 is hereby amended to read as follows:

598.135 The provisions of NRS 598.136, 598.137 and 598.138 do not apply to:

1. A contest of skill that does not involve the sale or lease of any goods, property or service.

2. ~~[A person who is licensed as a seller or a salesman pursuant to chapter 599B of NRS, and is engaging in an activity within the scope of that license.~~

~~3.]~~ A sale or purchase, or solicitation or representation made in connection with the sale or purchase, of goods from a catalog or of books, recordings, videocassettes, periodicals or other similar goods offered by a seller or membership group which is regulated by the Federal Trade Commission if the seller or membership group sends goods, pursuant to an agreement, to a customer or member for his inspection and, if unsatisfied after inspecting the goods, the customer or member is entitled to receive a full refund of the purchase price of the goods if the goods are returned undamaged to the seller or membership group.

~~[4.]~~ ***3.*** A solicitation, advertisement or promotion, or offer to extend credit, made by a commercial bank, bank holding company, subsidiary or affiliate of a bank holding company, trust company, savings and loan association, credit union, industrial loan company, personal property broker, consumer finance lender, commercial finance lender or insurer, or any other person engaged in the business of extending credit, who is regulated by an officer or agency of the State or of the Federal Government.

~~[5.]~~ ***4.*** A person licensed pursuant to chapter 463 of NRS and his employees.

Sec. 51. NRS 598.475 is hereby amended to read as follows:

598.475 1. In each advertisement for a sightseeing tour, a tour broker and a tour operator shall disclose in a clear and conspicuous manner the total price a customer is required to pay to take the sightseeing tour. Unless the inclusion of a fee or tax in the total price would violate a specific statute of this state or a federal statute or regulation, the total price must include, without limitation, all fees, taxes and other charges that a customer for a sightseeing tour is required to pay to take the sightseeing tour. If a fee or tax cannot be included in the total price because its inclusion would violate a specific statute of this state or a federal statute or regulation, the tour broker or tour operator, as applicable, shall disclose in a clear and conspicuous manner that the fee or tax is not included in the total price and must be paid in addition to the total price.

2. A tour broker and a tour operator shall not charge a customer for a sightseeing tour an amount that exceeds the sum of:

(a) The total price for the sightseeing tour which is disclosed in an advertisement for the sightseeing tour; and

(b) Any fee or tax that is not included in the total price for the sightseeing tour because its inclusion would violate a specific statute of this state or a federal statute or regulation.

3. On a billing invoice or receipt given to a customer for a sightseeing tour, a tour broker and a tour operator shall provide a clear and conspicuous notice which **[**~~:~~

~~(a) Sets~~**]** ***sets*** forth the provisions of subsection 2**.** **[**~~;~~

~~(b) States that complaints concerning the charges for a sightseeing tour may be directed to the~~**]** **[**~~Division;~~**]** ~~*[Attorney General;* and~~

~~(c) Provides a telephone number for the~~**]** **[**~~Division.~~**]** ~~*[Attorney General.]*~~

4. If a tour operator issues or causes to be issued a coupon or other indicia of discount or special promotion, the tour operator shall honor the coupon or other indicia in good faith unless:

(a) The coupon or other indicia sets forth a date of expiration that is clearly legible; and

(b) The date of expiration has passed.

5. The failure of a tour broker or tour operator to comply with a provision of this section constitutes a deceptive trade practice for the purposes of NRS 598.0903 to 598.0999, inclusive.

6. As used in this section:

(a) "Advertise" or "advertisement" means the attempt by publication, dissemination, solicitation or circulation to induce, directly or indirectly, any person to take a sightseeing tour.

(b) "Sightseeing tour" means an excursion that:

(1) Has a duration of 24 hours or less;

(2) Travels to one or more points of interest; and

(3) Is conducted using one or more means of motorized conveyance, including, without limitation, an airplane, bus, helicopter, tour boat or touring raft.

(c) "Tour broker" means a person who, in this State, advertises a sightseeing tour for a tour operator and collects money from customers for a sightseeing tour.

(d) "Tour operator" means a person who, in this State, engages in the business of providing a sightseeing tour to customers.

Sec. 52. NRS 598.706 is hereby amended to read as follows:

598.706 "Commissioner" means the Commissioner of **[**~~the Consumer Affairs Division~~**]** ***Mortgage Lending*** of the Department of Business and Industry.

Sec. 53. NRS 598.711 is hereby amended to read as follows:

598.711 "Division" means the **[**~~Consumer Affairs~~**]** Division of ***Mortgage Lending of*** the Department of Business and Industry.

Sec. 54. NRS 598.716 is hereby amended to read as follows:

598.716 "Registrant" means a credit service organization **[**~~, an organization for buying goods or services at a discount, a dance studio or a~~

~~health club]~~ which is required to register and post security with the Division pursuant to the provisions of this chapter.

Sec. 55. NRS 598.721 is hereby amended to read as follows:

598.721 1. Each credit service organization ~~[, organization for buying goods or services at a discount, dance studio and health club]~~ regulated by the provisions of this chapter shall apply for registration on the form prescribed by the Division.

2. At the time of application for registration, the applicant must pay to the Division an administrative fee of $25 and deposit the required security with the Division.

3. Upon receipt of the security in the proper form and the payment of the administrative fee required by this section, the Division shall issue a certificate of registration to the applicant. A certificate of registration:

(a) Is not transferable or assignable; and

(b) Expires 1 year after it is issued.

4. A registrant must renew a certificate of registration issued pursuant to this section before the certificate expires by submitting to the Division an application for the renewal of the certificate on a form prescribed by the Division.

Sec. 56. 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.]~~ ***Mortgage Lending.***

3. "Division" means the ~~[Consumer Affairs]~~ Division of ***Mortgage Lending 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 pursuant to chapter 676 of NRS.

(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 as a debt adjuster pursuant to chapter 676 of NRS.

(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. 57. NRS 598.840 is hereby amended to read as follows:

598.840 As used in NRS 598.840 to 598.930, inclusive, unless the context otherwise requires:

1. "Affiliate organization" means an organization for buying goods or services at a discount that:

(a) Is a subsidiary of a parent business entity; or

(b) Operates under a franchise granted by a parent business entity.

2. "Business day" means any calendar day except Sunday, or the following business holidays: New Year's Day, Martin Luther King, Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Nevada Day, Veterans' Day, Thanksgiving Day and Christmas Day.

3. "Buyer" means a person who purchases by contract a membership in an organization for buying goods or services at a discount.

4. ~~[“Commissioner” means the Commissioner of the Consumer Affairs Division.~~

~~5. “Consumer Affairs Division” means the Consumer Affairs Division of the Department of Business and Industry.~~

~~6.]~~ ”Franchise” has the meaning ascribed to it in 16 C.F.R. § 436.2, as amended or substituted in revision by the Federal Trade Commission.

~~[7.]~~ ***5.*** ”Organization for buying goods or services at a discount” or “organization” means a person who, for a consideration, provides or claims to provide a buyer with the ability to purchase goods or services at a price which is represented to be lower than the price generally charged in the area. The term includes, without limitation, an affiliate organization.

~~[8.]~~ ***6.*** ”Parent business entity” or “parent” means any business entity that, directly or indirectly, has owned, operated, controlled or granted franchises to, in any combination thereof, at least 15 organizations or affiliate organizations for a consecutive period of 5 years or more.

~~[9.]~~ ***7.*** ”Subsidiary” means an organization for buying goods or services at a discount that is owned, operated or controlled, either directly or indirectly or in whole or in part, by a parent business entity.

Sec. 57.5. **NRS 598.840 is hereby amended to read as follows:**

598.840 As used in NRS 598.840 to 598.930, inclusive, ***and sections 35.2 to 35.5, inclusive, of this act,*** unless the context otherwise requires:

1. ”Affiliate organization” means an organization for buying goods or services at a discount that:

(a) Is a subsidiary of a parent business entity; or

(b) Operates under a franchise granted by a parent business entity.

2. ”Business day” means any calendar day except Sunday, or the following business holidays: New Year’s Day, Martin Luther King, Jr.’s Birthday, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Nevada Day, Veterans’ Day, Thanksgiving Day and Christmas Day.

3. ”Buyer” means a person who purchases by contract a membership in an organization for buying goods or services at a discount.

4. ***”Commissioner” means the Commissioner of the Consumer Affairs Division.***

5. ”Division” means the Consumer Affairs Division of the Department of Business and Industry.

6. ”Franchise” has the meaning ascribed to it in 16 C.F.R. § 436.2, as amended or substituted in revision by the Federal Trade Commission.

~~[5.]~~ ***7.*** ”Organization for buying goods or services at a discount” or “organization” means a person who, for a consideration, provides or claims to provide a buyer with the ability to purchase goods or services at a price which is represented to be lower than the price generally charged in the area. The term includes, without limitation, an affiliate organization.

~~[6.]~~ ***8.*** ”Parent business entity” or “parent” means any business entity that, directly or indirectly, has owned, operated, controlled or granted

franchises to, in any combination thereof, at least 15 organizations or affiliate organizations for a consecutive period of 5 years or more.

~~[7.]~~ ***9. "Registrant" means an organization for buying goods or services at a discount which is required to register and post security with the Division pursuant to the provisions of NRS 598.840 to 598.930, inclusive, and sections 35.2 to 35.5, inclusive, of this act.***

10. "Subsidiary" means an organization for buying goods or services at a discount that is owned, operated or controlled, either directly or indirectly or in whole or in part, by a parent business entity.

Sec. 58. NRS 598.875 is hereby amended to read as follows:

598.875 Each contract for membership in an organization must:

1. Be in writing, legible and have all spaces filled in before the buyer signs it;

2. Be in the language in which the sales presentation was given;

3. Contain the addresses of the buyer and the organization;

4. Be given to the buyer when he signs it;

5. ~~[Disclose that the security required by NRS 598.726, 598.851 and, if applicable, NRS 598.855 has been obtained and deposited with the Consumer Affairs Division;~~

~~6.]~~ Specify the term of the membership of the buyer, which may not be measured by the buyer's life;

~~[7.]~~ ***6.*** Clearly specify the buyer's right to cancel the contract pursuant to NRS 598.885;

~~[8.]~~ ***7.*** Clearly specify the buyer's right to rescind the contract and to be given a refund pro rata pursuant to NRS 598.910 and the conditions and limitations on that right;

~~[9.]~~ ***8.*** Clearly specify the buyer's right to a refund on the purchase of goods pursuant to NRS 598.895 and the conditions and limitations on that right; and

~~[10.]~~ ***9.*** Clearly specify whether or not the buyer is given any other rights to a refund on the purchase of goods or services and, if so, any conditions and limitations on those rights.

Sec. 59. NRS 598.930 is hereby amended to read as follows:

598.930 1. The remedies, duties and prohibitions of NRS 598.840 to 598.930, inclusive, are not exclusive and are in addition to any other remedies provided by law.

2. Any violation of NRS ~~[598.851]~~ ***598.870*** to 598.900, inclusive, constitutes a deceptive trade practice for the purposes of NRS 598.0903 to 598.0999, inclusive.

Sec. 60. NRS 598.948 is hereby amended to read as follows:

598.948 Each contract between the buyer and the dance studio or health club must:

1. Be in writing, legible and have all spaces filled in before the buyer signs it;

2. Be in the language in which the sales presentation was given;

3. Contain the addresses of the buyer and the studio or club;

4. Be given to the buyer when he signs it;

5. ~~[Disclose whether security has been obtained and deposited with the Division pursuant to NRS 598.726;~~

~~6.]~~ Specify the term of membership of the buyer, which must not be measured by the life of the buyer;

~~[7.]~~ ***6.*** Clearly specify the right of the buyer to cancel the contract pursuant to NRS 598.950;

~~[8.]~~ ***7.*** Not contain a clause by which the contract is automatically renewed; and

~~[9.]~~ ***8.*** Specify the number of lessons and the cost of each lesson, if the contract is for dance lessons.

Sec. 61. NRS 598.966 is hereby amended to read as follows:

598.966 1. The remedies, duties and prohibitions of NRS 598.940 to 598.966, inclusive, are not exclusive and are in addition to any other remedies provided by law.

2. Any violation of NRS ~~[598.944]~~ ***598.948*** to 598.958, inclusive, constitutes a deceptive trade practice for the purposes of NRS 598.0903 to 598.0999, inclusive.

Sec. 62. ~~[NRS 598C.180 is hereby amended to read as follows:~~

~~598C.180 [1.] The provisions of this chapter must be administered by the [Commissioner of Consumer Affairs.~~

~~2. The Attorney General shall provide opinions for the Commissioner on all questions of law relating to the construction, interpretation or administration of this chapter.~~

~~3. The Attorney General shall represent the Division in any action or proceeding brought by or against the Commissioner pursuant to any of the provisions of this chapter.]~~ ~~*Attorney General.]*~~ **(Deleted by amendment.)**

Sec. 63. NRS 599B.010 is hereby amended to read as follows:

599B.010 As used in this chapter, unless the context otherwise requires:

1. "Chance promotion" means any plan in which premiums are distributed by random or chance selection.

2. ~~[~~"Commissioner" means the Commissioner of Consumer Affairs.

~~3.]~~ "Consumer" means a person who is solicited by a seller or salesman.

~~[4. "Division" means the Consumer Affairs Division of the Department of Business and Industry.~~

~~5.]~~ ***3.*** "Donation" means a promise, grant or pledge of money, credit, property, financial assistance or other thing of value given in response to a solicitation by telephone, including, but not limited to, a payment or promise to pay in consideration for a performance, event or sale of goods or services. The term does not include volunteer services, government grants or contracts or a payment by members of any organization of membership fees, dues, fines or assessments or for services rendered by the organization to those persons, if:

(a) The fees, dues, fines, assessments or services confer a bona fide right, privilege, professional standing, honor or other direct benefit upon the member; and

(b) Membership in the organization is not conferred solely in consideration for making a donation in response to a solicitation.

~~[6.]~~ ***4.*** "Goods or services" means any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value.

~~[7.]~~ ***5.*** "Premium" includes any prize, bonus, award, gift or any other similar inducement or incentive to purchase.

~~[8.]~~ ***6.*** "Recovery service" means a business or other practice whereby a person represents or implies that he will, for a fee, recover any amount of money that a consumer has provided to a seller or salesman pursuant to a solicitation governed by the provisions of this chapter.

~~[9.]~~ ***7.*** "Salesman" means any person:

(a) Employed or authorized by a seller to sell, or to attempt to sell, goods or services by telephone;

(b) Retained by a seller to provide consulting services relating to the management or operation of the seller's business; or

(c) Who communicates on behalf of a seller with a consumer:

(1) In the course of a solicitation by telephone; or

(2) For the purpose of verifying, changing or confirming an order,

➥ except that a person is not a salesman if his only function is to identify a consumer by name only and he immediately refers the consumer to a salesman.

~~[10.]~~ ***8.*** Except as otherwise provided in subsection ~~[11,]~~ ***9,*** "seller" means any person who, on his own behalf, causes or attempts to cause a solicitation by telephone to be made through the use of one or more salesmen or any automated dialing announcing device under any of the following circumstances:

(a) The person initiates contact by telephone with a consumer and represents or implies:

(1) That a consumer who buys one or more goods or services will receive additional goods or services, whether or not of the same type as purchased, without further cost, except for actual postage or common carrier charges;

(2) That a consumer will or has a chance or opportunity to receive a premium;

(3) That the items for sale are gold, silver or other precious metals, diamonds, rubies, sapphires or other precious stones, or any interest in oil, gas or mineral fields, wells or exploration sites or any other investment opportunity;

(4) That the product offered for sale is information or opinions relating to sporting events;

(5) That the product offered for sale is the services of a recovery service; or

(6) That the consumer will receive a premium or goods or services if he makes a donation;

(b) The solicitation by telephone is made by the person in response to inquiries from a consumer generated by a notification or communication sent or delivered to the consumer that represents or implies:

(1) That the consumer has been in any manner specially selected to receive the notification or communication or the offer contained in the notification or communication;

(2) That the consumer will receive a premium if the recipient calls the person;

(3) That if the consumer buys one or more goods or services from the person, the consumer will also receive additional or other goods or services, whether or not the same type as purchased, without further cost or at a cost that the person represents or implies is less than the regular price of the goods or services;

(4) That the product offered for sale is the services of a recovery service; or

(5) That the consumer will receive a premium or goods or services if he makes a donation; or

(c) The solicitation by telephone is made by the person in response to inquiries generated by advertisements that represent or imply that the person is offering to sell any:

(1) Gold, silver or other metals, including coins, diamonds, rubies, sapphires or other stones, coal or other minerals or any interest in oil, gas or other mineral fields, wells or exploration sites, or any other investment opportunity;

(2) Information or opinions relating to sporting events; or

(3) Services of a recovery service.

~~[11.]~~ ***9.*** "Seller" does not include:

(a) A person licensed pursuant to chapter 90 of NRS when soliciting offers, sales or purchases within the scope of his license.

(b) A person licensed pursuant to chapter 119A, 119B, 624, 645 or 696A of NRS when soliciting sales within the scope of his license.

(c) A person licensed as an insurance broker, agent or solicitor when soliciting sales within the scope of his license.

(d) Any solicitation of sales made by the publisher of a newspaper or magazine or by an agent of the publisher pursuant to a written agreement between the agent and publisher.

(e) A broadcaster soliciting sales who is licensed by any state or federal authority, if the solicitation is within the scope of the broadcaster's license.

(f) A person who solicits a donation from a consumer when:

(1) The person represents or implies that the consumer will receive a premium or goods or services with an aggregated fair market value of 2 percent of the donation or $50, whichever is less; or

(2) The consumer provides a donation of $50 or less in response to the solicitation.

(g) A charitable organization which is registered or approved to conduct a lottery pursuant to chapter 462 of NRS.

(h) A public utility or motor carrier which is regulated pursuant to chapter 704 or 706 of NRS, or by an affiliate of such a utility or motor carrier, if the solicitation is within the scope of its certificate or license.

(i) A utility which is regulated pursuant to chapter 710 of NRS, or by an affiliate of such a utility.

(j) A person soliciting the sale of books, recordings, videocassettes, software for computer systems or similar items through:

(1) An organization whose method of sales is governed by the provisions of Part 425 of Title 16 of the Code of Federal Regulations relating to the use of negative option plans by sellers in commerce;

(2) The use of continuity plans, subscription arrangements, arrangements for standing orders, supplements, and series arrangements pursuant to which the person periodically ships merchandise to a consumer who has consented in advance to receive the merchandise on a periodic basis and has the opportunity to review the merchandise for at least 10 days and return it for a full refund within 30 days after it is received; or

(3) An arrangement pursuant to which the person ships merchandise to a consumer who has consented in advance to receive the merchandise and has the opportunity to review the merchandise for at least 10 days and return it for a full refund within 30 days after it is received.

(k) A person who solicits sales by periodically publishing and delivering a catalog to consumers if the catalog:

(1) Contains a written description or illustration of each item offered for sale and the price of each item;

(2) Includes the business address of the person;

(3) Includes at least 24 pages of written material and illustrations;

(4) Is distributed in more than one state; and

(5) Has an annual circulation by mailing of not less than 250,000.

(l) A person soliciting without the intent to complete and who does not complete, the sales transaction by telephone but completes the sales transaction at a later face-to-face meeting between the solicitor and the consumer, if the person, after soliciting a sale by telephone, does not cause another person to collect the payment from or deliver any goods or services purchased to the consumer.

(m) Any commercial bank, bank holding company, subsidiary or affiliate of a bank holding company, trust company, savings and loan association, credit union, industrial loan company, personal property broker, consumer finance lender, commercial finance lender, or insurer subject to regulation by an official or agency of this State or of the United States, if the solicitation is within the scope of the certificate or license held by the entity.

(n) A person holding a certificate of authority issued pursuant to chapter 452 of NRS when soliciting sales within the scope of the certificate.

(o) A person licensed pursuant to chapter 689 of NRS when soliciting sales within the scope of his license.

(p) A person soliciting the sale of services provided by a video service provider subject to regulation pursuant to chapter 711 of NRS.

(q) A person soliciting the sale of agricultural products, if the solicitation is not intended to and does not result in a sale of more than $100 that is to be delivered to one address. As used in this paragraph, "agricultural products" has the meaning ascribed to it in NRS 587.290.

(r) A person who has been operating, for at least 2 years, a retail business establishment under the same name as that used in connection with the solicitation of sales by telephone if, on a continuing basis:

(1) Goods are displayed and offered for sale or services are offered for sale and provided at the person's business establishment; and

(2) At least 50 percent of the person's business involves the buyer obtaining such goods or services at the person's business establishment.

(s) A person soliciting only the sale of telephone answering services to be provided by the person or his employer.

(t) A person soliciting a transaction regulated by the Commodity Futures Trading Commission, if:

(1) The person is registered with or temporarily licensed by the Commission to conduct that activity pursuant to the Commodity Exchange Act, 7 U.S.C. §§ 1 et seq.; and

(2) The registration or license has not expired or been suspended or revoked.

(u) A person who contracts for the maintenance or repair of goods previously purchased from the person:

(1) Making the solicitation; or

(2) On whose behalf the solicitation is made.

(v) A person to whom a license to operate an information service or a nonrestricted gaming license, which is current and valid, has been issued pursuant to chapter 463 of NRS when soliciting sales within the scope of his license.

(w) A person who solicits a previous customer of the business on whose behalf the call is made if the person making the call:

(1) Does not offer the customer any premium in connection with the sale;

(2) Is not selling an investment or an opportunity for an investment that is not registered with any state or federal authority; and

(3) Is not regularly engaged in telephone sales.

(x) A person who solicits the sale of livestock.

(y) An issuer which has a class of securities that is listed on the New York Stock Exchange, the American Stock Exchange or the National Market

System of the National Association of Securities Dealers Automated Quotation System.

(z) A subsidiary of an issuer that qualifies for exemption pursuant to paragraph (y) if at least 60 percent of the voting power of the shares of the subsidiary is owned by the issuer.

Sec. 64. NRS 599B.025 is hereby amended to read as follows:

599B.025 ~~[1.]~~ The Attorney General may adopt regulations establishing standards of conduct for ~~[registrants]~~ ***sellers and salesmen*** and any other regulations necessary to exercise the powers and carry out the duties of the Attorney General as set forth in this chapter.

~~[2. The]~~ ~~[Commissioner and the]~~ ~~[Attorney General shall]~~ ~~[jointly]~~ ~~[adopt rules of practice establishing a procedure for processing complaints received concerning sellers and salesmen.]~~ ~~[, whether or not the sellers and salesmen are registered pursuant to this chapter. The rules of practice:~~

~~(a) Must provide for the sharing of information and for the initial review of complaints by the Attorney General before mediation by the Commissioner; and~~

~~(b) May provide procedures for mediation by the Commissioner after initial review by the Attorney General.~~

~~3. The Commissioner may adopt rules of practice necessary to administer and carry out the provisions of this chapter pertaining to the registration of sellers and salesmen. The rules of practice must not restrict the powers and duties of the Attorney General as set forth in this chapter.]~~

Sec. 65. NRS 599B.150 is hereby amended to read as follows:

599B.150 1. No salesman may be associated with or employed by more than one seller at the same time.

2. A seller shall cooperate fully with the ~~[Commissioner]~~ ***Attorney General*** in any investigation made by him concerning an alleged violation of the provisions of this chapter by a salesman.

Sec. 66. NRS 599B.160 is hereby amended to read as follows:

599B.160 If any change is made to any script, outline, presentation or sales or donation information or literature used by a ~~[registrant]~~ ***seller or salesman*** in connection with any solicitation, the new or revised material must be submitted by the ~~[registrant]~~ ***seller or salesman*** to the ~~[Division]~~ ***Attorney General*** before such material is used.

Sec. 67. NRS 599B.170 is hereby amended to read as follows:

599B.170 1. During any solicitation or sales presentation made by him, or in any correspondence written in connection with a sale, a salesman shall:

(a) Identify himself by stating his true name;

(b) Identify the seller by whom he is employed; and

(c) State the purpose of his call.

2. During any solicitation or sales presentation made by him, or in any correspondence written in connection with a ~~[registrant, a registrant]~~ ***seller or salesman, a seller or salesman*** shall disclose to a consumer:

(a) Any charge, including the amount associated with the use of any premium being offered;

(b) Any material restriction, requirement, condition, limitation or exception which is associated with the use of the premium; and

(c) Any charge connected with the sale of any goods or services.

3. A ~~[registrant]~~ ***seller or salesman*** shall not characterize a premium as a prize unless the consumer may receive the premium free of charge and without making any purchase.

4. A ~~[registrant]~~ ***seller or salesman*** shall inform each consumer of the time within which any premium will be delivered.

5. A ~~[registrant]~~ ***seller or salesman*** shall not make any representation of the number of premiums to be awarded in a sales promotion unless the representation accurately reflects the actual number of premiums that will be awarded.

Sec. 68. NRS 599B.180 is hereby amended to read as follows:

599B.180 If a seller expressly or impliedly represents to any consumer, directly or through a salesman, that the consumer is or may be eligible to receive any gift, premium, bonus or prize, however denominated, the seller shall:

1. Submit to the ~~[Division]~~ ***Attorney General*** a statement setting forth, for each item mentioned:

(a) A description of the item.

(b) The value or worth of the item and the basis for the valuation.

(c) All terms and conditions a consumer must satisfy in order to receive the item. The statement must be accompanied by a copy of the written statement of terms and conditions provided to consumers pursuant to subsection 3.

(d) If they are ascertainable, the odds, for a given consumer, of receiving the item.

(e) If a consumer is to receive fewer than all the items described by the seller:

(1) The manner in which the seller decides which item a given consumer is to receive.

(2) If they are ascertainable, the odds, for a given consumer, of receiving each item described.

(3) The name and address of each person who has, during the preceding 12 months or any portion thereof in which the seller has done business, received the item having the greatest value and the item with the smallest odds of being received.

2. Provide the following information to the consumer at the time of the solicitation:

(a) The complete address of the location and the telephone number from which the consumer is being called and, if different, the complete address of the principal location at which the seller does business.

(b) The information required by paragraphs (a) and (c) of subsection 1.

(c) If the seller elects to inform the consumer of the value or worth of the item, the information must be identical to that submitted pursuant to paragraph (b) of subsection 1, in exactly the form submitted.

(d) If the consumer is to receive fewer than all the items described by the seller, the information required by subparagraph (1) of paragraph (e) of subsection 1.

3. Advise the consumer, at the time of the solicitation, that he may obtain, without cost, a written statement of the terms and conditions he must satisfy in order to receive the item. If the consumer so requests, the seller shall send him such a statement, by mail, without cost to the consumer.

Sec. 69. NRS 599B.185 is hereby amended to read as follows:

599B.185 If a ~~[registrant]~~ ***seller or salesman*** solicits the sale of investments or opportunities for investment, he shall, during the oral sales presentation and in writing, inform the prospective consumer:

1. Of the manner in which the price of the offered item is determined;

2. Whether the ~~[registrant]~~ ***seller or salesman*** or his employer receives any financial advantage other than an agent's or brokerage fee; and

3. Of the amount of any agent's or brokerage fee.

Sec. 70. NRS 599B.187 is hereby amended to read as follows:

599B.187 1. A ~~[registrant]~~ ***seller or salesman*** shall not use a chance promotion unless each consumer is entitled to participate in the promotion without charge or payment of any kind.

2. A ~~[registrant]~~ ***seller or salesman*** shall, before describing any item offered in a chance promotion, inform each consumer that he may participate in the promotion without any obligation to purchase any goods or services.

3. If a consumer specifically requests the information and the odds are ascertainable, the ~~[registrant]~~ ***seller or salesman*** shall orally disclose the odds of receiving each item offered in the chance promotion. If such a request is made but the odds are not ascertainable, the ~~[registrant]~~ ***seller or salesman*** shall disclose the manner in which the items offered in the promotion are awarded.

4. A ~~[registrant]~~ ***seller or salesman*** shall not require or request the payment of any money as a condition of obtaining any premium offered in a chance promotion.

5. A ~~[registrant]~~ ***seller or salesman*** shall not require a person to perform any action or to supply any information to participate in a chance promotion, except that the ~~[registrant]~~ ***seller or salesman*** may require the person to submit a written request sent by first-class mail. A ~~[registrant]~~ ***seller or salesman*** may not require the person to supply any information other than his name, address and a list of the premiums available in the chance promotion.

6. If a premium is offered in a chance promotion, the ~~[registrant]~~ ***seller or salesman*** shall provide any such premium to each person who does not purchase goods or services from the ~~[registrant]~~ ***seller or salesman*** upon the

same terms, including time of delivery, as are provided to the persons who do purchase goods or services from the ~~[registrant.]~~ ***seller or salesman.***

7. If requested, a ~~[registrant]~~ ***seller or salesman*** shall inform each person who does not purchase goods or services from the ~~[registrant]~~ ***seller or salesman*** of the manner in which the person can participate in the chance promotion.

8. Any ~~[registrant]~~ ***seller or salesman*** who uses a chance promotion shall:

(a) Furnish to the ~~[Division]~~ ***Attorney General*** information establishing the financial ability of the ~~[registrant]~~ ***seller or salesman*** to award all premiums to be given in the promotion.

(b) Award all premiums included in the promotion to bona fide recipients within 12 months after the promotion begins.

(c) Deliver the premiums to bona fide recipients within a reasonable time.

Sec. 71. NRS 599B.190 is hereby amended to read as follows:

599B.190 1. Except as otherwise provided in subsection 3, a person who purchases goods or services or makes a donation pursuant to a solicitation governed by this chapter must be given a refund or replacement, at his option, if:

(a) The goods or services are defective, are not as represented or if any item described pursuant to NRS 599B.180 is not received as promised; and

(b) He returns the unused goods, if any, or makes a written request for the refund or replacement within 30 days after he receives:

(1) The goods or services; or

(2) Any item described pursuant to NRS 599B.180,

➥ whichever is received later. A return or request is timely if shipment is made or the request is postmarked, properly addressed and postage prepaid, within the time provided by this paragraph.

2. A ~~[registrant]~~ ***seller or salesman*** who receives a written request for a refund or replacement shall not require prior authorization for a return of goods and shall give a refund or replacement within 14 days after receipt of the request.

3. If a consumer of goods returns only a portion of the goods, the refund or replacement required by subsection 1 may be prorated accordingly.

4. The refund or replacement required by subsection 1 must be given by the seller, regardless of whether payment for the goods or services is made to the seller or some other person.

5. Except for any proration permitted by subsection 3, a ~~[registrant]~~ ***seller or salesman*** shall not impose any charge in connection with a return of goods or a request for a refund or replacement.

6. If a ~~[registrant]~~ ***seller or salesman*** receives payment by credit card, he may issue a refund in the form of a credit to the credit card account of the consumer in lieu of a cash refund.

7. Within 3 days after any purchase of goods or services or upon delivery of the goods or services, whichever is later, or within 3 days after receiving a

donation, the seller shall provide the consumer with a written summary of the provisions of this section. The summary must:

(a) ~~[Be made in a form prescribed by the Division.~~

~~(b)]~~ Include the address to which returned goods or a request for refund may be sent.

~~[(c)]~~ ***(b)*** Be accompanied by a statement containing the information required by paragraph (e) of subsection 1 of NRS 599B.180, if the provisions of that section apply.

~~[(d)]~~ ***(c)*** If the provisions of paragraph (c) of subsection 2 of NRS 599B.180 apply, be accompanied by a statement concerning the number of persons who have, during the 12 months preceding the solicitation or any portion thereof in which the seller has done business, received the item having the greatest value and the item with the smallest odds of being received.

➥ A summary is timely if it is postmarked, properly addressed and postage prepaid, within the time provided by this subsection.

Sec. 72. NRS 599B.200 is hereby amended to read as follows:

599B.200 A salesman or seller shall not disclose the name or address of any person who purchases goods or services pursuant to a solicitation governed by this chapter. Nothing in this section prohibits the disclosure of this information to:

1. Any person employed by or associated with the seller; ***or***

2. ~~[The Commissioner or any employee of the Division; or~~

~~3.]~~ Any law enforcement officer or agency that requires the information for investigative purposes.

Sec. 73. NRS 599B.210 is hereby amended to read as follows:

599B.210 1. Every ~~[registrant,]~~ ***seller or salesman,*** other than a ~~[registrant]~~ ***seller or salesman*** incorporated in this state, shall file with the Secretary of State an irrevocable consent appointing the Secretary of State as his agent to receive service of any lawful process in any action or proceeding against him arising pursuant to this chapter. Any lawful process against the ~~[registrant]~~ ***seller or salesman*** served upon the Secretary of State as provided in subsection 2 has the same force and validity as if served upon the ~~[registrant]~~ ***seller or salesman*** personally.

2. Service of process authorized by subsection 1 must be made by filing with the Secretary of State:

(a) Two copies of the process. The copies must include a specific citation to the provisions of this section. The Secretary of State may refuse to accept such service if the proper citation is not included in each copy.

(b) A fee of $10.

➥ The Secretary of State shall forthwith forward one copy of the process by registered or certified mail prepaid to the ~~[registrant,]~~ ***seller or salesman,*** or in the case of a ~~[registrant]~~ ***seller or salesman*** organized under the laws of a foreign government, to the United States manager or last appointed United

States general agent of the ~~[registrant,]~~ ***seller or salesman,*** giving the day and the hour of the service.

3. Service of process is not complete until the copy thereof has been mailed and received by the ~~[registrant,]~~ ***seller or salesman,*** and the receipt of the addressee is prima facie evidence of the completion of the service.

4. If service of summons is made upon the Secretary of State in accordance with the provisions of this section, the time within which the ~~[registrant]~~ ***seller or salesman*** is required to appear is extended 10 days.

Sec. 74. NRS 599B.255 is hereby amended to read as follows:

599B.255 1. Except as otherwise provided in NRS 599B.213, the Attorney General or the district attorney of any county in this state may prosecute a person who willfully violates, either directly or indirectly, the provisions of this chapter. ~~[Except as otherwise provided in subsection 3, such]~~ ***Such*** a person:

(a) For the first offense within 10 years, is guilty of a misdemeanor.

(b) For the second offense within 10 years, is guilty of a gross misdemeanor.

(c) For the third and all subsequent offenses within 10 years, is guilty of a category D felony and shall be punished as provided in NRS 193.130, or by a fine of not more than $50,000, or by both fine and the punishment provided in NRS 193.130.

2. Any offense which occurs within 10 years immediately preceding the date of the principal offense or after the principal offense constitutes a prior offense for the purposes of subsection 1 when evidenced by a conviction, without regard to the sequence of the offenses and convictions.

3. ~~[A person who violates any provision of NRS 599B.080 is guilty of a category D felony and shall be punished as provided in NRS 193.130, or by a fine of not more than $50,000, or by both fine and the punishment provided in NRS 193.130.~~

~~4.]~~ Property or proceeds attributable to any violation pursuant to the provisions of this section are subject to forfeiture in the manner provided by NRS 179.1156 to 179.121, inclusive.

Sec. 75. NRS 599B.260 is hereby amended to read as follows:

599B.260 1. Except as otherwise provided in subsection 2, all fees, civil penalties and any other money collected pursuant to this chapter in an action brought by the Attorney General must be deposited in the State General Fund and may only be used to defray the costs of:

(a) Administering and enforcing the provisions of this chapter.

(b) Enforcing the provisions of chapter 598 of NRS as they relate to the conduct of sellers and salesmen ~~[, whether or not the sellers and salesmen are registered pursuant to this chapter.]~~ .

2. The provisions of this section do not apply to:

(a) Criminal fines imposed pursuant to the provisions of this chapter; or

(b) Restitution ordered in an action brought by the Attorney General pursuant to the provisions of this chapter. Money collected for restitution

ordered in such an action must be deposited by the Attorney General and credited to the appropriate account of ~~[the Division or]~~ the Attorney General for distribution to the person for whom the restitution was ordered.

Sec. 76. 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 23 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 23 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. 77. **1.** 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, ~~[598.0913, 598.0927, 598.0957, 598.0959, 598.0965, 598.0966, 598.0967, 598.305, 598.307, 598.315, 598.317, 598.325, 598.335, 598.345, 598.356, 598.361, 598.365, 598.366, 598.367, 598.371, 598.372, 598.373, 598.374, 598.375, 598.385, 598.395, 598.405, 598.416, 598.425, 598.435, 598.445, 598.455, 598.465, 598.471, 598.485, 598.495, 598.506, 598.515, 598.525, 598.845, 598.851, 598.855, 598.860, 598.865, 598.915, 598.9407, 598.9413, 598.944, 598.946,]~~ 598.971, 598.975, 598.981, 598.985 ~~[,]~~ **and** 598.990 ~~[, 598C.030, 599B.015, 599B.080, 599B.090, 599B.100, 599B.105, 599B.110, 599B.115, 599B.120, 599B.125, 599B.130, 599B.140, 599B.143, 599B.145 and 599B.195]~~ are hereby repealed.

2. NRS 598.0913, 598.0927, 598.0957, 598.0959, 598.0965, 598.0966, 598.0967, 598.0971, 598.0979, 598.098, 598.305, 598.307, 598.315, 598.317, 598.325, 598.335, 598.345, 598.356, 598.361, 598.365, 598.366,

598.367, 598.371, 598.372, 598.373, 598.374, 598.375, 598.385, 598.395, 598.405, 598.416, 598.425, 598.435, 598.445, 598.455, 598.465, 598.471, 598.485, 598.495, 598.506, 598.515, 598.525, 598.845, 598.851, 598.855, 598.860, 598.865, 598.915, 598.9407, 598.9413, 598.944, 598.946, 598C.030, 598C.180, 599B.015, 599B.080, 599B.090, 599B.100, 599B.105, 599B.110, 599B.115, 599B.120, 599B.125, 599B.130, 599B.140, 599B.143, 599B.145 and 599B.195 are hereby repealed.

Sec. 78. 1. Any regulations adopted by the Commissioner of the Consumer Affairs Division of the Department of Business and Industry or by the Division before July 1, 2009, remain in force until amended by the officer or agency to which the responsibility for the adoption of the regulations is transferred. The regulations may be enforced by the officer or agency to which the responsibility for the enforcement of the regulations is transferred.

2. Any contract or other agreement entered into by the Commissioner of the Consumer Affairs Division of the Department of Business and Industry or by the Division before July 1, 2009, is binding upon the officer or agency to which the responsibility for administration of the contract or other agreement is transferred. Any such contract or other agreement may be enforced by the officer or agency to which the responsibility for the enforcement of the provisions of the contract or other agreement is transferred.

Sec. 79. 1. As soon as practicable after July 1, 2009, at the time the Revolving Account for the Consumer Affairs Division of the Department of Business and Industry established by NRS 598.0966 is abolished, the State Treasurer shall ensure that any money in the Revolving Account is transferred to the revolving account for the Bureau of Consumer Protection created by section 1 of this act.

2. As soon as practicable after July 1, 2009, at the time the Recovery Fund established pursuant to NRS 598.371 is abolished, the State Treasurer shall ensure that any money in the Recovery Fund is transferred to the State General Fund.

Sec. 80. **1.** This **section and sections 1 to 35, inclusive, 36 to 57, inclusive, and 58 to 79, inclusive, of this** act ~~[becomes]~~ **become** effective on July 1, 2009.

2. The amendatory provisions of sections 3, 4, 36 to 51, inclusive, 57, 58 to 75, inclusive, and subsection 2 of section 77 of this act expire by limitation on June 30, 2011.

3. Sections 35.1 to 35.95, inclusive, and 57.5 of this act become effective on July 1, 2011.

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.

598.0913 "Commissioner" defined.

598.0927 "Director" defined.

598.0957 Director may delegate powers and duties.

598.0959 Advisory committees: Creation and appointment; membership; compensation.

598.0965 Commissioner or Director to provide investigative assistance to Attorney General; legal advice and guidance by Attorney General.

598.0966 Revolving Account for Consumer Affairs Division: Creation; use; deposits; withdrawals; reimbursement; duties of Commissioner.

598.0967 Commissioner and Director: Subpoenas; hearings; regulations.

598.0971 Orders for enforcement: Authority of Commissioner; judicial review and enforcement; civil penalty and equitable relief.

598.0979 Restraining orders; injunctions; assurances of discontinuance.

598.098 Disclosure of information by Commissioner or Director; regulations.

598.305 Definitions.

598.307 "Account" defined.

598.315 "Commissioner" defined.

598.317 "Consumer" defined.

598.325 "Division" defined.

598.335 "Seller of travel" defined.

598.345 "Travel services" defined.

598.356 "Vacation certificate" defined.

598.361 Seller to maintain trust account; exception.

598.365 Seller to register, deposit security and pay fees before advertising services or conducting business in this State; certificate of registration; renewal of certificate.

598.366 Seller to include registration number in advertising; form.

598.367 Seller to display notice of Recovery Fund; penalty.

598.371 Administration of Fund: Separate accounting; limitations on use.

598.372 Administration of Fund: Report to Legislature; employment of persons; interest on money; limitations on balance; regulations.

598.373 Recovery from Fund: Deadline for complaint; hearing; judgment of court; action by Division.

598.374 Recovery from Fund: Eligibility; limitations on payment; subrogation of claim.

598.375 Security required for registration: Form; term; amount; records; rejection for nonconformance; change in form; inadequate amount; exception.

598.385 Rights and remedies of injured consumers; resolution by Division of claims against security; regulations.

598.395 Release of security if seller ceases to operate or registration expires.

598.405 Definitions.

598.416 "Advertise" and "advertisement" defined.

598.425 "Commissioner" defined.

598.435 "Division" defined.

598.445 "Sightseeing tour" defined.

598.455 "Tour broker" defined.

598.465 "Tour operator" defined.

598.471 Tour broker and tour operator to register, pay fee and, if applicable, deposit security before advertising services or conducting business in this State; certificate of registration; renewal of certificate.

598.485 Applicability of provisions limited to tour brokers and tour operators operating in certain counties.

598.495 Security required to be deposited by tour broker and tour operator: Form; term; amount; records; rejection for nonconformance; change in form; inadequate amount.

598.506 Rights and remedies of injured consumers; resolution by Division of claims against security; regulations.

598.515 Release of security if tour broker or tour operator ceases to operate.

598.525 Regulations.

598.845 Scope.

598.851 Organization to register and post security before advertising services or conducting business in this State.

598.855 Trust account required for payments on contracts.

598.860 Trust account required for payments on goods and services.

598.865 Administration of trust accounts; audits.

598.915 Waiver of statutory rights is void.

598.9407 "Commissioner" defined.

598.9413 "Division" defined.

598.944 Registration of dance studio or health club required.

598.946 Owner of dance studio or health club to register and deposit security before advertising services or conducting business in this State: Amount of security; adjustment of security; exception from requirement to deposit security.

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.

598C.030 "Commissioner" defined.

598C.180 Commissioner of Consumer Affairs to administer chapter; duties of Attorney General.

599B.015 Duties of Attorney General and Commissioner.

599B.080 Registration required.

599B.090 Registration of seller: Application; confidentiality of certain information; security; fee.

599B.100 Registration of seller: Form and amount of security; release of security.

599B.105 Rights and remedies of injured consumer; resolution by Division of claims against security; regulations.

599B.110 Registration of seller: Disclosure of certain convictions, judgments and orders concerning responsible persons.

599B.115 Registration of seller: Work card required for applicant and certain other persons; exceptions; issuance and renewal of work card; fingerprints.

599B.120 Registration of salesman: Application; statement of seller; fee.

599B.125 Statement regarding payment of child support by applicant for registration certificate; grounds for denial of registration certificate; duty of Division.

599B.130 Issuance and display of registration certificate.

599B.140 Renewal of registration.

599B.143 Suspension of registration certificate for failure to pay child support or comply with certain subpoenas or warrants; reinstatement of registration certificate.

599B.145 Payment and refund of fees for registration.

599B.195 Delivery of goods or services must be accompanied by form.

Assemblyman Arberry moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 78.

Bill read second time and ordered to third reading.

Senate Bill No. 382.

Bill read second time and ordered to third reading.

Senate Bill No. 403.

Bill read second time.

The following amendment was proposed by the Committee on Ways and Means:

Amendment No. 955.

SUMMARY—Makes **various** appropriations ~~[to restore the balances in the Stale Claims Account, Emergency Account and Reserve for Statutory Contingency Account;]~~ **from the State General Fund.** (BDR S-1264)

AN ACT making appropriations to restore ~~[the]~~ **certain fund** balances ~~[in the Stale Claims Account, Emergency Account and Reserve for Statu+tory Contingency Account;]~~ **and for certain costs related to changes in various taxes;** and providing other matters properly relating thereto.

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

Section 1. There is hereby appropriated from the State General Fund to the:

1. Stale Claims Account created by NRS 353.097 the sum of $5,500,000 to restore the balance in the Account.

2. Emergency Account created by NRS 353.263 the sum of $150,000 to restore the balance in the Account.

3. Reserve for Statutory Contingency Account created by NRS 353.264 the sum of $3,000,000 to restore the balance in the Account.

4. Contingency Fund created by NRS 353.266 the sum of $7,500,000 to restore the balance in the fund attributable to the State General Fund.

Sec. 2. **There is hereby appropriated from the State General Fund to the:**

1. Department of Motor Vehicles the sum of $24,000 for the costs of implementing changes to the provisions governing the governmental services tax.

2. Department of Taxation the sum of $95,000 for the costs of implementing changes to the provisions governing the local school support tax.

3. Interim Finance Committee the sum of $527,850 for allocation to the Department of Taxation for the costs of additional duties and modifications necessary to implement laws revised during this session.

Sec. 3. **Any remaining balance of the appropriations made by section 2 of this act must not be committed for expenditure after June 30, 2011, by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 16, 2011, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September 16, 2011.**

~~[Sec. 2.]~~ ***Sec. 4.*** **1.** This **section and sections 2 and 3 of this act become effective upon passage and approval.**

2. Section 1 of this act becomes effective on July 1, 2009.

Assemblyman Arberry moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Oceguera moved that all bills and resolutions reported out of committee with amendments be placed at the top of the appropriate reading file for this legislative day.

Motion carried.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Horne moved that Assembly Bill No. 385 be taken from the General File and placed on the Chief Clerk's desk.

Motion carried.

GENERAL FILE AND THIRD READING

Senate Bill No. 7.

Bill read third time.

The following amendment was proposed by the Committee on Ways and Means:

Amendment No. 950.

AN ACT relating to public health; making various changes relating to the Advisory Council on the State Program for Fitness and Wellness; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that, within the limits of available money, the Health Division of the Department of Health and Human Services shall establish the Advisory Council on the State Program for Fitness and Wellness to increase public knowledge, to raise public awareness and to educate the residents of this State on matters relating to physical fitness and wellness. (NRS 439.517, 439.518) **Section 1** of this bill increases the number of voting members of the Advisory Council from 7 to 11 members and authorizes the appointment of additional nonvoting members.

Existing law requires the State Health Officer or his designee to serve as the Chairman of the Advisory Council. **Section 2** of this bill provides instead that a majority of the voting members of the Advisory Council must select a Chairman and a Vice Chairman of the Advisory Council. **Section 2** further authorizes a majority of the voting members of the Advisory Council to appoint committees and subcommittees to study issues relating to physical fitness and wellness and provides for the removal of nonlegislative members. (NRS 439.519)

Existing law authorizes the Health Division to contract with public or private entities to provide services necessary to carry out the State Program for Fitness and Wellness. **Section 3** of this bill authorizes the Health Division to award grants for the same purpose.

Existing law requires the Health Division, on or before January 1 of each year, to prepare and submit a report to the Governor and to the Director of the Legislative Counsel Bureau for transmittal to the Legislature summarizing the findings and recommendations of the Advisory Council and the status of the State Program for Fitness and Wellness. (NRS 439.524) **Section 4** of this bill requires the Health Division to prepare and submit the report on or before February 1 of each year.

Section 5 of this bill revises ~~[an appropriation made]~~ **the dates that limit the expenditure and require the reversion of money appropriated** by the

2007 Legislature to ~~[clarify that the money must be accounted for in the nonreverting account created by statute to]~~ pay the operational costs of the Advisory Council.

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

Section 1. NRS 439.518 is hereby amended to read as follows:

439.518 1. Within the limits of available money, the Health Division shall establish the Advisory Council on the State Program for Fitness and Wellness to advise and make recommendations to the Health Division concerning the Program.

2. The Administrator shall appoint to the Advisory Council the following ~~[seven]~~ ***nine voting*** members:

(a) The State Health Officer or his designee;

(b) The Superintendent of Public Instruction or his designee;

(c) One representative of the health insurance industry;

(d) One provider of health care;

(e) One representative of the Nevada Association for Health, Physical Education, Recreation and Dance or its successor organization;

(f) One representative of an organization committed to the prevention of chronic diseases; ~~[and]~~

(g) One registered dietician ~~[.]~~ ***;***

(h) One representative who is a member of a racial or ethnic minority group appointed from a list of persons submitted to the Administrator by the Advisory Committee of the Office of Minority Health of the Department; and

(i) One representative of private employers in this State who has experience in matters relating to employment and human resources.

3. The Legislative Commission shall appoint to the Advisory Council the following two voting members:

(a) One member of the Senate; and

(b) One member of the Assembly.

4. A majority of the voting members of the Advisory Council may appoint nonvoting members to the Advisory Council.

Sec. 2. NRS 439.519 is hereby amended to read as follows:

439.519 1. The members of the Advisory Council serve terms of 2 years. A member may be reappointed.

2. ~~[The State Health Officer or his designee shall serve as the]~~ ***A majority of the voting members of the Advisory Council shall select a*** Chairman ***and a Vice Chairman*** of the Advisory Council.

3. ***A majority of the voting members of the Advisory Council may:***

(a) Appoint committees or subcommittees to study issues relating to physical fitness and wellness.

(b) Remove a nonlegislative member of the Advisory Council for failing to carry out the business of, or serve the best interests of, the Advisory Council.

4. The Health Division shall, within the limits of available money, provide the necessary professional staff and a secretary for the Advisory Council.

~~[4.]~~ ***5.*** A majority of the ***voting*** members of the Advisory Council constitutes a quorum to transact all business, and a majority of those ***voting members*** present, physically or via telecommunications, must concur in any decision.

~~[5.]~~ ***6.*** The Advisory Council shall, within the limits of available money, meet at the call of the Administrator, the Chairman or a majority of the ***voting*** members of the Advisory Council quarterly or as is necessary.

~~[6.]~~ ***7.*** The members of the Advisory Council serve without compensation, except that each member is entitled, while engaged in the business of the Advisory Council and within the limits of available money, to the per diem allowance and travel expenses provided for state officers and employees generally.

Sec. 3. NRS 439.523 is hereby amended to read as follows:

439.523 The Health Division may, within the limits of available money, enter into contracts with ***or award grants to*** public or private entities that have the appropriate expertise to provide any services necessary to carry out or assist the Health Division in carrying out the provisions of NRS 439.514 to 439.525, inclusive.

Sec. 4. NRS 439.524 is hereby amended to read as follows:

439.524 The Health Division shall, on or before ~~[January]~~ ***February*** 1 of each year, prepare and submit a report to the Governor and to the Director of the Legislative Counsel Bureau for transmittal to the Legislature summarizing:

1. The findings and recommendations of the Advisory Council; and
2. The status of the Program.

Sec. 5. Section 35 of chapter 345, Statutes of Nevada 2007, at page 1617, is hereby amended to read as follows:

Sec. 35. 1. There is hereby appropriated from the State General Fund to the account for the Advisory Council on the State Program for Fitness and Wellness, created pursuant to Senate Bill No. 197 of the 73rd Session of the Nevada Legislature, the sum of $100,000 for the operational costs of the Council.

2. Any remaining balance of the appropriation made by subsection 1 must not be committed for expenditure after June 30, ~~[2009,]~~ ***2011,*** by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September ~~[18, 2009,]~~ ***16, 2011,*** by either the entity to which the money was appropriated or the entity to which the money was

subsequently granted or transferred, and must be reverted to the State General Fund on or before September ~~[~~18, 2009.~~]~~ ~~*[NRS 439.525, the sum of $100,000 for the operational costs of the Council.]*~~ ***16, 2011.***

Sec. 6. Notwithstanding the provisions of subsection 1 of NRS 439.519, the members of the Advisory Council on the State Program for Fitness and Wellness appointed pursuant to:

1. The provisions of paragraphs (h) and (i) of subsection 2 of NRS 439.518, as amended by section 1 of this act, must be appointed to initial terms of 4 years.

2. The provisions of paragraphs (a) and (b) of subsection 3 of NRS 439.518, as amended by section 1 of this act, must be appointed to initial terms of 2 years.

Sec. 7. This act becomes effective upon passage and approval.

Assemblywoman Smith moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

Senate Bill No. 152.

Bill read third time.

The following amendment was proposed by the Committee on Ways and Means:

Amendment No. 953.

AN ACT relating to energy; providing for the training of persons to perform jobs which promote energy efficiency; requiring governmental entities to perform certain functions to promote energy efficiency; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill provides for the use of the incentives contained in the recently signed federal American Recovery and Reinvestment Act of 2009 to provide job training, the promotion of energy efficiency and the promotion of the use of renewable energy in Nevada. **Sections 9 and 10** of this bill seek to take advantage of those incentives by providing specific training to persons in this State, establishing projects that will require the skills for which those persons are trained and providing for the employment of those persons. **Section 9** requires the Department of Employment, Training and Rehabilitation and the Housing Division of the Department of Business and Industry to establish contractual relationships with nonprofit collaboratives to provide training in the fields of energy efficiency and renewable energy, including training in the areas of weatherization, energy retrofit applications and performing energy audits. Within the limits of available money, the collaboratives will carry out programs for job training and provide apprenticeship programs in specific energy-related fields. Within the limits of money available, the Housing Division is required to contract with the nonprofit collaboratives, governmental entities, community action agencies and other nonprofit corporations to identify neighborhoods that will qualify for funding for

residential weatherization projects and award contracts for projects to promote energy efficiency through residential weatherization. Such contracts awarded must provide for employing the persons trained by the nonprofit collaborative for this purpose, paying those employees prevailing wages and offering the employees and their dependents health care insurance.

Section 10 of this bill requires the State Public Works Board, the board of trustees of each school district and the Board of Regents of the University of Nevada, within 90 days after the effective date of this bill, to each establish projects to weatherize and retrofit public buildings, facilities and structures in this State, including without limitation, traffic-control systems, and to otherwise use sources of renewable energy to serve those buildings, facilities and structures. **Section 10** further sets forth criteria for prioritizing those projects. Those entities are further required to enter into contracts for the projects as soon as practicable. Such contracts are required to provide that employees of the contractors and subcontractors on the project be paid prevailing wages, that the contractor or subcontractor employ a certain number of employees trained by a nonprofit cooperative and pay them prevailing wages and that the contractor offer employees on the project and their dependents health care insurance.

Section 11 of this bill provides that within the limits of money available, the State Public Works Board and the Division of State Parks of the State Department of Conservation and Natural Resources shall conduct studies to determine the feasibility of carrying out certain projects for providing alternative sources of energy in this State.

Section 12 of this bill requires the Labor Commissioner to adopt the job classifications and wage rates established by the Federal Government for certain jobs relating to residential weatherization and to enforce those job classifications and wage rates in the same manner that he enforces the labor laws and regulations of this State generally.

Section 13 of this bill requires the Office of Energy within the Office of the Governor, the Department of Employment, Training and Rehabilitation and the Housing Division of the Department of Business and Industry to report to the Interim Finance Committee concerning the application for and acceptance and expenditure of any money available to the State to carry out the purposes of this bill pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

WHEREAS, The unemployment rate in the State of Nevada is currently 9.1 percent and is expected to reach 11.4 percent sometime during 2009; and

WHEREAS, Many of Nevada's 128,000 unemployed residents have lost jobs in the construction and service sectors as the construction industry has faltered as a result of the mortgage foreclosure crisis and as the service industry, including gaming and tourism, has faltered as a result of the curtailment of discretionary spending on a national level; and

WHEREAS, One of the most effective methods of returning unemployed Nevadans to work is to create "green jobs" by developing new industries in

this State in a manner that takes advantage of incentives offered by the Federal Government for job training, the promotion of energy efficiency and the promotion of the use of renewable energy; and

WHEREAS, An immediate step which may be taken to put Nevadans back to work is to coordinate job training with programs for weatherization and energy efficiency that are part of the recently enacted federal economic stimulus package; and

WHEREAS, In such a manner, unemployed Nevadans may learn new skills in fields such as energy auditing and the installation of energy efficient equipment and improvements, and then go to work performing such tasks as **performing energy audits,** weatherizing homes, retrofitting public buildings, helping lower-income Nevadans to save on their utility bills, and reducing energy costs for schools, government buildings and other public facilities; and

WHEREAS, The performance of energy audits is a critical component of ensuring that the weatherization of homes results in meaningful reductions in energy costs to Nevadans; and

WHEREAS, The average energy auditor can perform 500 energy audits of residences per year; and

WHEREAS, The money available through the recently enacted federal economic stimulus package can be used to ensure that many Nevadans are trained in the skills necessary to perform energy audits thereby resulting in the performance of many thousands of energy audits of residences in Nevada; and

WHEREAS, The Green Jobs Initiative can be accomplished through a public-private partnership that combines the resources of state agencies, local housing authorities, institutions of higher education, joint labor-management partnerships, apprenticeship programs and private contractors under the "umbrella" of a nonprofit collaborative; and

WHEREAS, The Green Jobs Initiative would function to establish programs to provide job training and outreach for the weatherization and retrofitting of buildings and facilities in northern Nevada, southern Nevada and rural Nevada; now, therefore,

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

Section 1. Chapter 701B of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this act.

Sec. 2. ***Sections 2 to 10, inclusive, of this act may be cited as the Green Jobs Initiative.***

Sec. 3. ***As used in sections 2 to 10, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 4 to 8, inclusive, of this act have the meanings ascribed to them in those sections.***

Sec. 4. ***"Department" means the Department of Employment, Training and Rehabilitation.***

Sec. 5. ***"Division" means the Housing Division of the Department of Business and Industry.***

Sec. 6. ***1. "Renewable energy" means a source of energy that occurs naturally or is regenerated naturally, including, without limitation:***

(a) Biomass;

(b) Fuel cells;

(c) Geothermal energy;

(d) Solar energy;

(e) Waste heat;

(f) Waterpower; and

(g) Wind.

2. The term does not include coal, natural gas, oil, propane or any other fossil fuel, or nuclear energy.

Sec. 7. ***"Retrofitting" means the alteration, improvement, modification, remodeling or renovation of a building, facility, residence or structure to make that building, facility, residence or structure more energy efficient.***

Sec. 8. ***"Weatherization" means materials or measures, and their installation, that are used to improve the thermal efficiency of a building, facility, residence or structure.***

Sec. 9. ***1. The Department of Employment, Training and Rehabilitation and the Housing Division of the Department of Business and Industry shall establish contractual relationships with one or more nonprofit collaboratives to carry out the State's mission of creating new jobs in the fields of energy efficiency and renewable energy by combining job training with weatherization, energy retrofit applications or the development of renewable energy plants.***

2. To qualify as a nonprofit collaborative for the purposes of this section, a nonprofit entity:

(a) Must enter into a written agreement relating to job training and career development activities with:

(1) A labor management agency or other affiliated agency which has established an apprenticeship program that is registered and approved by the State Apprenticeship Council pursuant to chapter 610 of NRS; and

(2) A community college or another institution of higher education; and

(b) Must conduct or have the ability to conduct training programs in at least one of the three geographic regions of this State, including southern Nevada, northern Nevada and rural Nevada.

➥ Such a nonprofit entity may also enter into a written agreement relating to job training and career development activities with a trade association which has an accredited job skills training program.

3. Within the limits of money available to the Department for this purpose, the Department shall contract with one or more qualified nonprofit collaboratives to:

(a) Carry out programs for job training in fields relating to energy efficiency and the use of renewable energy.

(b) In concert with a labor management agency or other affiliated agency which has established an apprenticeship program that is registered and approved by the State Apprenticeship Council pursuant to chapter 610 of NRS, develop apprenticeship programs to train laborers in skills related to:

(1) The implementation of energy efficiency measures.

(2) The use of renewable energy.

(3) Performing audits of the energy efficiency of buildings, facilities, residences and structures.

(4) The weatherization of buildings, facilities, residences and structures.

(5) The retrofitting of buildings, facilities, residences and structures.

(6) The construction and operation of centralized renewable energy plants.

(7) The manufacturing of components relating to work performed pursuant to subparagraphs (1) to (6), inclusive.

4. The job training described in subsection 3 must be sufficiently detailed to allow workers, as applicable, to perform:

(a) The services set forth in NRS 702.270.

(b) The services set forth in NRS 618.910 to 618.936, inclusive.

(c) Such other vocational or professional services, or both, as the Department deems appropriate.

5. Funding provided for the job training described in subsection 3:

(a) Must, to the extent money is available for the purpose, include the cost of tuition and supplies.

(b) May include a cost-of-living stipend which may or may not be in addition to any available unemployment compensation.

6. Within the limits of money available to the Division for the purpose, the Division shall contract with one or more governmental entities, community action agencies or nonprofit organizations, including, without limitation, qualified nonprofit collaboratives, to:

(a) Identify, in different regions of the State, neighborhoods that will qualify for funding for residential weatherization projects pursuant to federal programs focusing on residential weatherization; and

(b) Issue requests for proposals for contractors and award contracts for projects to promote energy efficiency through weatherization. Any such requests for proposals and contracts must include, without limitation:

(1) Provisions stipulating that all employees of the outside contractors who work on the project must be paid prevailing wages;

(2) Provisions requiring that each outside contractor:

(I) Employ on each such project a number of persons trained as described in paragraph (b) of subsection 3 that is equal to or greater than 50 percent of the total workforce the contractor employs on the project; or

(II) If the Director of the Department determines in writing, pursuant to a request submitted by the contractor, that the contractor cannot reasonably comply with the provisions of sub-subparagraph (I) because there are not available a sufficient number of such trained persons, employ a number of persons trained as described in paragraph (b) of subsection 3 or trained through any apprenticeship program that is registered and approved by the State Apprenticeship Council pursuant to chapter 610 of NRS that is equal to or greater than 50 percent of the total workforce the contractor employs on the project;

(3) A component pursuant to which persons trained as described in paragraph (b) of subsection 3 must be classified and paid prevailing wages depending upon the classification of the skill in which they are trained; and

(4) A component that requires each contractor to offer to employees working on the project, and to their dependents, health care in the same manner as a policy of insurance pursuant to chapters 689A and 689B of NRS or the Employee Retirement Income Security Act of 1974.

7. The Department and the Division:

(a) Shall apply for and accept any grant, appropriation, allocation or other money available pursuant to:

(1) The Green Jobs Act of 2007, 29 U.S.C. § 2916(e); and

(2) The American Recovery and Reinvestment Act of 2009, Public Law 111-5; and

(b) May apply for and accept any other available gift, grant, appropriation or donation from any public or private source,

➥ to assist the Department and the Division in carrying out the provisions of this section.

8. The Department and the Division shall each report to the Interim Finance Committee at each meeting held by the Interim Finance Committee with respect to the activities in which they have engaged pursuant to this section.

9. As used in this section, "community action agencies" means private corporations or public agencies established pursuant to the Economic Opportunity Act of 1964, Public Law 88-452, which are authorized to administer money received from federal, state, local or private funding entities to assess, design, operate, finance and oversee antipoverty programs.

Sec. 10. ***1. The State Public Works Board shall, within 90 days after the effective date of this act, determine the specific projects to weatherize and retrofit public buildings, facilities and structures, including, without limitation, traffic-control systems, and to otherwise use sources of renewable energy to serve those buildings, facilities and structures pursuant to the provisions of this section and section 9 of this act. The projects must be prioritized and selected on the basis of the following criteria:***

(a) The length of time necessary to commence the project.

(b) The number of workers estimated to be employed on the project.

(c) The effectiveness of the project in reducing energy consumption.

(d) The estimated cost of the project.

(e) Whether the project is able to be powered by or to otherwise use sources of renewable energy.

(f) Whether the project has qualified for participation in one or more of the following programs:

(1) The Solar Energy Systems Incentive Program created by NRS 701B.240;

(2) The Renewable Energy School Pilot Program created by NRS 701B.350;

(3) The Wind Energy Systems Demonstration Program created by NRS 701B.580;

(4) The Waterpower Energy Systems Demonstration Program created by NRS 701B.820; or

(5) An energy efficiency or energy conservation program offered by a public utility, as defined in NRS 704.020, pursuant to a plan approved by the Public Utilities Commission of Nevada pursuant to NRS 704.741.

2. The board of trustees of each school district shall, within 90 days after the effective date of this act, determine the specific projects to weatherize and retrofit public buildings, facilities and structures, including, without limitation, traffic-control systems, and to otherwise use sources of renewable energy to serve those buildings, facilities and structures pursuant to the provisions of this section and section 9 of this act. The projects must be prioritized and selected on the basis of the following criteria:

(a) The length of time necessary to commence the project.

(b) The number of workers estimated to be employed on the project.

(c) The effectiveness of the project in reducing energy consumption.

(d) The estimated cost of the project.

(e) Whether the project is able to be powered by or to otherwise use sources of renewable energy.

(f) Whether the project has qualified for participation in one or more of the following programs:

(1) The Solar Energy Systems Incentive Program created by NRS 701B.240;

(2) The Renewable Energy School Pilot Program created by NRS 701B.350;

(3) The Wind Energy Systems Demonstration Program created by NRS 701B.580;

(4) The Waterpower Energy Systems Demonstration Program created by NRS 701B.820; or

(5) An energy efficiency or energy conservation program offered by a public utility, as defined in NRS 704.020, pursuant to a plan approved by the Public Utilities Commission of Nevada pursuant to NRS 704.741.

3. The Board of Regents of the University of Nevada shall, within 90 days after the effective date of this act, determine the specific projects to weatherize and retrofit public buildings, facilities and structures, including, without limitation, traffic-control systems, and to otherwise use sources of renewable energy to serve those buildings, facilities and structures pursuant to the provisions of this section and section 9 of this act. The projects must be prioritized and selected on the basis of the following criteria:

(a) The length of time necessary to commence the project.

(b) The number of workers estimated to be employed on the project.

(c) The effectiveness of the project in reducing energy consumption.

(d) The estimated cost of the project.

(e) Whether the project is able to be powered by or to otherwise use sources of renewable energy.

(f) Whether the project has qualified for participation in one or more of the following programs:

(1) The Solar Energy Systems Incentive Program created by NRS 701B.240;

(2) The Renewable Energy School Pilot Program created by NRS 701B.350;

(3) The Wind Energy Systems Demonstration Program created by NRS 701B.580;

(4) The Waterpower Energy Systems Demonstration Program created by NRS 701B.820; or

(5) An energy efficiency or energy conservation program offered by a public utility, as defined in NRS 704.020, pursuant to a plan approved by the Public Utilities Commission of Nevada pursuant to NRS 704.741.

4. As soon as practicable after an entity described in subsections 1, 2 and 3 selects a project, the entity shall proceed to enter into a contract with one or more contractors to perform the work on the project. The request for proposals and all contracts for each project must include, without limitation:

(a) Provisions stipulating that all employees of the contractors and subcontractors who work on the project must be paid prevailing wages pursuant to the requirements of chapter 338 of NRS;

(b) Provisions requiring that each contractor and subcontractor employed on each such project:

(1) Employ a number of persons trained as described in paragraph (b) of subsection 3 of section 9 of this act that is equal to or greater than 50 percent of the total workforce the contractor or subcontractor employs on the project; or

(2) If the Director of the Department determines in writing, pursuant to a request submitted by the contractor or subcontractor, that the contractor or subcontractor cannot reasonably comply with the provisions of subparagraph (1) because there are not available a sufficient number of such trained persons, employ a number of persons trained as described in paragraph (b) of subsection 3 of section 9 of this act or trained through any apprenticeship program that is registered and approved by the State Apprenticeship Council pursuant to chapter 610 of NRS that is equal to or greater than 50 percent of the total workforce the contractor or subcontractor employs on the project;

(c) A component pursuant to which persons trained as described in paragraph (b) of subsection 3 of section 9 of this act must be classified and paid prevailing wages depending upon the classification of the skill in which they are trained; and

(d) A component that requires each contractor or subcontractor to offer to employees working on the project, and to their dependents, health care in the same manner as a policy of insurance pursuant to chapters 689A and 689B of NRS or the Employee Retirement Income Security Act of 1974.

5. The State Public Works Board, each of the school districts and the Board of Regents of the University of Nevada shall each provide a report to the Interim Finance Committee which describes the projects selected pursuant to this section and a report of the dates on which those projects are scheduled to be completed.

Sec. 11. Within limits of money available for the purpose:

1. The State Public Works Board shall conduct a study to determine the feasibility of using geothermal resources to provide heating to all or a portion of the Lovelock Correctional Center.

2. The Division of State Parks of the State Department of Conservation and Natural Resources shall conduct a study to determine the feasibility of:

(a) Constructing a hydroelectric generation unit at the existing dam on the South Fork Reservoir near Elko, Nevada.

(b) Constructing wind turbines in the vicinity of the South Fork Reservoir near Elko, Nevada.

Sec. 11.5. **Upon the approval of any contract entered into by the Housing Division of the Department of Business and Industry pursuant to section 9 of this act, the State Board of Examiners shall immediately transmit a copy of the contract to the Director of the Legislative Counsel Bureau for transmittal to the Legislative Commission.**

Sec. 12. For the purposes of the State in carrying out the provisions of section 9 of this act governing residential weatherization in compliance with section 1606 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, and notwithstanding any other provision of state law:

1. The Labor Commissioner shall, on the effective date of this act, for each locality in this State for which the Labor Commissioner has not already

established job classifications and wage rates pursuant to state law, adopt the job classifications and wage rates relating to residential weatherization established for that locality pursuant to the most current provisions of federal law or, if such job classifications and wage rates have not been established for that locality, the job classifications and wage rates for the closest locality, whether or not in Nevada, for which such job classifications and wage rates have been established, which are necessary to carry out the provisions of section 9 of this act;

2. The Labor Commissioner shall enforce the job classifications and wage rates adopted pursuant to subsection 1 in the same manner as the Labor Commissioner is authorized to enforce the labor laws and regulations of this State generally; and

3. The provisions of NRS 233B.040 to 233B.120, inclusive, do not apply to the adoption by the Labor Commissioner of the job classifications and wage rates required pursuant to subsection 1.

Sec. 13. **1.** The Office of Energy within the Office of the Governor, the Department of Employment, Training and Rehabilitation and the Housing Division of the Department of Business and Industry shall report to the Interim Finance Committee as required by the Committee concerning the application for and acceptance and expenditure of any money available to the State to carry out the purposes of this act pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

2. As part of each report required pursuant to subsection 1, the Housing Division of the Department of Business and Industry shall provide a written statement to the Interim Finance Committee concerning:

(a) The number of energy audits of residences performed pursuant to section 9 of this act for the period since the previous such report;

(b) The energy savings for residences resulting from the weatherization projects carried out pursuant to section 9 of this act; and

(c) Any other information required by the Interim Finance Committee.

Sec. 14. This act becomes effective upon passage and approval.

Assemblyman Arberry moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

Senate Bill No. 293.

Bill read third time.

The following amendment was proposed by the Committee on Ways and Means:

Amendment No. 949.

AN ACT relating to children; making various changes to provisions governing the court-ordered admission of a child to a locked facility; **revising provisions governing proceedings on a petition alleging that a**

child is in need of protection; requiring a court to provide a hearing to determine whether to include rights to visitation of siblings in a decree of adoption; requiring the development of policies concerning certain psychotropic medications given to children who are in the custody of agencies which provide child welfare services; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law sets forth the procedure for petitioning a court to order the admission of certain children with emotional disturbances to a locked facility for treatment. (NRS 432B.607-432B.6085) **Section 2.5** of this bill clarifies that as used in those provisions, "court-ordered admission of a child" includes a child for whom a petition is filed to continue placement after an emergency admission. **Section 2.7** of this bill requires each agency which provides child welfare services to establish appropriate policies to ensure that children in the custody of the agency have timely access to clinically appropriate psychotropic medication. **Section 11** of this bill requires the Division of Child and Family Services of the Department of Health and Human Services to adopt consistent policies with respect to access to such medication by children in division facilities.

Existing law governs the requirements for a petition alleging that a child is in need of protection and provides that the district attorney shall countersign each such petition and represent the interests of the public in all subsequent proceedings. (NRS 432B.510) Section 2.9 of this bill requires an agency which provides child welfare services to represent the best interests of the child in all proceedings and revises the provisions governing the district attorney to require that the district attorney represent the interests of the agency which provides child welfare services in all subsequent proceedings.

Section 4 of this bill requires a petition for the court-ordered admission of a child with an emotional disturbance into a locked facility to be filed within 5 days after an emergency admission or the child must be released. (NRS 432B.6075) **Section 5** of this bill clarifies that the court proceeding for the court-ordered admission of a child who is alleged to be a child with an emotional disturbance must include an evidentiary hearing. (NRS 432B.6076) **Section 6** of this bill expands the manner in which a person is allowed to oppose a petition for the court-ordered admission of a child into a locked facility to include an opposition stated verbally in court. (NRS 432B.6077) **Section 7** of this bill provides that if a court authorizes a second evaluation team to examine a child who is subject to a court-ordered admission to a locked facility, the second examination must be conducted within 5 business days by a team that is not affiliated with, employed by or otherwise connected to the facility where the child has been admitted. (NRS 432B.6078) **Section 8** of this bill requires a court to apply the same standards in considering a petition to renew a court-ordered admission of a child as were applied to the original petition. (NRS 432B.608) **Section 9** of

this bill extends the time for developing a plan for the care, treatment and training of a child subject to a court-ordered admission to a locked facility from 5 to 10 days after the child is admitted to the facility, and removes the requirement that the plan include certain criteria which the child must satisfy before discharge. (NRS 432B.6081)

Section 10 of this bill requires a court to conduct a hearing to determine whether to grant visitation rights to a sibling as part of an adoption decree when the adoption is of a child in the custody of an agency which provides child welfare services. **Section 11** further requires the agency which provides child welfare services to provide the court that is conducting the adoption proceedings with a copy of any existing order for visitation with a sibling of the child and allows certain interested parties to petition to participate in the determination as to whether to include visitation rights in the adoption decree.

Section 12 of this bill requires the Legislative Committee on Health Care to study issues relating to the use of psychotropic medications by children in the custody of agencies which provide child welfare services.

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

Section 1. (Deleted by amendment.)

Sec. 2. (Deleted by amendment.)

Sec. 2.3. Chapter 432B of NRS is hereby amended by adding thereto the provisions set forth as sections 2.5 and 2.7 of this act.

Sec. 2.5. ***"Court-ordered admission of a child" includes, without limitation:***

1. A child who is in the custody of an agency which provides child welfare services and who is not in a facility whom the court orders to be admitted to a facility; and

2. A child who has been placed in a facility under an emergency admission and whom the court orders to be admitted for the purpose of continuing the placement.

Sec. 2.7. ***Each agency which provides child welfare services shall establish appropriate policies to ensure that children in the custody of the agency have timely access to clinically appropriate psychotropic medication. The policies must include, without limitation, policies concerning:***

1. The use of psychotropic medication in a manner that has not been tested or approved by the United States Food and Drug Administration, including, without limitation, the use of such medication for a child who is of an age that has not been tested or approved or who has a condition for which the use of the medication has not been tested or approved;

2. Prescribing any psychotropic medication for use by a child who is less than 4 years of age;

3. The concurrent use by a child of three or more classes of psychotropic medication; and

4. The concurrent use by a child of two psychotropic medications of the same class.

Sec. 2.9. **NRS 432B.510 is hereby amended to read as follows:**

432B.510 1. A petition alleging that a child is in need of protection may be signed only by:

(a) A representative of an agency which provides child welfare services;

(b) A law enforcement officer or probation officer; or

(c) The district attorney.

2. ***An agency which provides child welfare services shall represent the best interests of the child in all proceedings.*** The district attorney shall countersign every petition alleging need of protection, and shall represent the interests of the ~~[public]~~ ***child welfare agency*** in all proceedings. If the district attorney fails or refuses to countersign the petition, the petitioner may seek a review by the Attorney General. If the Attorney General determines that a petition should be filed, he shall countersign the petition and shall represent the interests of the ~~[public]~~ ***child welfare agency*** in all subsequent proceedings.

3. Every petition must be entitled "In the Matter of ....., a child," and must be verified by the person who signs it.

4. Every petition must set forth specifically:

(a) The facts which bring the child within the jurisdiction of the court as indicated in NRS 432B.410.

(b) The name, date of birth and address of the residence of the child.

(c) The names and addresses of the residences of his parents and any other person responsible for the child's welfare, and spouse if any. If his parents or other person responsible for his welfare do not reside in this State or cannot be found within the State, or if their addresses are unknown, the petition must state the name of any known adult relative residing within the State or, if there is none, the known adult relative residing nearest to the court.

(d) Whether the child is in protective custody and, if so:

(1) The agency responsible for placing the child in protective custody and the reasons therefor; and

(2) Whether the child has been placed in a home or facility in compliance with the provisions of NRS 432B.3905. If the placement does not comply with the provisions of NRS 432B.3905, the petition must include a plan for transferring the child to a placement which complies with the provisions of NRS 432B.3905.

5. When any of the facts required by subsection 4 are not known, the petition must so state.

Sec. 3. NRS 432B.607 is hereby amended to read as follows:

432B.607 As used in NRS 432B.607 to 432B.6085, inclusive, ***and section 2.5 of this act,*** unless the context otherwise requires, the words and

terms defined in NRS 432B.6071 to 432B.6074, inclusive, ***and section 2.5 of this act*** have the meanings ascribed to them in those sections.

Sec. 4. NRS 432B.6075 is hereby amended to read as follows:

432B.6075 ***1.*** A proceeding for a court-ordered admission of a child alleged to be a child with an emotional disturbance who is in the custody of an agency which provides child welfare services to a facility may be commenced by the filing of a petition with the clerk of the court which has jurisdiction in proceedings concerning the child. The petition may be filed by the agency which provides child welfare services without the consent of a parent of the child. The petition must be accompanied:

~~[1.]~~ ***(a)*** By a certificate of a physician, psychiatrist or licensed psychologist stating that he has examined the child alleged to be a child with an emotional disturbance and has concluded that the child has an emotional disturbance and, because of that condition, is likely to harm himself or others if allowed his liberty; or

~~[2.]~~ ***(b)*** By a sworn written statement by the petitioner that:

~~[(a)]~~ ***(1)*** The petitioner has, based upon his personal observation of the child alleged to be a child with an emotional disturbance, probable cause to believe that the child has an emotional disturbance and, because of that condition, is likely to harm himself or others if allowed his liberty; and

~~[(b)]~~ ***(2)*** The child alleged to be a child with an emotional disturbance has refused to submit to examination or treatment by a physician, psychiatrist or licensed psychologist.

2. If a petition filed pursuant to this section is to continue the placement of the child after an emergency admission, the petition must be filed not later than 5 days after the emergency admission or the child must be released.

Sec. 5. NRS 432B.6076 is hereby amended to read as follows:

432B.6076 1. Except as otherwise provided in NRS 432B.6077, if the court finds, after proceedings for the court-ordered admission of a child alleged to be a child with an emotional disturbance who is in the custody of an agency which provides child welfare services to a facility ~~[:]~~ ***, including, without limitation, an evidentiary hearing:***

(a) That there is not clear and convincing evidence that the child with respect to whom the hearing was held exhibits observable behavior such that he is likely to harm himself or others if allowed his liberty, the court shall enter its finding to that effect and the child must not be admitted to a facility.

(b) That there is clear and convincing evidence that the child with respect to whom the hearing was held is in need of treatment in a facility and is likely to harm himself or others if allowed his liberty, the court may order the admission of the child for the most appropriate course of treatment. The order of the court must be interlocutory and must not become final if, within 30 days after the admission, the child is unconditionally released from the facility pursuant to NRS 432B.6084.

2. Before issuing an order for admission or a renewal thereof, the court shall explore other alternative courses of treatment within the least restrictive appropriate environment as suggested by the evaluation team who evaluated the child, or other persons professionally qualified in the field of psychiatric mental health, which the court believes may be in the best interests of the child.

Sec. 6. NRS 432B.6077 is hereby amended to read as follows:

432B.6077 1. An agency which provides child welfare services shall not place a child who is in the custody of the agency in a facility, other than under an emergency admission, unless the agency has petitioned the court for the court-ordered admission of the child to a facility pursuant to NRS 432B.6075.

2. If a petition for the court-ordered admission of a child filed pursuant to NRS 432B.6075 is accompanied by the information described in ***paragraph (b) of*** subsection ~~[2]~~ ***1*** of NRS 432B.6075, the court shall order a psychological evaluation of the child.

3. If a court which receives a petition filed pursuant to NRS 432B.6075 for the court-ordered admission to a facility of a child who is in the custody of an agency which provides child welfare services determines pursuant to subsection 2 of NRS 432B.6076 that the child could be treated effectively in a less restrictive appropriate environment than a facility, the court must order the placement of the child in a less restrictive appropriate environment. In making such a determination, the court may consider any information provided to the court, including, without limitation:

(a) Any information provided pursuant to subsection 4;

(b) Any suggestions of psychologists, psychiatrists or other physicians who have evaluated the child concerning the appropriate environment for the child; and

(c) Any suggestions of licensed clinical social workers or other professionals or any adult caretakers who have interacted with the child and have information concerning the appropriate environment for the child.

4. If a petition for the court-ordered admission of a child who is in the custody of an agency which provides child welfare services is filed pursuant to NRS 432B.6075:

(a) Any person, including, without limitation, the child, may oppose the petition for the court-ordered admission of the child by filing a written opposition with the court ~~[.]~~ ***or stating the opposition in court;*** and

(b) The agency which provides child welfare services must present information to the court concerning whether:

(1) A facility is the appropriate environment to provide treatment to the child; or

(2) A less restrictive appropriate environment would serve the needs of the child.

Sec. 7. NRS 432B.6078 is hereby amended to read as follows:

432B.6078 1. Not later than 5 days after a child who is in the custody of an agency which provides child welfare services has been admitted to a facility pursuant to NRS 432B.6076, the agency which provides child welfare services shall inform the child of his legal rights and the provisions of NRS 432B.607 to 432B.6085, inclusive, ***and section 2.5 of this act,*** 433.456 to 433.543, inclusive, and 433.545 to 433.551, inclusive, and chapters 433A and 433B of NRS and, if the child or the child's attorney desires, assist the child in requesting the court to authorize a second examination by an evaluation team that includes a physician, psychiatrist or licensed psychologist ***who are not employed by, connected to or otherwise affiliated with the facility*** other than a physician, psychiatrist or licensed psychologist who performed an original examination which authorized the court to order the admission of the child to the facility. ***A second examination must be conducted not later than 5 business days after the court authorizes the examination.***

2. If the court authorizes a second examination of the child, the examination must:

(a) Include, without limitation, an evaluation concerning whether the child should remain in the facility and a recommendation concerning the appropriate placement of the child which must be provided to the facility; and

(b) Be paid for by the governmental entity that is responsible for the agency which provides child welfare services, if such payment is not otherwise provided by the State Plan for Medicaid.

Sec. 8. NRS 432B.608 is hereby amended to read as follows:

432B.608 1. If the court issues an order for the admission to a facility of a child who is in the custody of an agency which provides child welfare services pursuant to NRS 432B.6076, the admission automatically expires at the end of 90 days if not terminated previously by the facility as provided for in subsection 2 of NRS 432B.6084.

2. At the end of the court-ordered period of treatment, the agency which provides child welfare services, the Division of Child and Family Services or any facility may petition to renew the admission of the child for additional periods not to exceed 60 days each.

3. For each renewal, the petition must set forth the specific reasons why further treatment in the facility would be in the best interests of the child ~~[.]~~ ***and the court shall apply the same standards when considering a petition to renew the admission of the child as were applied for the original petition for the court-ordered admission of the child.***

Sec. 9. NRS 432B.6081 is hereby amended to read as follows:

432B.6081 A facility which provides care, treatment or training to a child who is in the custody of an agency which provides child welfare services and who is admitted to the facility pursuant to NRS 432B.6076 shall develop a plan, in consultation with the child, for the continued care,

treatment and training of the child upon discharge from the facility. The plan must:

1. Be developed not later than ~~[5]~~ ***10*** days after the child is admitted to the facility;

2. Be submitted to the court after each period of admission ordered by the court pursuant to NRS 432B.6076 in the manner set forth in NRS 432B.608; and

3. Include, without limitation:

(a) The anticipated date of discharge of the child from the facility;

(b) ~~[The criteria which must be satisfied before the child is discharged from the facility, as determined by the medical professional responsible for the care, treatment and training of the child in the facility;~~

~~(c)]~~ The name of any psychiatrist or psychologist who will provide care, treatment or training to the child after the child is discharged from the facility, if appropriate;

~~[(d)]~~ ***(c)*** A plan for any appropriate care, treatment or training for the child for at least 30 days after the child is discharged from the facility; and

~~[(e)]~~ ***(d)*** The suggested placement of the child after the child is discharged from the facility.

Sec. 10. Chapter 127 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If a child who is in the custody of an agency which provides child welfare services is placed for adoption, the agency must provide the court which is conducting the adoption proceedings with a copy of any order for visitation with a sibling of the child that was issued pursuant to NRS 432B.580 and the court must conduct a hearing to determine whether to include an order for visitation with a sibling in the decree of adoption.

2. Any interested party in the adoption, including, without limitation, the adoptive parent, the adoptive child, a sibling of the adoptive child, the agency which provides child welfare services or a licensed child-placing agency may petition the court to participate in the determination of whether to include an order of visitation with a sibling in the decree of adoption.

3. The sole consideration of the court in making a determination concerning visitation with a sibling pursuant to this section is the best interest of the child.

Sec. 11. NRS 433B.130 is hereby amended to read as follows:

433B.130 1. The Administrator shall:

(a) Administer, in accordance with the policies established by the Commission, the programs of the Division for the mental health of children.

(b) Appoint the administrative personnel necessary to operate the programs of the Division for the mental health of children. The Commission must approve the credentials, training and experience of deputy administrators and administrative officers appointed for this purpose.

(c) Delegate to the administrative officers the power to appoint medical, technical, clerical and operational staff necessary for the operation of any division facilities.

(d) Establish appropriate policies to ensure that children in division facilities have timely access to clinically appropriate psychotropic medication that are consistent with the policies established pursuant to section 2.7 of this act.

2. If the Administrator finds that it is necessary or desirable that any employee reside at a facility operated by the Division or receive meals at such a facility, perquisites granted or charges for services rendered to that person are at the discretion of the Governor.

3. The Administrator may accept children referred to the Division for treatment pursuant to the provisions of NRS 458.290 to 458.350, inclusive.

4. The Administrator may enter into agreements with the Administrator of the Division of Mental Health and Developmental Services of the Department for the care and treatment of clients of the Division of Child and Family Services at any facility operated by the Division of Mental Health and Developmental Services.

Sec. 12. During the 2009-2011 interim, the Legislative Committee on Health Care shall study the policies adopted pursuant to section 2.7 of this act and NRS 433B.130, as amended by section 11 of this act, and the use of psychotropic medication by children in the custody of agencies which provide child welfare services, including, without limitation, children in the custody of a facility operated by the Division of Child and Family Services of the Department of Health and Human Services. The study must include, without limitation, issues concerning:

1. The use of psychotropic medication in a manner that has not been tested or approved by the United States Food and Drug Administration, including, without limitation, the use of such medication for a child who is of an age that has not been tested or approved or who has a condition for which the use of the medication has not been tested or approved;

2. Prescribing any psychotropic medication for use by a child who is less than 4 years of age;

3. The concurrent use by a child of three or more classes of psychotropic medication;

4. Whether children in the custody of agencies which provide child welfare services have timely access to clinically appropriate psychotropic medication; and

5. The concurrent use by a child of two psychotropic medications of the same class.

Sec. 13. This act becomes effective on July 1, 2009.

Assemblyman Arberry moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

Assembly Bill No. 18.
Bill read third time.
Roll call on Assembly Bill No. 18:
YEAS—41.
NAYS—None.
EXCUSED—Aizley.
Assembly Bill No. 18 having received a constitutional majority, Madam Speaker declared it passed.
Bill ordered transmitted to the Senate.

Assembly Bill No. 409.
Bill read third time.
Remarks by Assemblymen Settelmeyer and Bobzien.
Roll call on Assembly Bill No. 409:
YEAS—34.
NAYS—Christensen, Cobb, Goedhart, Gustavson, Hambrick, McArthur, Settelmeyer—7.
EXCUSED—Aizley.
Assembly Bill No. 409 having received a constitutional majority, Madam Speaker declared it passed, as amended.
Bill ordered transmitted to the Senate.

Assembly Bill No. 540.
Bill read third time.
Roll call on Assembly Bill No. 540:
YEAS—34.
NAYS—Christensen, Cobb, Goedhart, Gustavson, Hambrick, McArthur, Settelmeyer—7.
EXCUSED—Aizley.
Assembly Bill No. 540 having received a two-thirds majority, Madam Speaker declared it passed.
Bill ordered transmitted to the Senate.

Senate Bill No. 146.
Bill read third time.
Roll call on Senate Bill No. 146:
YEAS—41.
NAYS—None.
EXCUSED—Aizley.
Senate Bill No. 146 having received a constitutional majority, Madam Speaker declared it passed.
Bill ordered transmitted to the Senate.

Senate Bill No. 318.
Bill read third time.
Roll call on Senate Bill No. 318:
YEAS—41.
NAYS—None.
EXCUSED—Aizley.

Senate Bill No. 318 having received a constitutional majority, Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 400.

Bill read third time.

Remarks by Assemblyman Grady.

Roll call on Senate Bill No. 400:

YEAS—41.

NAYS—None.

EXCUSED—Aizley.

Senate Bill No. 400 having received a constitutional majority, Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 401.

Bill read third time.

Remarks by Assemblyman Hardy.

Roll call on Senate Bill No. 401:

YEAS—41.

NAYS—None.

EXCUSED—Aizley.

Senate Bill No. 401 having received a constitutional majority, Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 422.

Bill read third time.

Remarks by Assemblyman Grady.

Roll call on Senate Bill No. 422:

YEAS—41.

NAYS—None.

EXCUSED—Aizley.

Senate Bill No. 422 having received a constitutional majority, Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 423.

Bill read third time.

Roll call on Senate Bill No. 423:

YEAS—41.

NAYS—None.

EXCUSED—Aizley.

Senate Bill No. 423 having received a constitutional majority, Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 424.

Bill read third time.

Roll call on Senate Bill No. 424:
YEAS—41.
NAYS—None.
EXCUSED—Aizley.
Senate Bill No. 424 having received a constitutional majority, Madam Speaker declared it passed.
Bill ordered transmitted to the Senate.

Senate Bill No. 425.
Bill read third time.
Roll call on Senate Bill No. 425:
YEAS—41.
NAYS—None.
EXCUSED—Aizley.
Senate Bill No. 425 having received a constitutional majority, Madam Speaker declared it passed.
Bill ordered transmitted to the Senate.

Senate Bill No. 430.
Bill read third time.
Roll call on Senate Bill No. 430:
YEAS—41.
NAYS—None.
EXCUSED—Aizley.
Senate Bill No. 430 having received a constitutional majority, Madam Speaker declared it passed.
Bill ordered transmitted to the Senate.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Oceguera moved that all rules be suspended and that the Assembly dispense with the reprinting of Assembly Bills Nos. 214 and 561; Senate Bills Nos. 7, 152, 293, and 403.
Motion carried.

Assemblyman Oceguera moved that all rules be suspended and that Assembly Bills Nos. 214 and 561; Senate Bills Nos. 78, 382, and 403 be declared emergency measures under the *Constitution* and that they be placed at the top of General File for third reading and final passage.
Motion carried.

Assemblywoman Smith moved that Senate Bill No. 24 be rereferred to the Committee on Ways and Means.
Motion carried.

Assemblyman Horne moved that Assembly Bill No. 385 be taken from the Chief Clerk's desk and placed at the top of the General File.
Motion carried.

Assembly Bill No. 385.

Bill read third time.

The following amendment was proposed by the Committee on Ways and Means:

Amendment No. 952.

SUMMARY—Makes various changes concerning ~~[the supervision of convicted persons by correctional officers and parole and probation officers.]~~ **private prisons.** (BDR 16-523)

AN ACT relating to ~~[supervision of convicted persons;]~~ **prisons;** requiring the Board of State Prison Commissioners to ~~[establish guidelines setting forth the maximum number of prisoners who may be supervised by a correctional officer; making various changes concerning the maximum caseload of each parole and probation officer who supervises convicted persons;]~~ **adopt regulations pertaining to a facility or institution operated by a private organization; providing that certain provisions relating to a prisoner confined in a facility or institution also apply to a prisoner confined in a private facility or institution operated by a private organization;** and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Board of State Prison Commissioners to ~~[regulate the number of officers and employees of the Department of Corrections. (NRS 209.111) Section 1 of this bill requires the Board to adopt a policy, in consultation with the Director of the Department and the State of Nevada Employees' Association, establishing guidelines for the maximum number of prisoners who may be supervised by a correctional officer at each facility and institution of the Department.~~

~~Under existing law, the Chief Parole and Probation Officer is appointed by the Director of the Department of Public Safety and is responsible, among other things, for supervising the fiscal affairs and responsibilities of the Division of Parole and Probation of the Department, for appointing personnel, assistants and employees for the Division, for formulating methods of investigation, supervision, recordkeeping and reporting, and for developing policies of parole and probation. (NRS 213.1092, 213.1095) Section 2 of this bill requires the Chief Parole and Probation Officer to adopt a policy establishing guidelines for the maximum caseload for each parole and probation officer. Section 2 further requires the Governor to establish the budget for the Division of Parole and Probation each biennium at an amount which anticipates staffing the Division to comply with those guidelines. The Chief Parole and Probation Officer is then required to report to the Interim Finance Committee at the end of each fiscal year setting forth the maximum caseloads that were established for parole and probation officers and, if the maximum caseload per officer was not achieved during the last fiscal year, setting forth the amount of money needed to comply with that requirement.]~~

adopt regulations for carrying out the business of the Board and of the Department of Corrections. (NRS 209.111) Section 1.3 of this bill requires the Board to adopt additional regulations: (1) establishing the maximum number of prisoners that may be incarcerated in a private facility or institution; and (2) requiring that a private facility or institution must meet or exceed the standards set forth in the inmate housing plan approved in the budget of the Department for the biennium, including, without limitation, any associated line-item costs.

Existing law makes it a crime for: (1) a prisoner to escape from prison or to manufacture or possess certain items used in an escape; (2) a person to aid a prisoner in escaping from prison; (3) a person who has custody of a prisoner to allow the prisoner to escape; and (4) a person to conceal an escaped prisoner. (NRS 212.080, 212.090, 212.093, 212.100-212.130) Existing law also provides certain procedures for issuing a warrant for the arrest of an escaped prisoner and the manner in which expenses for recapturing the prisoner must be paid. (NRS 212.030-212.080) Further, existing law makes it a crime to: (1) provide certain items to a prisoner, including certain weapons, an intoxicant or a controlled substance and certain communications devices; or (2) engage in certain behavior concerning a prisoner, such as engaging in sexual conduct or certain unlawful acts relating to human excrement or bodily fluid. (NRS 212.160-212.189) Section 1.7 of this bill provides that those provisions also apply to a prisoner incarcerated in a private prison operated by a private organization as well as to certain other persons. Section 1.7 also provides that the private organization which operates a private facility or institution must: (1) reimburse the State for expenses incurred by the State in recapturing a prisoner who escapes from the private facility or institution; and (2) provide training to its employees that is equivalent to the training provided to a correctional officer in this State.

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

Section 1. **[**~~NRS 209.111 is hereby amended to read as follows:~~

~~209.111 *1.* The Board has full control of all grounds, buildings, labor, and property of the Department, and shall:~~

~~[1.] *(a)* Purchase, or cause to be purchased, all commissary supplies, materials and tools necessary for any lawful purpose carried on at any institution or facility of the Department.~~

~~[2.] *(b)* Regulate the number of officers and employees of the Department.~~

~~[3.] *(c)* Prescribe regulations for carrying on the business of the Board and the Department.~~

~~*2. The Board shall adopt a policy which establishes guidelines for the maximum number of prisoners who may be supervised by a correctional*~~

~~*officer at each facility and institution of the Department. The Board shall establish the guidelines in consultation with the Director and the State of Nevada Employees' Association, or its successor organization. The Director, the State of Nevada Employees' Association or any other interested person may request the Board to review and revise the guidelines established pursuant to this subsection. The decision whether to revise the guidelines pursuant to such a request is in the sole discretion of the Board.]*~~ **(Deleted by amendment.)**

Sec. 1.3. **Chapter 209 of NRS is hereby amended by adding thereto a new section to read as follows:**

1. To ensure the safety of the residents of the State of Nevada, the Board shall adopt regulations:

(a) Establishing the maximum number of prisoners who may be incarcerated in a private facility or institution; and

(b) Requiring that a private facility or institution must meet or exceed the standards set forth in the inmate housing plan approved in the budget of the Department for the biennium, including, without limitation, any associated line-item costs.

2. As used in this section:

(a) "Prisoner" has the meaning ascribed to it in section 1.7 of this act.

(b) "Private facility or institution" has the meaning ascribed to it in section 1.7 of this act.

Sec. 1.7. **Chapter 212 of NRS is hereby amended by adding thereto a new section to read as follows:**

1. The provisions of this section and NRS 212.030 to 212.130, inclusive, and 212.160 to 212.189, inclusive, apply to:

(a) A person who has custody of a prisoner assigned to a private facility or institution in this State; and

(b) A prisoner assigned to a private facility or institution in this State,

↪ to the same extent that those provisions would apply if the prisoner had been assigned to a facility or institution operated by the Department.

2. A private organization that operates a private facility or institution must provide training to any person employed by the private facility or institution to perform the duties of a correctional officer described in subsection 5 of NRS 209.131. The training must be equivalent to the training provided to a correctional officer in this State.

3. The private organization that operates a private facility or institution must reimburse the State for any expenses charged against the State or paid by the State pursuant to NRS 212.040, 212.050 or 212.070 concerning a prisoner who escapes from the private facility or institution.

4. As used in this section:

(a) "Prisoner" means any person who is:

(1) Convicted of a crime under the laws of this State and sentenced to imprisonment in the state prison; or

(2) Convicted of a crime under the laws of another jurisdiction and sentenced to imprisonment by that jurisdiction.

(b) "Private facility or institution" means a facility or institution operated by a private organization to house prisoners.

Sec. 2. ~~[Chapter 213 of NRS is hereby amended by adding thereto a new section to read as follows:~~

~~*1. The Chief shall adopt a policy which establishes guidelines for a maximum caseload for each parole and probation officer of:*~~

~~*(a) Not more than 30 offenders who are subject to intensive supervision or residential confinement or who are otherwise deemed high risk to reoffend;*~~

~~*(b) Not more than 45 offenders who are required to register as sex offenders if they are not subject to paragraph (a); or*~~

~~*(c) Not more than 70 offenders who are not subject to paragraph (a) or (b).*~~

~~*2. The budget submitted to the Legislature by the Governor for the Division for each biennium must be set at an amount reasonably anticipated to allow the Division to achieve the maximum caseloads for parole and probation officers set forth in subsection 1.*~~

~~*3. The Chief shall submit a report to the Interim Finance Committee at the end of each fiscal year setting forth the maximum caseloads that were established for parole and probation officers pursuant to subsection 1 and, if the maximum caseloads set forth in that subsection were not achieved for that fiscal year, setting forth the amount of money needed in order to comply with the provisions of subsection 1.]~~ **(Deleted by amendment.)**

Sec. 3. ~~[NRS 213.107 is hereby amended to read as follows:~~

~~213.107 As used in NRS 213.107 to 213.157, inclusive, *and section 2 of this act,* unless the context otherwise requires:~~

~~1. "Board" means the State Board of Parole Commissioners.~~

~~2. "Chief" means the Chief Parole and Probation Officer.~~

~~3. "Division" means the Division of Parole and Probation of the Department of Public Safety.~~

~~4. "Residential confinement" means the confinement of a person convicted of a crime to his place of residence under the terms and conditions established by the Board.~~

~~5. "Sex offender" means any person who has been or is convicted of a sexual offense.~~

~~6. "Sexual offense" means:~~

~~(a) A violation of NRS 200.366, subsection 4 of NRS 200.400, NRS 200.710, 200.720, subsection 2 of NRS 200.730, NRS 201.180, paragraph (a) or subparagraph (2) of paragraph (b) of subsection 1 of NRS 201.195, NRS 201.230 or 201.450, or paragraph (a) or (b) of subsection 4 or paragraph (a) or (b) of subsection 5 of NRS 201.560;~~

~~(b) An attempt to commit any offense listed in paragraph (a); or~~

~~(c) An act of murder in the first or second degree, kidnapping in the first or second degree, false imprisonment, burglary or invasion of the home if the act is determined to be sexually motivated at a hearing conducted pursuant to NRS 175.547.~~

~~7. "Standards" means the objective standards for granting or revoking parole or probation which are adopted by the Board or the Chief.~~**] (Deleted by amendment.)**

Sec. 4. This act becomes effective on July 1, 2009.

Assemblyman Arberry moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Oceguera moved that all rules be suspended and the Assembly dispense with the reprinting of Assembly Bill No. 385.

Motion carried.

GENERAL FILE AND THIRD READING

Assembly Bill No. 561.

Bill read third time.

Remarks by Assemblyman Denis.

Roll call on Assembly Bill No. 561:

YEAS—41.

NAYS—None.

EXCUSED—Aizley.

Assembly Bill No. 561 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Bill No. 214.

Bill read third time.

Remarks by Assemblywoman Parnell.

Roll call on Assembly Bill No. 214:

YEAS—38.

NAYS—Cobb, Goedhart, Gustavson—3.

EXCUSED—Aizley.

Assembly Bill No. 214 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 7.

Bill read third time.

Roll call on Senate Bill No. 7:

YEAS—41.

NAYS—None.

EXCUSED—Aizley.

Senate Bill No. 7 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 78.

Bill read third time.

Remarks by Assemblywoman Parnell.

Roll call on Senate Bill No. 78:

YEAS—41.

NAYS—None.

EXCUSED—Aizley.

Senate Bill No. 78 having received a constitutional majority, Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 152.

Bill read third time.

Remarks by Assemblywomen Smith and Gansert.

Roll call on Senate Bill No. 152:

YEAS—31.

NAYS—Christensen, Cobb, Gansert, Goedhart, Gustavson, Hambrick, McArthur, Settelmeyer, Stewart, Woodbury—10.

EXCUSED—Aizley.

Senate Bill No. 152 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 293.

Bill read third time.

Remarks by Assemblywoman Smith.

Roll call on Senate Bill No. 293:

YEAS—41.

NAYS—None.

EXCUSED—Aizley.

Senate Bill No. 293 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 382.

Bill read third time.

Remarks by Assemblywoman Pierce.

Potential conflict of interest declared by Assemblyman Denis.

Roll call on Senate Bill No. 382:

YEAS—41.

NAYS—None.

EXCUSED—Aizley.

Senate Bill No. 382 having received a constitutional majority, Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 403.
Bill read third time.
Roll call on Senate Bill No. 403:
YEAS—41.
NAYS—None.
EXCUSED—Aizley.
Senate Bill No. 403 having received a constitutional majority, Madam Speaker declared it passed, as amended.
Bill ordered transmitted to the Senate.

Assembly Bill No. 385.
Bill read third time.
Remarks by Assemblymen Cobb and Horne.
Roll call on Assembly Bill No. 385:
YEAS—37.
NAYS—Goedhart, Gustavson, Settelmeyer, Woodbury—4.
EXCUSED—Aizley.
Assembly Bill No. 385 having received a constitutional majority, Madam Speaker declared it passed, as amended.
Bill ordered transmitted to the Senate.

MOTIONS, RESOLUTIONS AND NOTICES

By the Committee on Elections, Procedures, Ethics, and Constitutional Amendments:
Assembly Resolution No. 12—Designating certain members of the Assembly as regular and alternate members of the Legislative Commission for the 2009-2011 biennium.
Assemblyman Oceguera moved the adoption of the resolution.
Remarks by Assemblyman Oceguera.
Resolution adopted.

Assemblyman Oceguera moved that all bills so far passed this legislative day be immediately transmitted to the Senate.
Motion carried.

Assemblyman Oceguera moved that the Assembly recess until 4 p.m.
Motion carried.

Assembly in recess at 12:24 p.m.

ASSEMBLY IN SESSION

At 4:28 p.m.
Madam Speaker presiding.
Quorum present.

MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, May 28, 2009

To the Honorable the Assembly:

I have the honor to inform your honorable body that the Senate amended, and on this day passed, as amended, Assembly Bill No. 522, Amendment No. 967, and respectfully requests your honorable body to concur in said amendment.

SHERRY L. RODRIGUEZ
Assistant Secretary of the Senate

UNFINISHED BUSINESS

CONSIDERATION OF SENATE AMENDMENTS

Assembly Bill No. 522.

The following Senate amendment was read:

Amendment No. 967.

AN ACT relating to energy; creating the Fund for Renewable Energy, Energy Efficiency and Energy Conservation Loans and the Account for Set-Aside Programs; authorizing the Director of the Department of Energy to administer the Fund; authorizing the granting of partial abatements of certain property taxes and local sales and use taxes to certain facilities for the generation of process heat from solar renewable energy, wholesale facilities for the generation of electricity from renewable energy **, facilities for the generation of electricity from geothermal resources** and facilities for the transmission of electricity produced from renewable energy; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Sections 1.1-1.8 of this bill establish the Fund for Renewable Energy, Energy Efficiency and Energy Conservation Loans and the Account for Set-Aside Programs. The Director of the Office of Energy administers the Fund. The Fund and the Account for Set-Aside Programs may be used only for the purposes set forth in the American Recovery and Reinvestment Act and to make loans at a rate of not more than 3 percent to renewable energy systems for the construction of renewable energy projects. The Director is prohibited from committing any money in the Fund for expenditure ~~[or establishing the priorities for determining which renewable energy systems will receive money or other assistance from the Fund]~~ without obtaining the prior approval of the Legislature or the Interim Finance Committee if the Legislature is not in session.

Section 28 of this bill authorizes the Nevada Energy Commissioner appointed pursuant to **section ~~[~~1.85 of this bill~~]~~ 1.21 of Senate Bill No. 358 of this session** to grant partial abatements of property taxes and local sales and use taxes to certain facilities for the generation of process heat from solar renewable energy, wholesale facilities for the generation of electricity from renewable energy **, facilities for the generation of electricity from geothermal resources** and facilities for the transmission of electricity

produced from renewable energy. These abatements will cease to be effective in 40 years.

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

Section 1. Chapter 701 of NRS is hereby amended by adding thereto the provisions set forth as sections 1.1 to 1.95, inclusive, of this act.

Sec. 1.1. ***As used in sections 1.1 to 1.8, inclusive, of this act, the words and terms defined in sections 1.15 to 1.45, inclusive, of this act have the meanings ascribed to them in those sections.***

Sec. 1.15. ***"American Recovery and Reinvestment Act" means the American Recovery and Reinvestment Act of 2009, Public Law 111-5.***

Sec. 1.2. ***"Construction" means the erection, building, acquisition, alteration, remodeling, improvement or extension of a project and the inspection and supervision of such activities and includes, without limitation:***

1. Any preliminary planning to determine the feasibility of a project;

2. Engineering, architectural, legal, environmental, fiscal or economic investigations or studies, surveys, designs, plans, working drawings, specifications or procedures that comply with the provisions of the American Recovery and Reinvestment Act and any regulations adopted pursuant thereto; and

3. Any other activities reasonably necessary to the completion of a project.

Sec. 1.3. ***"Federal grant" means money authorized by the American Recovery and Reinvestment Act to:***

1. Create a revolving loan fund to assist in the financing of the construction of renewable energy projects; or

2. Fund set-aside programs authorized by the American Recovery and Reinvestment Act.

Sec. 1.4. ***"Fund" means the Fund for Renewable Energy, Energy Efficiency and Energy Conservation Loans created by section 1.5 of this act.***

Sec. 1.45. ***"Renewable energy system" has the meaning ascribed to it in NRS 704.7815.***

Sec. 1.5. ***1. The Fund for Renewable Energy, Energy Efficiency and Energy Conservation Loans is hereby created. The Director shall administer the Fund.***

2. The account to fund activities, other than projects, authorized by the American Recovery and Reinvestment Act, to be known as the Account for Set-Aside Programs, is hereby created in the Fund for the Municipal Bond Bank.

3. The money in the Fund and the Account for Set-Aside Programs may be used only for the purposes set forth in the American Recovery and Reinvestment Act.

4. All claims against the Fund and the Account for Set-Aside Programs must be paid as other claims against the State are paid.

5. The faith of the State is hereby pledged that the money in the Account for the Revolving Fund and the Account for Set-Aside Programs will not be used for purposes other than those authorized by the American Recovery and Reinvestment Act.

Sec. 1.6. ***1. The interest and income earned on money in the Fund and the Account for Set-Aside Programs must be credited to the Fund and the Account for Set-Aside Programs, respectively.***

2. All payments of principal and interest on all loans made to a renewable energy system and all proceeds from the sale, refunding or prepayment of obligations of a renewable energy system acquired or loans made in carrying out the purposes of the Fund must be deposited in the State Treasury for credit to the Fund.

3. The Director may accept gifts, contributions, grants and bequests of money from any public or private source. The money so accepted must be deposited in the State Treasury for credit to the Fund, or the Account for Set-Aside Programs, and can be used to provide money from the State to match the federal grant, as required by the American Recovery and Reinvestment Act.

4. Only federal money deposited in a separate subaccount of the Fund, including repayments of principal and interest on loans made solely from federal money, and interest and income earned on federal money in the Fund, may be used to benefit renewable energy systems not governmentally owned.

Sec. 1.7. ***1. The Director shall:***

(a) Use the money in the Fund and the Account for Set-Aside Programs for the purposes set forth in the American Recovery and Reinvestment Act.

(b) Determine whether renewable energy systems which receive money or other assistance from the Fund or the Account for Set-Aside Programs comply with the American Recovery and Reinvestment Act and regulations adopted pursuant thereto.

2. The Director may:

(a) Prepare and enter into required agreements with the Federal Government for the acceptance of grants of money for the Fund and the Account for Set-Aside Programs.

(b) Bind the Office of Energy to terms of the required agreements.

(c) Accept grants made pursuant to the American Recovery and Reinvestment Act.

(d) Manage the Fund and the Account for Set-Aside Programs in accordance with the requirements and objectives of the American Recovery and Reinvestment Act.

(e) Provide services relating to management and administration of the Fund and the Account for Set-Aside Programs, including the preparation of any agreement, plan or report.

(f) Perform, or cause to be performed by agencies or organizations through interagency agreement, contract or memorandum of understanding, set-aside programs pursuant to the American Recovery and Reinvestment Act.

3. The Director shall not [:

(a) Commit] ***commit*** ***any money in the Fund for expenditure for the purposes set forth in section 1.75 of this act*** ***[; or***

(b) Establish the priorities for determining which renewable energy systems will receive money or other assistance from the Fund,

"] ***without obtaining the prior approval of the Legislature or the Interim Finance Committee if the Legislature is not in session.***

Sec. 1.75. ***1. Except as otherwise provided in section 1.6 of this act, money in the Fund, including repayments of principal and interest on loans, and interest and income earned on money in the Fund, may be used only to make loans at a rate of not more than 3 percent to renewable energy systems for the construction of renewable energy projects.***

2. Money in the Account for Set-Aside Programs may be used only to fund set-aside programs authorized by the American Recovery and Reinvestment Act. Money in the Account for Set-Aside Programs may be transferred to the Fund pursuant to the American Recovery and Reinvestment Act.

3. A renewable energy system which requests a loan or other financial assistance must demonstrate that it has:

(a) Complied with the American Recovery and Reinvestment Act and regulations adopted pursuant thereto; or

(b) Agreed to take actions that are needed to ensure that it has the capability to comply with the American Recovery and Reinvestment Act and regulations adopted pursuant thereto.

4. Money from the Fund may not be given to an existing renewable energy system unless it has the technical, managerial and financial capability to ensure compliance with the American Recovery and Reinvestment Act and regulations adopted pursuant thereto. A new renewable energy system, to receive such funding, must demonstrate that it has the technical, managerial and financial capability to ensure compliance with the American Recovery and Reinvestment Act and regulations adopted pursuant thereto.

Sec. 1.8. ***The Director may adopt such regulations as are necessary to carry out the provisions of sections 1.1 to 1.8, inclusive, of this act.***

Sec. 1.85. ***[1. The Governor shall appoint the Nevada Energy Commissioner, subject to confirmation by the Legislature, or the Legislative Commission if the Legislature is not in session.***

2. The Commissioner:

(a) Is in the unclassified service of the State;

(b) Serves at the pleasure of the Governor; and

~~*(c) Must have experience and demonstrated expertise in one or more of the following fields:*~~

~~*(1) Financing of energy projects;*~~

~~*(2) Energy generation projects;*~~

~~*(3) Energy transmission projects;*~~

~~*(4) Professional engineering related to energy efficiency; or*~~

~~*(5) Renewable energy.*~~

~~*3. The Commissioner may, within the limits of legislative appropriations or authorizations:*~~

~~*(a) Employ and fix the salaries of or contract for the services of such professional, technical and operational personnel and consultants as the execution of his duties may require;*~~

~~*(b) Employ, or retain on a contract basis, legal counsel who shall:*~~

~~*(1) Act as counsel and attorney for the Commissioner in all actions, proceedings and hearings; and*~~

~~*(2) Generally aid the Commissioner in the performance of his duties; and*~~

~~*(c) Employ such additional personnel as may be required to carry out his duties, who must be in the classified service of the State.*~~

~~*4. A person employed by the Commissioner pursuant to this section must be qualified by training and experience to perform the duties of his employment.*~~

~~*5. The Commissioner and the persons employed by the Commissioner shall not have any conflict of interest relating to the performance of their duties.]*~~ **(Deleted by amendment.)**

Sec. 1.9. ~~*[The Nevada Energy Commissioner shall:*~~

~~*1. Utilize all available public and private means to:*~~

~~*(a) Provide information to the public about issues relating to energy and to explain how conservation of energy and its sources may be accomplished; and*~~

~~*(b) Work with educational and research institutes, trade associations and any other public and private entities in this State to create a database for information on technological development, financing opportunities and federal and state policy developments regarding renewable energy and energy efficiency.*~~

~~*2. Encourage the development of any sources of renewable energy and any other energy projects which will benefit the State and any measures which conserve or reduce the demand for energy or which result in more efficient use of energy by, without limitation:*~~

~~*(a) Identifying appropriate areas in this State for the development of sources of renewable energy, based on:*~~

~~*(1) Assessments of solar, wind and geothermal potential;*~~

~~*(2) Evaluations of natural resource constraints;*~~

~~*(3) Current electric transmission infrastructure and capacity; and*~~

~~*(4) The feasibility of the construction of new electric transmission lines;*~~

~~*(b) Working with renewable energy developers to locate their projects within appropriate areas of this State, including, without limitation, assisting the developers to interface with the Bureau of Land Management, the Department of Defense and other federal agencies in:*~~

~~*(1) Expediting land leases;*~~

~~*(2) Resolving site issues; and*~~

~~*(3) Receiving permits for projects on public lands within the appropriate areas of this State;*~~

~~*(c) Coordinating the planning of renewable energy projects in appropriate areas of this State to establish a mix of solar, wind and geothermal renewable energy systems that create a reliable source of energy and maximize use of current or future transmission lines and infrastructure; and*~~

~~*(d) Developing proposals for the financing of future electric transmission projects for renewable energy if no such financing proposals exist.*~~

~~*3. Review jointly with the Nevada System of Higher Education the policies of this State relating to the research and development of the geothermal energy resources in this State and make recommendations to the appropriate state and federal agencies concerning methods for the development of the geothermal energy resources in this State.*~~

~~*4. If the Commissioner determines that it is feasible and cost effective, enter into contracts with researchers from the Nevada System of Higher Education:*~~

~~*(a) To conduct environmental studies in connection with the identification of appropriate areas in this State for the development of renewable energy resources, including, without limitation, hydrologic studies, solar resource mapping studies and wind power modeling studies; and*~~

~~*(b) For the development of technologies that will facilitate the energy efficiency of the electricity grid for this State, including, without limitation, meters that facilitate energy efficiency for consumers of electricity.*~~

~~*5. Cooperate with the Director:*~~

~~*(a) To promote energy projects that enhance the economic development of the State;*~~

~~*(b) To promote the use of renewable energy in this State;*~~

~~*(c) To promote the use of measures which conserve or reduce the demand for energy or which result in more efficient use of energy;*~~

~~*(d) To develop a comprehensive program for retrofitting public buildings in this State with energy efficiency measures; and*~~

~~*(e) If the Commissioner determines that it is feasible and cost effective, to enter into contracts with researchers from the Nevada System of Higher Education for the design of energy efficiency and retrofit projects to carry*~~

~~*out the comprehensive program for retrofitting public buildings in this State developed pursuant to paragraph (d).*~~

~~*6. Coordinate activities and programs with the activities and programs of the Office of Energy, the Consumer's Advocate and the Public Utilities Commission of Nevada in general and with other federal, state and local officers and agencies that promote, fund, administer or operate activities and programs related to the use of renewable energy and the use of measures which conserve or reduce the demand for energy or which result in more efficient use of energy.*~~

~~*7. Carry out all other directives concerning energy that are prescribed by the Legislature.]*~~ **(Deleted by amendment.)**

Sec. 1.95. ~~*[The Commissioner may:*~~

~~*1. Administer any gifts or grants which he is authorized to accept.*~~

~~*2. Expend money received from those gifts or grants or from any money received through legislative appropriations or authorizations to contract with qualified persons or institutions for research in the production and efficient use of energy resources.*~~

~~*3. Enter into any cooperative agreement with any federal or state agency or political subdivision.*~~

~~*4. Participate in any program established by the Federal Government relating to sources of energy and adopt regulations appropriate to such a program.*~~

~~*5. Assist developers of renewable energy systems in preparing and making requests to obtain money for development through the issuance of industrial development revenue bonds pursuant to NRS 349.400 to 349.670, inclusive.*~~

~~*6. Adopt any regulations that the Commissioner determines are necessary to carry out his duties.*~~

~~*7. Within the limits of legislative appropriations and other money authorized for expenditure for such purposes, negotiate and execute agreements with public or private entities which are necessary to the exercise of the powers and duties of the Commissioner.]*~~ **(Deleted by amendment.)**

Sec. 2. (Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

Sec. 4. (Deleted by amendment.)

Sec. 5. (Deleted by amendment.)

Sec. 6. (Deleted by amendment.)

Sec. 7. (Deleted by amendment.)

Sec. 8. (Deleted by amendment.)

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. (Deleted by amendment.)
Sec. 15. (Deleted by amendment.)
Sec. 16. (Deleted by amendment.)
Sec. 17. (Deleted by amendment.)
Sec. 18. (Deleted by amendment.)
Sec. 19. (Deleted by amendment.)
Sec. 20. (Deleted by amendment.)
Sec. 21. (Deleted by amendment.)
Sec. 22. (Deleted by amendment.)
Sec. 23. (Deleted by amendment.)
Sec. 24. (Deleted by amendment.)
Sec. 25. (Deleted by amendment.)
Sec. 26. (Deleted by amendment.)
Sec. 27. (Deleted by amendment.)

Sec. 27.5. Chapter 701A of NRS is hereby amended by adding thereto the provisions set forth as sections 28 and 28.5 of this act.

Sec. 28. ***1. A person who intends to locate a facility for the generation of process heat from solar renewable energy, a wholesale facility for the generation of electricity from renewable energy , a facility for the generation of electricity from geothermal resources or a facility for the transmission of electricity produced from renewable energy in this State may apply to the Director for a partial abatement of the local sales and use taxes, the taxes imposed pursuant to chapter 361 of NRS, or both local sales and use taxes and taxes imposed pursuant to chapter 361 of NRS.*** ~~*[A person who intends to locate a facility for the generation of electricity from geothermal resources in this State may apply to the Director for a partial abatement of local sales and use taxes.]*~~ ***A facility that is owned, operated, leased or otherwise controlled by a governmental entity is not eligible for an abatement pursuant to this section.***

2. As soon as practicable after the Director receives such an application, the Director shall submit the application to the Commissioner and forward a copy of the application to:

(a) The Chief of the Budget Division of the Department of Administration;

(b) The Department of Taxation;

(c) The board of county commissioners;

(d) The county assessor;

(e) The county treasurer; and

(f) The Commission on Economic Development.

➥ With the copy of the application forwarded to the county treasurer, the Director shall include a notice that the local jurisdiction may request a presentation regarding the facility. A request for a presentation must be made within 30 days after receipt of the application. The Commissioner shall hold a public hearing on the application. The hearing must not be

held earlier than 30 days after all persons listed in this subsection have received a copy of the application.

3. ~~[The]~~ Except as otherwise provided in subsection 4, the Commissioner shall approve an application for a partial abatement pursuant to this section if the Commissioner makes the following determinations:

(a) The applicant has executed an agreement with the Commissioner which must:

(1) State that the facility will, after the date on which a certificate of eligibility for the abatement is issued pursuant to subsection 6, continue in operation in this State for a period specified by the Commissioner, which must be at least 10 years, and will continue to meet the eligibility requirements for the abatement; and

(2) Bind the successors in interest in the facility for the specified period.

(b) The facility is registered pursuant to the laws of this State or the applicant commits to obtain a valid business license and all other permits required by the county, city or town in which the facility operates.

(c) No funding is or will be provided by any governmental entity in this State for the acquisition, design or construction of the facility or for the acquisition of any land therefor, except any private activity bonds as defined in 26 U.S.C. § 141.

(d) If the facility will be located in a county whose population is 100,000 or more or a city whose population is 60,000 or more, the facility meets the following requirements:

(1) There will be 75 or more full-time employees working on the construction of the facility during the second quarter of construction, including, unless waived by the Commissioner for good cause, at least 30 percent who are residents of Nevada;

(2) Establishing the facility will require the facility to make a capital investment of at least $10,000,000 in this State;

(3) The average hourly wage that will be paid by the facility to its employees in this State is at least 110 percent of the average statewide hourly wage, excluding management and administrative employees, as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation on July 1 of each fiscal year; and

(4) The average hourly wage of the employees working on the construction of the facility will be at least 150 percent of the average statewide hourly wage, excluding management and administrative employees, as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation on July 1 of each fiscal year and:

(I) The employees working on the construction of the facility must be provided a health insurance plan that includes an option for health insurance coverage for dependents of the employees; and

(II) The cost of the benefits provided to the employees working on the construction of the facility will meet the minimum requirements for benefits established by the Commissioner by regulation pursuant to subsection 9.

(e) If the facility will be located in a county whose population is less than 100,000 or a city whose population is less than 60,000, the facility meets the following requirements:

(1) There will be 50 or more full-time employees working on the construction of the facility during the second quarter of construction, including, unless waived by the Commissioner for good cause, at least 30 percent who are residents of Nevada;

(2) Establishing the facility will require the facility to make a capital investment of at least $3,000,000 in this State;

(3) The average hourly wage that will be paid by the facility to its employees in this State is at least 110 percent of the average statewide hourly wage, excluding management and administrative employees, as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation on July 1 of each fiscal year; and

(4) The average hourly wage of the employees working on the construction of the facility will be at least 150 percent of the average statewide hourly wage, excluding management and administrative employees, as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation on July 1 of each fiscal year and:

(I) The employees working on the construction of the facility must be provided a health insurance plan that includes an option for health insurance coverage for dependents of the employees; and

(II) The cost of the benefits provided to the employees working on the construction of the facility will meet the minimum requirements for benefits established by the Commissioner by regulation pursuant to subsection 9.

(f) The financial benefits that will result to this State from the employment by the facility of the residents of this State and from capital investments by the facility in this State will exceed the loss of tax revenue that will result from the abatement.

4. The Commissioner shall not approve an application for a partial abatement of the taxes imposed pursuant to chapter 361 of NRS submitted pursuant to subsection 2 by a facility for the generation of electricity from geothermal resources unless the application is approved pursuant to this subsection. The board of county commissioners of a county must approve or deny the application not later than 30 days after the board receives a

copy of the application. The board of county commissioners must not condition the approval of the application on a requirement that the facility for the generation of electricity from geothermal resources agree to purchase, lease or otherwise acquire in its own name or on behalf of the county any infrastructure, equipment, facilities or other property in the county that is not directly related to or otherwise necessary for the construction and operation of the facility. If the board of county commissioners does not approve or deny the application within 30 days after the board receives the application, the application shall be deemed denied.

5. Notwithstanding the provisions of subsection [2,] 3, the Commissioner may, if the Commissioner determines that such action is necessary:

(a) Approve an application for a partial abatement for a facility that does not meet the requirements set forth in paragraph (d) or (e) of subsection 3; or

(b) [Make the requirements set forth in paragraph (d) or (e) of subsection 3 more stringent; or

(c)] Add additional requirements that a facility must meet to qualify for a partial abatement.

[5.] 6. If the Commissioner approves an application for a partial abatement pursuant to this section of:

(a) Property taxes imposed pursuant to chapter 361 of NRS, the partial abatement must:

(1) Be for a duration of the 20 fiscal years immediately following the date of approval of the application;

(2) Be equal to 55 percent of the taxes on real and personal property payable by the facility each year; and

(3) Not apply during any period in which the facility is receiving another abatement or exemption from property taxes imposed pursuant to chapter 361 of NRS, other than any partial abatement provided pursuant to NRS 361.4722.

(b) Local sales and use taxes:

(1) The partial abatement must:

(I) Be for the [2] 3 years beginning on the date of approval of the application;

(II) Be equal to that portion of the combined rate of all the local sales and use taxes payable by the facility each year which exceeds [0.5] 0.6 percent; and

(III) Not apply during any period in which the facility is receiving another abatement or exemption from local sales and use taxes.

(2) The Department of Taxation shall issue to the facility a document certifying the abatement which can be presented to retailers at the time of sale. The document must clearly state that the purchaser is only required to

pay sales and use taxes imposed in this State at the rate of ~~[2.5]~~ 2.6 percent.

~~[6.]~~ 7. Upon approving an application for a partial abatement pursuant to this section, the Commissioner shall immediately notify the Director of the terms of the abatement and the Director shall immediately forward a certificate of eligibility for the abatement to:

(a) The Department of Taxation;

(b) The board of county commissioners;

(c) The county assessor;

(d) The county treasurer; and

(e) The Commission on Economic Development.

~~[7.]~~ 8. As soon as practicable after receiving a copy of:

(a) An application pursuant to subsection 2:

(1) The Chief of the Budget Division shall publish a fiscal note that indicates an estimate of the fiscal impact of the partial abatement on the State and forward a copy of the fiscal note to the Director for submission to the Commissioner; and

(2) The Department of Taxation shall publish a fiscal note that indicates an estimate of the fiscal impact of the partial abatement on each affected local government, and forward a copy of the fiscal note to each affected local government and to the Director for submission to the Commissioner.

(b) A certificate of eligibility pursuant to subsection 6, the Department of Taxation shall forward a copy of the certificate to each affected local government.

~~[8.]~~ 9. A partial abatement approved by the Commissioner pursuant to this section terminates upon any determination by the Commissioner that the facility has ceased to meet any eligibility requirements for the abatement. The Commissioner shall provide notice and a reasonable opportunity to cure any noncompliance issues before making a determination that the facility has ceased to meet those requirements. The Commissioner shall immediately provide notice of each determination of termination to the Director, and the Director shall immediately provide a copy of the notice to:

(a) The Commissioner, who shall immediately notify each affected local government of the determination;

(b) The board of county commissioners;

(c) The county assessor;

(d) The county treasurer; and

(e) The Commission on Economic Development.

~~[9.]~~ 10. The Commissioner:

(a) Shall adopt regulations:

(1) Prescribing the minimum level of benefits that a facility must provide to its employees if the facility is going to use benefits paid to

employees as a basis to qualify for a partial abatement pursuant to this section;

(2) Prescribing such requirements for an application for a partial abatement pursuant to this section as will ensure that all information and other documentation necessary for the Commissioner to make an appropriate determination is filed with the Director;

(3) Requiring each recipient of a partial abatement pursuant to this section to file annually with the Director, for submission to the Commissioner, such information and documentation as may be necessary for the Commissioner to determine whether the recipient is in compliance with any eligibility requirements for the abatement; and

(4) Regarding the capital investment that a facility must make to meet the requirement set forth in paragraph (d) or (e) of subsection 3; and

(b) May adopt such other regulations as the Commissioner determines to be necessary to carry out the provisions of this section.

~~*[10.]*~~ ***11.*** ***Notwithstanding any statutory provision to the contrary, if the Commissioner approves an application for a partial abatement pursuant to this section of:***

(a) Property taxes imposed pursuant to chapter 361 of NRS, the amount of all the property taxes which are collected from the facility for the period of the abatement must be allocated and distributed in such a manner that:

(1) ~~*[For the period beginning on July 1, 2009, and ending on June 30, 2011:*~~

~~*(I)]*~~ ***Forty-five percent of that amount is deposited in the unrestricted balance of the State General Fund; and***

~~*[(II)]*~~ ***(2) Fifty-five percent of that amount is distributed to the local governmental entities that would otherwise be entitled to receive those taxes in proportion to the relative amount of those taxes those entities would otherwise be entitled to receive .*** ~~*[; and*~~

~~*(2) For the period beginning on July 1, 2011, and ending on June 30, 2049:*~~

~~*(I) Forty-five percent of that amount is deposited in the Renewable Energy Fund created by section 28.5 of this act; and*~~

~~*(II) Fifty-five percent of that amount is distributed to the local governmental entities that would otherwise be entitled to receive those taxes in proportion to the relative amount of those taxes those entities would otherwise be entitled to receive.]*~~

(b) Local sales and use taxes, the State Controller shall allocate, transfer and remit an amount equal to all the sales and use taxes imposed in this State and collected from the facility for the period of the abatement in the same manner as if that amount consisted solely of the proceeds of taxes imposed by NRS 374.110 and 374.190.

~~*[11.]*~~ ***12.*** ***As used in this section:***

(a) "Biomass" means any organic matter that is available on a renewable basis, including, without limitation:

(1) Agricultural crops and agricultural wastes and residues;

(2) Wood and wood wastes and residues;

(3) Animal wastes;

(4) Municipal wastes; and

(5) Aquatic plants.

(b) "Commissioner" means the Nevada Energy Commissioner appointed pursuant to section [1.85] 1.21 of Senate Bill No. 358 of this [act.] session.

(c) "Director" means the Director of the Office of Energy appointed pursuant to NRS 701.150.

(d) "Facility for the generation of electricity from renewable energy" means a facility for the generation of electricity that:

(1) Uses renewable energy as its primary source of energy; and

(2) Has a generating capacity of at least 10 megawatts.

➥ The term does not include a facility that is located on residential property.

(e) "Facility for the generation of process heat from solar renewable energy" means a facility that:

(1) Uses solar renewable energy to generate process heat; and

(2) Has an output capacity of at least [12,920,000] 25,840,000 British thermal units per hour.

(f) "Fuel cell" means a device or contrivance which, through the chemical process of combining ions of hydrogen and oxygen, produces electricity and water.

(g) "Local sales and use taxes" means any taxes imposed on the gross receipts of any retailer from the sale of tangible personal property sold at retail, or stored, used or otherwise consumed, in any political subdivision of this State, except the taxes imposed by the Sales and Use Tax Act.

(h) "Renewable energy" means:

(1) Biomass;

(2) Fuel cells;

(3) Solar energy;

(4) Waterpower; or

(5) Wind.

➥ The term does not include coal, natural gas, oil, propane or any other fossil fuel, geothermal energy or nuclear energy.

(i) "Wholesale facility for the generation of electricity from renewable energy" means a facility for the generation of electricity from renewable energy that, except as otherwise provided in subparagraph (2), does not sell the electricity to the end user of the electricity. The term includes:

(1) All the machinery and equipment that is used in the facility to collect and store the renewable energy and to convert the renewable energy into electricity.

(2) A facility that is owned, leased or otherwise controlled by an entity that has authority to sell electricity and provide transmission services or distribution services, or both.

Sec. 28.5. ***The Renewable Energy Fund is hereby created. The Nevada Energy Commissioner appointed pursuant to section ~~[1.85]~~ 1.21 of Senate Bill No. 358 of this ~~[act]~~ session shall administer the Fund. The interest and income earned on the money in the fund must be credited to the fund. ~~[The]~~ Not less than 75 percent of the money in the fund must be used ~~[primarily to defer the rate of the utility to the consumer or otherwise]~~ to offset the cost of electricity ~~[and natural gas]~~ to retail customers ~~[.]~~ of a public utility that is subject to the portfolio standard established by the Public Utilities Commission of Nevada pursuant to NRS 704.7821. The Nevada Energy Commissioner may establish other uses of the money in the Fund by regulation.***

Sec. 29. (Deleted by amendment.)

Sec. 30. (Deleted by amendment.)

Sec. 31. (Deleted by amendment.)

Sec. 32. (Deleted by amendment.)

Sec. 33. (Deleted by amendment.)

Sec. 34. (Deleted by amendment.)

Sec. 35. (Deleted by amendment.)

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Sec. 37. (Deleted by amendment.)

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Sec. 95. (Deleted by amendment.)
Sec. 96. (Deleted by amendment.)
Sec. 97. (Deleted by amendment.)
Sec. 98. (Deleted by amendment.)
Sec. 99. (Deleted by amendment.)
Sec. 100. (Deleted by amendment.)
Sec. 101. (Deleted by amendment.)
Sec. 102. (Deleted by amendment.)
Sec. 103. (Deleted by amendment.)
Sec. 104. (Deleted by amendment.)
Sec. 105. (Deleted by amendment.)
Sec. 106. (Deleted by amendment.)

Sec. 106.5. **Section 28 of this act is hereby amended to read as follows:**

Sec. 28. 1. A person who intends to locate a facility for the generation of process heat from solar renewable energy, a wholesale facility for the generation of electricity from renewable energy , a facility for the generation of electricity from geothermal resources or a facility for the transmission of electricity produced from renewable energy in this State may apply to the Director for a partial abatement of the local sales and use taxes, the taxes imposed pursuant to chapter 361 of NRS, or both local sales and use taxes and taxes imposed pursuant to chapter 361 of NRS. A facility that is owned, operated, leased or otherwise controlled by a governmental entity is not eligible for an abatement pursuant to this section.

2. As soon as practicable after the Director receives such an application, the Director shall submit the application to the Commissioner and forward a copy of the application to:

(a) The Chief of the Budget Division of the Department of Administration;

(b) The Department of Taxation;

(c) The board of county commissioners;

(d) The county assessor;

(e) The county treasurer; and

(f) The Commission on Economic Development.

➥ With the copy of the application forwarded to the county treasurer, the Director shall include a notice that the local jurisdiction may request a presentation regarding the facility. A request for a presentation must be made within 30 days after receipt of the application. The Commissioner shall hold a public hearing on the application. The hearing must not be held earlier than 30 days after all persons listed in this subsection have received a copy of the application.

3. Except as otherwise provided in subsection 4, the Commissioner shall approve an application for a partial abatement pursuant to this section if the Commissioner makes the following determinations:

(a) The applicant has executed an agreement with the Commissioner which must:

(1) State that the facility will, after the date on which a certificate of eligibility for the abatement is issued pursuant to subsection 6, continue in operation in this State for a period specified by the Commissioner, which must be at least 10 years, and will continue to meet the eligibility requirements for the abatement; and

(2) Bind the successors in interest in the facility for the specified period.

(b) The facility is registered pursuant to the laws of this State or the applicant commits to obtain a valid business license and all other permits required by the county, city or town in which the facility operates.

(c) No funding is or will be provided by any governmental entity in this State for the acquisition, design or construction of the facility or for the

acquisition of any land therefor, except any private activity bonds as defined in 26 U.S.C. § 141.

(d) If the facility will be located in a county whose population is 100,000 or more or a city whose population is 60,000 or more, the facility meets the following requirements:

(1) There will be 75 or more full-time employees working on the construction of the facility during the second quarter of construction, including, unless waived by the Commissioner for good cause, at least 30 percent who are residents of Nevada;

(2) Establishing the facility will require the facility to make a capital investment of at least $10,000,000 in this State;

(3) The average hourly wage that will be paid by the facility to its employees in this State is at least 110 percent of the average statewide hourly wage, excluding management and administrative employees, as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation on July 1 of each fiscal year; and

(4) The average hourly wage of the employees working on the construction of the facility will be at least 150 percent of the average statewide hourly wage, excluding management and administrative employees, as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation on July 1 of each fiscal year and:

(I) The employees working on the construction of the facility must be provided a health insurance plan that includes an option for health insurance coverage for dependents of the employees; and

(II) The cost of the benefits provided to the employees working on the construction of the facility will meet the minimum requirements for benefits established by the Commissioner by regulation pursuant to subsection 9.

(e) If the facility will be located in a county whose population is less than 100,000 or a city whose population is less than 60,000, the facility meets the following requirements:

(1) There will be 50 or more full-time employees working on the construction of the facility during the second quarter of construction, including, unless waived by the Commissioner for good cause, at least 30 percent who are residents of Nevada;

(2) Establishing the facility will require the facility to make a capital investment of at least $3,000,000 in this State;

(3) The average hourly wage that will be paid by the facility to its employees in this State is at least 110 percent of the average statewide hourly wage, excluding management and administrative employees, as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation on July 1 of each fiscal year; and

(4) The average hourly wage of the employees working on the construction of the facility will be at least 150 percent of the average

statewide hourly wage, excluding management and administrative employees, as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation on July 1 of each fiscal year and:

(I) The employees working on the construction of the facility must be provided a health insurance plan that includes an option for health insurance coverage for dependents of the employees; and

(II) The cost of the benefits provided to the employees working on the construction of the facility will meet the minimum requirements for benefits established by the Commissioner by regulation pursuant to subsection 9.

(f) The financial benefits that will result to this State from the employment by the facility of the residents of this State and from capital investments by the facility in this State will exceed the loss of tax revenue that will result from the abatement.

4. The Commissioner shall not approve an application for a partial abatement of the taxes imposed pursuant to chapter 361 of NRS submitted pursuant to subsection 2 by a facility for the generation of electricity from geothermal resources unless the application is approved pursuant to this subsection. The board of county commissioners of a county must approve or deny the application not later than 30 days after the board receives a copy of the application. The board of county commissioners must not condition the approval of the application on a requirement that the facility for the generation of electricity from geothermal resources agree to purchase, lease or otherwise acquire in its own name or on behalf of the county any infrastructure, equipment, facilities or other property in the county that is not directly related to or otherwise necessary for the construction and operation of the facility. If the board of county commissioners does not approve or deny the application within 30 days after the board receives the application, the application shall be deemed denied.

5. Notwithstanding the provisions of subsection 3, the Commissioner may, if the Commissioner determines that such action is necessary:

(a) Approve an application for a partial abatement for a facility that does not meet the requirements set forth in paragraph (d) or (e) of subsection 3; or

(b) Add additional requirements that a facility must meet to qualify for a partial abatement.

6. If the Commissioner approves an application for a partial abatement pursuant to this section of:

(a) Property taxes imposed pursuant to chapter 361 of NRS, the partial abatement must:

(1) Be for a duration of the 20 fiscal years immediately following the date of approval of the application;

(2) Be equal to 55 percent of the taxes on real and personal property payable by the facility each year; and

(3) Not apply during any period in which the facility is receiving another abatement or exemption from property taxes imposed pursuant to chapter 361 of NRS, other than any partial abatement provided pursuant to NRS 361.4722.

(b) Local sales and use taxes:

(1) The partial abatement must:

(I) Be for the 3 years beginning on the date of approval of the application;

(II) Be equal to that portion of the combined rate of all the local sales and use taxes payable by the facility each year which exceeds ~~[0.6]~~ ***0.25*** percent; and

(III) Not apply during any period in which the facility is receiving another abatement or exemption from local sales and use taxes.

(2) The Department of Taxation shall issue to the facility a document certifying the abatement which can be presented to retailers at the time of sale. The document must clearly state that the purchaser is only required to pay sales and use taxes imposed in this State at the rate of ~~[2.6]~~ ***2.25*** percent.

7. Upon approving an application for a partial abatement pursuant to this section, the Commissioner shall immediately notify the Director of the terms of the abatement and the Director shall immediately forward a certificate of eligibility for the abatement to:

(a) The Department of Taxation;

(b) The board of county commissioners;

(c) The county assessor;

(d) The county treasurer; and

(e) The Commission on Economic Development.

8. As soon as practicable after receiving a copy of:

(a) An application pursuant to subsection 2:

(1) The Chief of the Budget Division shall publish a fiscal note that indicates an estimate of the fiscal impact of the partial abatement on the State and forward a copy of the fiscal note to the Director for submission to the Commissioner; and

(2) The Department of Taxation shall publish a fiscal note that indicates an estimate of the fiscal impact of the partial abatement on each affected local government, and forward a copy of the fiscal note to each affected local government and to the Director for submission to the Commissioner.

(b) A certificate of eligibility pursuant to subsection 6, the Department of Taxation shall forward a copy of the certificate to each affected local government.

9. A partial abatement approved by the Commissioner pursuant to this section terminates upon any determination by the Commissioner that the facility has ceased to meet any eligibility requirements for the abatement. The Commissioner shall provide notice and a reasonable opportunity to cure any noncompliance issues before making a determination that the facility has ceased to meet those requirements. The Commissioner shall immediately

provide notice of each determination of termination to the Director, and the Director shall immediately provide a copy of the notice to:

(a) The Commissioner, who shall immediately notify each affected local government of the determination;

(b) The board of county commissioners;

(c) The county assessor;

(d) The county treasurer; and

(e) The Commission on Economic Development.

10. The Commissioner:

(a) Shall adopt regulations:

(1) Prescribing the minimum level of benefits that a facility must provide to its employees if the facility is going to use benefits paid to employees as a basis to qualify for a partial abatement pursuant to this section;

(2) Prescribing such requirements for an application for a partial abatement pursuant to this section as will ensure that all information and other documentation necessary for the Commissioner to make an appropriate determination is filed with the Director;

(3) Requiring each recipient of a partial abatement pursuant to this section to file annually with the Director, for submission to the Commissioner, such information and documentation as may be necessary for the Commissioner to determine whether the recipient is in compliance with any eligibility requirements for the abatement; and

(4) Regarding the capital investment that a facility must make to meet the requirement set forth in paragraph (d) or (e) of subsection 3; and

(b) May adopt such other regulations as the Commissioner determines to be necessary to carry out the provisions of this section.

11. Notwithstanding any statutory provision to the contrary, if the Commissioner approves an application for a partial abatement pursuant to this section of:

(a) Property taxes imposed pursuant to chapter 361 of NRS, the amount of all the property taxes which are collected from the facility for the period of the abatement must be allocated and distributed in such a manner that:

(1) Forty-five percent of that amount is deposited in the ~~[unrestricted balance of the State General Fund;]~~ ***Renewable Energy Fund created by section 28.5 of this act;*** and

(2) Fifty-five percent of that amount is distributed to the local governmental entities that would otherwise be entitled to receive those taxes in proportion to the relative amount of those taxes those entities would otherwise be entitled to receive.

(b) Local sales and use taxes, the State Controller shall allocate, transfer and remit an amount equal to all the sales and use taxes imposed in this State and collected from the facility for the period of the abatement in the same manner as if that amount consisted solely of the proceeds of taxes imposed by NRS 374.110 and 374.190.

12. As used in this section:

(a) "Biomass" means any organic matter that is available on a renewable basis, including, without limitation:

(1) Agricultural crops and agricultural wastes and residues;

(2) Wood and wood wastes and residues;

(3) Animal wastes;

(4) Municipal wastes; and

(5) Aquatic plants.

(b) "Commissioner" means the Nevada Energy Commissioner appointed pursuant to section 1.21 of Senate Bill No. 358 of this session.

(c) "Director" means the Director of the Office of Energy appointed pursuant to NRS 701.150.

(d) "Facility for the generation of electricity from renewable energy" means a facility for the generation of electricity that:

(1) Uses renewable energy as its primary source of energy; and

(2) Has a generating capacity of at least 10 megawatts.

➥ The term does not include a facility that is located on residential property.

(e) "Facility for the generation of process heat from solar renewable energy" means a facility that:

(1) Uses solar renewable energy to generate process heat; and

(2) Has an output capacity of at least 25,840,000 British thermal units per hour.

(f) "Fuel cell" means a device or contrivance which, through the chemical process of combining ions of hydrogen and oxygen, produces electricity and water.

(g) "Local sales and use taxes" means any taxes imposed on the gross receipts of any retailer from the sale of tangible personal property sold at retail, or stored, used or otherwise consumed, in any political subdivision of this State, except the taxes imposed by the Sales and Use Tax Act.

(h) "Renewable energy" means:

(1) Biomass;

(2) Fuel cells;

(3) Solar energy;

(4) Waterpower; or

(5) Wind.

➥ The term does not include coal, natural gas, oil, propane or any other fossil fuel, geothermal energy or nuclear energy.

(i) "Wholesale facility for the generation of electricity from renewable energy" means a facility for the generation of electricity from renewable energy that, except as otherwise provided in subparagraph (2), does not sell the electricity to the end user of the electricity. The term includes:

(1) All the machinery and equipment that is used in the facility to collect and store the renewable energy and to convert the renewable energy into electricity.

(2) A facility that is owned, leased or otherwise controlled by an entity that has authority to sell electricity and provide transmission services or distribution services, or both.

Sec. 106.7. **Section 1.21 of Senate Bill No. 358 of this session is hereby amended to read as follows:**

Sec. 1.21. ***1. The Governor shall appoint the Nevada Energy Commissioner as the head of the Authority*** **.** ~~*[, subject to confirmation by the Legislature, or the Legislative Commission if the Legislature is not in session.]*~~

2. The Commissioner:

(a) Is in the unclassified service of the State;

(b) Serves at the pleasure of the Governor; and

(c) Must have experience and demonstrated expertise in one or more of the following fields:

(1) Financing of energy projects;

(2) Energy generation projects;

(3) Energy transmission projects;

(4) Professional engineering related to energy efficiency; or

(5) Renewable energy.

3. The Commissioner may, within the limits of legislative appropriations or authorizations:

(a) Employ and fix the salaries of or contract for the services of such professional, technical and operational personnel and consultants as the execution of his duties and the operation of the Authority may require;

(b) Employ, or retain on a contract basis, legal counsel who shall:

(1) Be counsel and attorney for the Commissioner and the Authority in all actions, proceedings and hearings; and

(2) Generally aid the Authority in the performance of its duties; and

(c) Employ such additional personnel as may be required to carry out the duties of the Authority, who must be in the classified service of the State.

4. A person employed by the Commissioner pursuant to this section must be qualified by training and experience to perform the duties of his employment.

5. The Commissioner and the persons employed by the Commissioner shall not have any conflict of interest relating to the performance of their duties.

Sec. 106.9. **Section 1.35 of Senate Bill No. 358 of this session is hereby amended to read as follows:**

Sec. 1.35. ***1. The New Energy Industry Task Force is hereby created.***

2. The Task Force consists of the Commissioner and the following eight members who must be appointed by the Commissioner **:** ~~*[subject to the review and approval of the appointments by the Legislature, or the Legislative Commission if the Legislature is not in session:]*~~

(a) A representative of the large-scale solar energy industry in this State;

(b) A representative of the geothermal energy industry in this State;

(c) A representative of the wind energy industry in this State;

(d) A representative of the distributed generation industry, energy efficiency equipment and installation industry or manufacturers of equipment for renewable energy power plants in this State;

(e) A representative of an electric utility in this State;

(f) A representative of an organization in this State that advocates on behalf of environmental or public lands issues who has expertise in or knowledge of environmental or public lands issues;

(g) A representative of a labor organization in this State; and

(h) A representative of an organization that represents contractors in this State.

Sec. 107. The Legislature hereby finds that each exemption provided by this act from any ad valorem tax on property or excise tax on the sale, storage, use or consumption of tangible personal property sold at retail:

1. Will achieve a bona fide social or economic purpose and that the benefits of the exemption are expected to exceed any adverse effect of the exemption on the provision of services to the public by the State or a local government that would otherwise receive revenue from the tax from which the exemption would be granted; and

2. Will not impair adversely the ability of the State or a local government to pay, when due, all interest and principal on any outstanding bonds or any other obligations for which revenue from the tax from which the exemption would be granted was pledged.

Sec. 107.5. **1. The Nevada Energy Commissioner appointed pursuant to section 1.21 of Senate Bill No. 358 of this session shall propose a budget for his office and the Renewable Energy and Energy Efficiency Authority created by section 1.19 of Senate Bill No. 358 of this session for the 2009-2011 biennium to the Interim Finance Committee. The Committee:**

(a) Shall make any changes it deems appropriate;

(b) Shall approve the budget; and

(c) May require the Public Utilities Commission of Nevada to transfer not more than $500,000 from its reserve account in the Public Utilities Commission Regulatory Fund created by NRS 703.147, to an account in the State General Fund for use by the Commissioner in a manner authorized in the budget approved pursuant to this subsection.

2. Not later than 10 days after the Interim Finance Committee approves the budget pursuant to subsection 1, the Public Utilities Commission of Nevada shall make any transfer required pursuant to paragraph (c) of subsection 1.

3. In accordance with, and out of any money received pursuant to, the American Recovery and Reinvestment Act of 2009, Public Law 111-5, the Interim Finance Committee may determine an amount of money up to 3 percent of the money received to be used by the Nevada Energy

Commissioner and the Renewable Energy and Energy Efficiency Authority in the manner authorized in the budget approved pursuant to subsection 1.

4. The Interim Finance Committee may allocate money in the reserve account in the Public Utilities Commission Regulatory Fund created by NRS 703.147 in addition to the amount authorized by paragraph (c) of subsection 1 if the Interim Finance Committee determines that additional money is necessary to fund the budget of the Nevada Energy Commissioner or the Renewable Energy and Energy Efficiency Authority during the 2009-2011 biennium. Any money so allocated is hereby authorized for expenditure by the Nevada Energy Commissioner.

Sec. 108. Notwithstanding the provisions of ~~[section]~~ **sections** 28 **and 106.5** of this act, a person is not entitled to any partial abatement of taxes pursuant to ~~[that section]~~ **those sections** after June 30, 2049.

Sec. 109. (Deleted by amendment.)

Sec. 109.5. **Sections 11.7 and 20.8 of Senate Bill No. 358 of this session are hereby repealed.**

Sec. 110. 1. This section and sections **106.7, 106.9, 107.5 and 109.5 of this act become effective upon passage and approval.**

2. **Sections** 1 to 1.8, inclusive, 27.5, 28, 28.5, 107, 108 and 109 of this act become effective on July 1, 2009.

~~[2.]~~ **3.** Sections 1.85, 1.9 and 1.95 of this act become effective on July 1, 2009, if and only if no other bill passed during the 2009 Legislative Session becomes effective that provides for the appointment, powers and duties of the Nevada Energy Commissioner.

~~[3.]~~ **4. Section 106. of this act becomes effective on July 1, 2011.**

5. Sections 28 **,** ~~[and]~~ 28.5 **and 106.5** of this act expire by limitation on June 30, 2049.

TEXT OF REPEALED SECTIONS

Section 11.7 of Senate Bill No. 358 of this session:

Sec. 11.7. NRS 704.033 is hereby amended to read as follows:

704.033 1. Except as otherwise provided in subsection 6, the Commission shall levy and collect an annual assessment from all public utilities, providers of discretionary natural gas service and alternative sellers subject to the jurisdiction of the Commission.

2. Except as otherwise provided in subsections 3 and 4, the annual assessment must be:

(a) For the use of the Commission, not more than ~~[3.50]~~ ***2.50*** mills; ~~[and]~~

(b) For the use of the Consumer's Advocate, not more than 0.75 mills ~~[.]~~ ***;***

(c) For the use of the Renewable Energy and Energy Efficiency Authority, not more 0.925 mills; and

(d) For the use of the Office of Energy, not more than 0.075 mills,

➥ on each dollar of gross operating revenue derived from the intrastate operations of such utilities, providers of discretionary natural gas service and alternative sellers in the State of Nevada. The total annual assessment must be not more than 4.25 mills.

3. The levy ~~[for]~~ ***:***

(a) For the use of the Consumer's Advocate must not be assessed against railroads ~~[.]~~ ***;***

(b) For the use of the Renewable Energy and Energy Efficiency Authority must be assessed only against utilities that provide electricity or natural gas in this State; and

(c) For the use of the Office of Energy must be assessed only against utilities that provide electricity or natural gas in this State.

4. The minimum assessment in any 1 year must be $100.

5. The gross operating revenue of the utilities must be determined for the preceding calendar year. In the case of:

(a) Telecommunication providers, except as provided in paragraph (c), the revenue shall be deemed to be all intrastate revenues.

(b) Railroads, the revenue shall be deemed to be the revenue received only from freight and passenger intrastate movements.

(c) All public utilities, providers of discretionary natural gas service and alternative sellers, the revenue does not include the proceeds of any commodity, energy or service furnished to another public utility, provider of discretionary natural gas service or alternative seller for resale.

6. Providers of commercial mobile radio service are not subject to the annual assessment and, in lieu thereof, shall pay to the Commission an annual licensing fee of $200.

7. The amount of the annual assessment which the Commission must levy and collect for the use of the Renewable Energy and Energy Efficiency Authority pursuant to paragraph (c) of subsection 2 and the Office of Energy pursuant to paragraph (d) of subsection 2 must be determined by:

(a) The Legislature if the Legislature is in session; or

(b) The Interim Finance Committee if the Legislature is not in session.

Section 20.8 of Senate Bill No. 358 of this session:

Sec. 20.8. For the period beginning July 1, 2009, and ending June 30, 2010, the Public Utilities Commission of Nevada shall levy and collect from utilities that provide electricity or natural gas in this State the annual assessment described in NRS 704.033, as amended by section 11.7 of this act, that must be:

1. For the use of the Renewable Energy and Energy Efficiency Authority, 0.21 mills; and

2. For the use of the Office of Energy, 0.07 mills,

➥ unless the Legislature or the Interim Finance Committee establishes a different amount on or before June 15, 2009.

Assemblyman Conklin moved that the Assembly concur in the Senate amendment to Assembly Bill No. 522.

Remarks by Assemblyman Conklin.

Motion carried by a constitutional majority.

Bill ordered to enrollment.

REPORTS OF COMMITTEES

Madam Speaker:

Your Committee on Judiciary, to which was referred Senate Bill No. 182, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

BERNIE ANDERSON, *Chairman*

MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, May 28, 2009

To the Honorable the Assembly:

I have the honor to inform your honorable body that the Senate on this day passed Assembly Bills Nos. 92, 555; Senate Bill No. 434.

Also, I have the honor to inform your honorable body that the Senate amended, and on this day passed, as amended, Assembly Bill No. 65, Amendment No. 961, and respectfully requests your honorable body to concur in said amendment.

Also, I have the honor to inform your honorable body that the Senate amended, and on this day passed, as amended, Assembly Bill No. 207, Amendment No. 609, and respectfully requests your honorable body to concur in said amendment.

Also, I have the honor to inform your honorable body that the Senate on this day respectfully refused to recede from its action on Assembly Bill No. 24, Senate Amendment No. 599, and requests a conference, and appointed Senators Schneider, Carlton and Hardy as a Conference Committee to meet with a like committee of the Assembly.

Also, I have the honor to inform your honorable body that the Senate on this day respectfully refused to recede from its action on Assembly Bill No. 140, Senate Amendment No. 771, and requests a conference, and appointed Senators Carlton, Copening and Townsend as a Conference Committee to meet with a like committee of the Assembly.

Also, I have the honor to inform your honorable body that the Senate on this day respectfully refused to recede from its action on Assembly Bill No. 202, Senate Amendment No. 812, and requests a conference, and appointed Senators Carlton, Parks and Amodei as a Conference Committee to meet with a like committee of the Assembly.

Also, I have the honor to inform your honorable body that the Senate on this day respectfully refused to recede from its action on Assembly Bill No. 309, Senate Amendments Nos. 693, 876, and requests a conference, and appointed Senators Amodei, Care and Wiener as a Conference Committee to meet with a like committee of the Assembly.

Also, I have the honor to inform your honorable body that the Senate on this day respectfully refused to recede from its action on Assembly Bill No. 320, Senate Amendments Nos. 694, 871, and requests a conference, and appointed Senators McGinness, Copening and Care as a Conference Committee to meet with a like committee of the Assembly.

Also, I have the honor to inform your honorable body that the Senate on this day respectfully refused to recede from its action on Assembly Bill No. 454, Senate Amendment No. 763, and requests a conference, and appointed Senators Carlton, Copening and Hardy as a Conference Committee to meet with a like committee of the Assembly.

Also, I have the honor to inform your honorable body that the Senate on this day concurred in the Assembly Amendments Nos. 725, 900 to Senate Bill No. 31; Assembly Amendments Nos. 828, 839 to Senate Bill No. 94; Assembly Amendment No. 654 to Senate Bill No. 124; Assembly Amendment No. 734 to Senate Bill No. 173; Assembly Amendments Nos. 668, 916 to Senate Bill No. 190; Assembly Amendment No. 736 to Senate Bill No. 248; Assembly

Amendment No. 689 to Senate Bill No. 376; Assembly Amendment No. 658 to Senate Bill No. 396; Assembly Amendment No. 878 to Senate Bill No. 416.

Also, I have the honor to inform your honorable body that the Senate on this day respectfully refused to concur in the Assembly Amendment No. 827 to Senate Bill No. 43; Assembly Amendment No. 588 to Senate Bill No. 55; Assembly Amendment No. 723 to Senate Bill No. 84; Assembly Amendment No. 921 to Senate Bill No. 175; Assembly Amendment No. 890 to Senate Bill No. 213; Assembly Amendments Nos. 783, 905 to Senate Bill No. 269; Assembly Amendment No. 745 to Senate Bill No. 332; Assembly Amendment No. 840 to Senate Bill No. 411.

Also, I have the honor to inform your honorable body that the Senate on this day adopted the report of the Conference Committee concerning Senate Bill No. 45.

Also, I have the honor to inform your honorable body that the Senate on this day adopted the report of the Conference Committee concerning Senate Bill No. 54.

SHERRY L. RODRIGUEZ
Assistant Secretary of the Senate

INTRODUCTION, FIRST READING AND REFERENCE

Senate Bill No. 434.

Assemblyman Oceguera moved that all rules be suspended, reading so far had considered second reading, rules further suspended, Senate Bill No. 434 considered engrossed, declared an emergency measure under the *Constitution*, and placed on third reading and final passage.

Motion carried.

UNFINISHED BUSINESS

APPOINTMENT OF CONFERENCE COMMITTEES

Madam Speaker appointed Assemblymen Horne, McClain, and Gansert as a Conference Committee to meet with a like committee of the Senate for the further consideration of Assembly Bill No. 140.

Madam Speaker appointed Assemblymen McClain, Conklin, and Hardy as a Conference Committee to meet with a like committee of the Senate for the further consideration of Assembly Bill No. 202.

Madam Speaker appointed Assemblymen Segerblom, Pierce, and Carpenter as a Conference Committee to meet with a like committee of the Senate for the further consideration of Assembly Bill No. 320.

Madam Speaker appointed Assemblymen Horne, McClain, and Goedhart as a Conference Committee to meet with a like committee of the Senate for the further consideration of Assembly Bill No. 454.

Madam Speaker appointed Assemblymen Parnell, Dondero Loop, and Hambrick as a Conference Committee to meet with a like committee of the Senate for the further consideration of Assembly Bill No. 309.

RECEDE FROM ASSEMBLY AMENDMENTS

Assemblyman Conklin moved that the Assembly do not recede from its action on Senate Bill No. 269, that a conference be requested, and that Madam Speaker appoint a first Conference Committee consisting of three members to meet with a like committee of the Senate.

Motion carried.

APPOINTMENT OF CONFERENCE COMMITTEES

Madam Speaker appointed Assemblymen Smith, Anderson, and Hardy as a Conference Committee to meet with a like committee of the Senate for the further consideration of Senate Bill No. 269.

CONSIDERATION OF SENATE AMENDMENTS

Assembly Bill No. 207.

The following Senate amendment was read:

Amendment No. 609.

AN ACT relating to common-interest communities; revising certain requirements for limited-purpose associations that are created for a rural agricultural residential common-interest communities; providing that such a limited-purpose association is a public body for purposes of the Open Meeting Law; providing that a study of the reserves of an association may be conducted by a person without a permit under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, a limited-purpose association that is created for a rural agricultural residential common-interest community must comply with certain requirements set forth in chapter 116 of NRS. **Section 1** of this bill exempts such a limited-purpose association from the requirement to: (1) pay a fee to the Real Estate Administrator for each unit in the association as required pursuant to NRS 116.31155 ~~[.]~~ **, except that the association must pay the fees if it intends to use the services of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels;** (2) comply with certain rules for meetings of the executive board; and (3) conduct a study every 5 years of the reserves required to repair, replace and restore the major components of the common elements of the community, and take certain actions concerning the study. (NRS 116.1201, 116.31083, 116.31152, 116.31155)

Existing law requires each limited-purpose association that is created for a rural agricultural residential common-interest community to comply with chapter 241 of NRS, which is commonly referred to as the Open Meeting Law. (NRS 116.31075) **Section 2** of this bill amends the definition of "public body" for purposes of the Open Meeting Law to include a limited-purpose association that is created for a rural agricultural residential common-interest community. (NRS 241.015) Thus, such a limited-purpose association will be

subject to enforcement action by the Attorney General if the association violates the Open Meeting Law. (NRS 241.037)

Existing law provides that at least once every 5 years, the executive board of an association shall cause a study of the reserves of the association required to repair, replace and restore the major components of the association to be conducted by a person who holds a permit to conduct such a study. (NRS 116.31152) **Sections 1.3 and 1.7** of this bill provide that if the common-interest community contains 20 or fewer units and is located in a county with a population of 50,000 or less (currently counties other than Carson City, Clark and Washoe Counties), the study may be conducted by any person whom the executive board deems qualified to conduct the study.

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

Section 1. NRS 116.1201 is hereby amended to read as follows:

116.1201 1. Except as otherwise provided in this section and NRS 116.1203, this chapter applies to all common-interest communities created within this State.

2. This chapter does not apply to:

(a) A limited-purpose association, except that a limited-purpose association:

(1) Shall pay the fees required pursuant to NRS 116.31155 ~~[;]~~ ~~*[, unless]*~~ ***, except that if the limited-purpose association is created for a rural agricultural residential common-interest community*** ~~*[,]*~~ ***, the limited-purpose association is not required to pay the fee unless the association intends to use the services of the Ombudsman;***

(2) Shall register with the Ombudsman pursuant to NRS 116.31158;

(3) Shall comply with the provisions of:

(I) NRS 116.31038 ~~[,]~~ ***;***

(II) NRS 116.31083 and 116.31152 ~~[;]~~ ***, unless the limited-purpose association is created for a rural agricultural residential common-interest community;*** and

~~[(II)]~~ ***(III)*** NRS 116.31075, if the limited-purpose association is created for a rural agricultural residential common-interest community;

(4) Shall comply with the provisions of NRS 116.4101 to 116.412, inclusive, as required by the regulations adopted by the Commission pursuant to paragraph (b) of subsection 5; and

(5) Shall not enforce any restrictions concerning the use of units by the units' owners, unless the limited-purpose association is created for a rural agricultural residential common-interest community.

(b) A planned community in which all units are restricted exclusively to nonresidential use unless the declaration provides that this chapter does apply to that planned community. This chapter applies to a planned community containing both units that are restricted exclusively to nonresidential use and other units that are not so restricted only if the declaration so provides or if

the real estate comprising the units that may be used for residential purposes would be a planned community in the absence of the units that may not be used for residential purposes.

(c) Common-interest communities or units located outside of this State, but the provisions of NRS 116.4102 to 116.4108, inclusive, apply to all contracts for the disposition thereof signed in this State by any party unless exempt under subsection 2 of NRS 116.4101.

(d) A common-interest community that was created before January 1, 1992, is located in a county whose population is less than 50,000, and has less than 50 percent of the units within the community put to residential use, unless a majority of the units' owners otherwise elect in writing.

(e) Except as otherwise provided in this chapter, time shares governed by the provisions of chapter 119A of NRS.

3. The provisions of this chapter do not:

(a) Prohibit a common-interest community created before January 1, 1992, from providing for separate classes of voting for the units' owners;

(b) Require a common-interest community created before January 1, 1992, to comply with the provisions of NRS 116.2101 to 116.2122, inclusive;

(c) Invalidate any assessments that were imposed on or before October 1, 1999, by a common-interest community created before January 1, 1992; or

(d) Prohibit a common-interest community created before January 1, 1992, or a common-interest community described in NRS 116.31105 from providing for a representative form of government.

4. The provisions of chapters 117 and 278A of NRS do not apply to common-interest communities.

5. The Commission shall establish, by regulation:

(a) The criteria for determining whether an association, a limited-purpose association or a common-interest community satisfies the requirements for an exemption or limited exemption from any provision of this chapter; and

(b) The extent to which a limited-purpose association must comply with the provisions of NRS 116.4101 to 116.412, inclusive.

6. As used in this section, "limited-purpose association" means an association that:

(a) Is created for the limited purpose of maintaining:

(1) The landscape of the common elements of a common-interest community;

(2) Facilities for flood control; or

(3) A rural agricultural residential common-interest community; and

(b) Is not authorized by its governing documents to enforce any restrictions concerning the use of units by units' owners, unless the limited-purpose association is created for a rural agricultural residential common-interest community.

Sec. 1.3. NRS 116.31152 is hereby amended to read as follows:

116.31152 1. The executive board shall:

(a) At least once every 5 years, cause to be conducted a study of the reserves required to repair, replace and restore the major components of the common elements;

(b) At least annually, review the results of that study to determine whether those reserves are sufficient; and

(c) At least annually, make any adjustments to the association's funding plan which the executive board deems necessary to provide adequate funding for the required reserves.

2. ~~[The]~~ ***Except as otherwise provided in this subsection, the*** study of the reserves required by subsection 1 must be conducted by a person who holds a permit issued pursuant to chapter 116A of NRS. ***If the common-interest community contains 20 or fewer units and is located in a county whose population is 50,000 or less, the study of the reserves required by subsection 1 may be conducted by any person whom the executive board deems qualified to conduct the study.***

3. The study of the reserves must include, without limitation:

(a) A summary of an inspection of the major components of the common elements that the association is obligated to repair, replace or restore;

(b) An identification of the major components of the common elements that the association is obligated to repair, replace or restore which have a remaining useful life of less than 30 years;

(c) An estimate of the remaining useful life of each major component of the common elements identified pursuant to paragraph (b);

(d) An estimate of the cost of repair, replacement or restoration of each major component of the common elements identified pursuant to paragraph (b) during and at the end of its useful life; and

(e) An estimate of the total annual assessment that may be necessary to cover the cost of repairing, replacement or restoration of the major components of the common elements identified pursuant to paragraph (b), after subtracting he reserves of the association as of the date of the study, and an estimate of the funding plan that may be necessary to provide adequate funding for the required reserves.

4. A summary of the study of the reserves required by subsection 1 must be submitted to the Division not later than 45 days after the date that the executive board adopts the results of the study.

5. If a common-interest community was developed as part of a planned unit development pursuant to chapter 278A of NRS and is subject to an agreement with a city or county to receive credit against the amount of the residential construction tax that is imposed pursuant to NRS 278.4983 and 278.4985, the association that is organized for the common-interest community may use the money from that credit for the repair, replacement or restoration of park facilities and related improvements if:

(a) The park facilities and related improvements are identified as major components of the common elements of the association; and

(b) The association is obligated to repair, replace or restore the park facilities and related improvements in accordance with the study of the reserves required by subsection 1.

Sec. 1.7. NRS 116A.420 is hereby amended to read as follows:

116A.420 1. Except as otherwise provided in this section ~~[.]~~ ***and subsection 2 of NRS 116.31152,*** a person shall not act as a reserve study specialist unless the person holds a permit.

2. The Commission shall by regulation provide for the standards of practice for reserve study specialists who hold permits.

3. The Division may investigate any reserve study specialist who holds a permit to ensure that the reserve study specialist is complying with the provisions of this chapter and chapters 116 and 116B of NRS and the standards of practice adopted by the Commission.

4. In addition to any other remedy or penalty, if the Commission or a hearing panel, after notice and hearing, finds that a reserve study specialist who holds a permit has violated any provision of this chapter or chapter 116 or 116B of NRS or any of the standards of practice adopted by the Commission, the Commission or the hearing panel may take appropriate disciplinary action against the reserve study specialist.

5. In addition to any other remedy or penalty, the Commission may:

(a) Refuse to issue a permit to a person who has failed to pay money which the person owes to the Commission or the Division.

(b) Suspend, revoke or refuse to renew the permit of a person who has failed to pay money which the person owes to the Commission or the Division.

6. The provisions of this section do not apply to a member of an executive board or an officer of an association who is acting solely within the scope of his duties as a member of the executive board or an officer of the association.

Sec. 2. NRS 241.015 is hereby amended to read as follows:

241.015 As used in this chapter, unless the context otherwise requires:

1. "Action" means:

(a) A decision made by a majority of the members present during a meeting of a public body;

(b) A commitment or promise made by a majority of the members present during a meeting of a public body;

(c) If a public body may have a member who is not an elected official, an affirmative vote taken by a majority of the members present during a meeting of the public body; or

(d) If all the members of a public body must be elected officials, an affirmative vote taken by a majority of all the members of the public body.

2. "Meeting":

(a) Except as otherwise provided in paragraph (b), means:

(1) The gathering of members of a public body at which a quorum is present to deliberate toward a decision or to take action on any matter over

which the public body has supervision, control, jurisdiction or advisory power.

(2) Any series of gatherings of members of a public body at which:

(I) Less than a quorum is present at any individual gathering;

(II) The members of the public body attending one or more of the gatherings collectively constitute a quorum; and

(III) The series of gatherings was held with the specific intent to avoid the provisions of this chapter.

(b) Does not include a gathering or series of gatherings of members of a public body, as described in paragraph (a), at which a quorum is actually or collectively present:

(1) Which occurs at a social function if the members do not deliberate toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

(2) To receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both.

3. Except as otherwise provided in this subsection, "public body" means ~~[any]~~ ***:***

(a) Any administrative, advisory, executive or legislative body of the State or a local government which expends or disburses or is supported in whole or in part by tax revenue or which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue, including, but not limited to, any board, commission, committee, subcommittee or other subsidiary thereof and includes an educational foundation as defined in subsection 3 of NRS 388.750 and a university foundation as defined in subsection 3 of NRS 396.405 ~~[.]~~ ***; and***

(b) A limited-purpose association that is created for a rural agricultural residential common-interest community as defined in subsection 6 of NRS 116.1201.

➥ "Public body" does not include the Legislature of the State of Nevada.

4. "Quorum" means a simple majority of the constituent membership of a public body or another proportion established by law.

Sec. 3. This act becomes effective on July 1, 2009.

Assemblyman Anderson moved that the Assembly concur in the Senate amendment to Assembly Bill No. 207.

Remarks by Assemblyman Anderson.

Motion carried by a constitutional majority.

Bill ordered to enrollment.

RECEDE FROM ASSEMBLY AMENDMENTS

Assemblyman Anderson moved that the Assembly do not recede from its action on Senate Bill No. 55, that a conference be requested, and that Madam Speaker appoint a first Conference Committee consisting of three members to meet with a like committee of the Senate.

Remarks by Assemblyman Anderson.

Motion carried.

APPOINTMENT OF CONFERENCE COMMITTEES

Madam Speaker appointed Assemblymen Anderson, Ohrenschall, and McArthur as a Conference Committee to meet with a like committee of the Senate for the further consideration of Senate Bill No. 55.

RECEDE FROM ASSEMBLY AMENDMENTS

Assemblyman Atkinson moved that the Assembly do not recede from its action on Senate Bill No. 332, that a conference be requested, and that Madam Speaker appoint a first Conference Committee consisting of three members to meet with a like committee of the Senate.

Remarks by Assemblyman Atkinson.

Motion carried.

APPOINTMENT OF CONFERENCE COMMITTEES

Madam Speaker appointed Assemblymen Spiegel, Dondero Loop, and Goicoechea as a Conference Committee to meet with a like committee of the Senate for the further consideration of Senate Bill No. 332.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Conklin moved that Senate Bill No. 395 be taken from the Chief Clerk's desk and placed at the top of General File.

Motion carried.

GENERAL FILE AND THIRD READING

Senate Bill No. 395.

Bill read third time.

The following amendment was proposed by Assemblyman Bobzien:

Amendment No. 965.

AN ACT relating to governmental administration; revising provisions governing the issuance of certain permits by the Public Utilities Commission of Nevada pursuant to the Utility Environmental Protection Act; altering the composition of the Commission on Economic Development; requiring the Chief of the Purchasing Division of the Department of Administration to adopt regulations establishing standards for the procurement of certain appliances, equipment, lighting and other devices; requiring the State Public Works Board to adopt certain standards concerning the efficient use of water and energy; requiring licensed vehicle dealers to provide certain information

concerning vehicle emissions; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 4 of this bill alters the definition of "utility facility," as that term is used in the Utility Environmental Protection Act which provides for the issuance of permits **by the Public Utilities Commission of Nevada** for the construction of utility facilities, to **: (1)** require a nameplate capacity **for electric facilities** of not more than 70 megawatts rather than a generating capacity of not more than 35 megawatts **[.] ; and (2) apply to certain electric and gas facilities located in a county whose population is 100,000 or more (currently Clark and Washoe Counties) which were previously excluded.**

Section 5 of this bill exempts certain utility facilities from certain findings that are a condition precedent to permitting under the Utility Environmental Protection Act.

Sections 6 and 24 of this bill alter the composition of the Commission on Economic Development to require that at least two of the appointed members be from counties whose population is less than 100,000. (NRS 231.040)

Section 8 of this bill requires the Chief of the Purchasing Division of the Department of Administration to adopt regulations establishing standards favoring the procurement of appliances, equipment, lighting and other devices that bear the "Energy Star" label or meet other requirements prescribed by federal law unless to do so would not be cost-effective.

Section 10 of this bill requires the State Public Works Board to adopt standards and performance guidelines concerning the efficient use of water and energy.

Section 18 of this bill requires vehicle dealers in Nevada, beginning ~~[on January 1, 2010, to provide upon request]~~ **with the 2012 model year and thereafter, to ensure that each new vehicle offered for sale is accompanied by** a disclosure of the **vehicle's** estimated carbon dioxide emissions **., [**~~of each new vehicle offered for sale,~~**]** if such information is available.

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

Section 1. (Deleted by amendment.)

Sec. 2. (Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

Sec. 4. NRS 704.860 is hereby amended to read as follows:

704.860 "Utility facility" means:

1. Electric generating plants and their associated facilities, except ~~[:~~

~~(a) Electric generating plants and their associated facilities that are or will be located entirely within the boundaries of a county whose population is 100,000 or more; or~~

~~(b) Electric~~] ***electric*** generating plants and their associated facilities which use or will use renewable energy, as defined in NRS 704.7811, as their primary source of energy to generate electricity and which have or will have a ~~[~~generating~~]~~ ***nameplate*** capacity of not more than ~~[~~35~~]~~ ***70*** megawatts, including, without limitation, a net metering system, as defined in NRS 704.771.

~~[~~***(***~~]~~ As used in this subsection, "associated facilities" includes, without limitation, any facilities for the storage, transmission or treatment of water, including, without limitation, facilities to supply water or for the treatment or disposal of wastewater, which support or service an electric generating plant.

2. Electric transmission lines and transmission substations that:

(a) Are designed to operate at 200 kilovolts or more;

(b) Are not required by local ordinance to be placed underground; and

(c) Are constructed outside any incorporated city.

3. Gas transmission lines, storage plants, compressor stations and their associated facilities when constructed outside ~~[~~.

~~(a) Any~~] ***any*** incorporated city ***.*** ~~[~~; and

~~(b) Any county whose population is 100,000 or more.~~]

4. Water storage, transmission and treatment facilities, other than facilities for the storage, transmission or treatment of water from mining operations.

5. Sewer transmission and treatment facilities.

Sec. 5. NRS 704.890 is hereby amended to read as follows:

704.890 1. Except as otherwise provided in subsection 3, the Commission may not grant a permit for the construction, operation and maintenance of a utility facility, either as proposed or as modified by the Commission, to a person unless it finds and determines:

(a) The nature of the probable effect on the environment;

(b) ~~[~~The~~]~~ ***If the utility facility emits greenhouse gases and does not use renewable energy as its primary source of energy to generate electricity, the*** extent to which the facility is needed to ensure reliable utility service to customers in this State;

(c) That the need for the facility balances any adverse effect on the environment;

(d) That the facility represents the minimum adverse effect on the environment, considering the state of available technology and the nature and economics of the various alternatives;

(e) That the location of the facility as proposed conforms to applicable state and local laws and regulations issued thereunder and the applicant has obtained, or is in the process of obtaining, all other permits, licenses and approvals required by federal, state and local statutes, regulations and ordinances; and

(f) That the facility will serve the public interest.

2. If the Commission determines that the location of all or a part of the proposed facility should be modified, it may condition its permit upon such a

modification. If the applicant has not obtained all the other permits, licenses and approvals required by federal, state and local statutes, regulations and ordinances as of the date on which the Commission decides to issue a permit, the Commission shall condition its permit upon the applicant obtaining those permits and approvals.

3. The requirements set forth in paragraph (f) of subsection 1 do not apply to any application for a permit which is filed by a state government or political subdivision thereof.

4. As used in this section, "renewable energy" has the meaning ascribed to it in NRS 704.7811.

Sec. 6. NRS 231.040 is hereby amended to read as follows:

231.040 1. The Commission on Economic Development is composed of the Lieutenant Governor, who is its Chairman, and six members who are appointed by the Governor.

2. The Governor shall appoint as members of the Commission persons who ***are residents of Nevada and who*** have proven experience in economic development which was acquired by them while engaged in finance, manufacturing, mining, agriculture, the field of transportation, or in general business other than tourism or gaming.

3. The Governor shall appoint ~~[at]~~ ***to the Commission:***

(a) At least one member who is a resident of ~~[:~~

~~(a)]~~ Clark County.

(b) ***At least one member who is a resident of*** Washoe County.

(c) ~~[A county]~~ ***At least two members who are residents of counties*** whose population is ~~[50,000 or less.]~~ ***less than 100,000.***

Sec. 7. (Deleted by amendment.)

Sec. 8. Chapter 333 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The Chief shall adopt regulations which set forth standards to be used by using agencies when purchasing new appliances, equipment, lighting and other devices that use electricity, natural gas, propane or oil. Except as otherwise provided in subsection 2, the standards must require that such new appliances, equipment, lighting and other devices have received the Energy Star label pursuant to the program established pursuant to 42 U.S.C. § 6294a, or its successor, or meet the requirements established pursuant to 48 C.F.R. § 23.203.

2. The standards described in subsection 1 do not apply insofar as:

(a) No items in a given class of appliances, equipment, lighting or other devices have been evaluated to determine whether they are eligible to receive the Energy Star label or have been designated by the Federal Government to meet the requirements established pursuant to 48 C.F.R. § 23.203; or

(b) The purchase of new appliances, equipment, lighting or other devices that have received the Energy Star label would not be cost-effective

in an individual instance, comparing the cost of the item to the cost of the amount of energy that will be saved over the useful life of the item.

Sec. 9. NRS 333.340 is hereby amended to read as follows:

333.340 1. Every contract or order for goods must be awarded to the lowest responsible bidder. To determine the lowest responsible bidder, the Chief:

(a) Shall consider, if applicable ~~[, the]~~ ***:***

(1) The imposition of the inverse preference described in NRS 333.336.

(2) The required standards adopted pursuant to section 8 of this act.

(b) May consider:

(1) The location of the using agency to be supplied.

(2) The qualities of the articles to be supplied.

(3) The total cost of ownership of the articles to be supplied.

(4) Except as otherwise provided in subparagraph (5), the conformity of the articles to be supplied with the specifications.

(5) If the articles are an alternative to the articles listed in the original request for bids, whether the advertisement for bids included a statement that bids for an alternative article will be considered if:

(I) The specifications of the alternative article meet or exceed the specifications of the article listed in the original request for bids;

(II) The purchase of the alternative article results in a lower price; and

(III) The Chief deems the purchase of the alternative article to be in the best interests of the State of Nevada.

(6) The purposes for which the articles to be supplied are required.

(7) The dates of delivery of the articles to be supplied.

2. If a contract or an order is not awarded to the lowest bidder, the Chief shall provide the lowest bidder with a written statement which sets forth the specific reasons that the contract or order was not awarded to him.

3. As used in this section, "total cost of ownership" includes, but is not limited to:

(a) The history of maintenance or repair of the articles;

(b) The cost of routine maintenance and repair of the articles;

(c) Any warranties provided in connection with the articles;

(d) The cost of replacement parts for the articles; and

(e) The value of the articles as used articles when given in trade on a subsequent purchase.

Sec. 10. Chapter 341 of NRS is hereby amended by adding thereto a new section to read as follows:

1. For the purposes of the design and construction of buildings or other projects of this State, the Board shall adopt by regulation:

(a) Standards for the efficient use of water.

(b) Standards for the efficient use of energy, including, without limitation, the use of sources of renewable energy.

(c) Performance guidelines for new, remodeled and renovated buildings.

(d) Performance guidelines for retrofit projects, including, without limitation, guidelines for:

(1) Energy consumption.

(2) The use of potable water.

(3) The use of water for purposes relating to landscaping.

(4) The disposal of solid waste.

2. The standards and performance guidelines adopted in accordance with subsection 1 must include a mechanism for their evaluation and revision to ensure that such standards and guidelines:

(a) Are cost-effective over the life of the applicable project.

(b) Produce certain threshold levels of cost savings.

3. In adopting the standards and performance guidelines pursuant to subsection 1, the Board may consider, without limitation:

(a) The Leadership in Energy and Environmental Design Green Building Rating System established by the U.S. Green Building Council or its successor;

(b) The Green Globes assessment and rating system developed by the Green Building Initiative or its successor;

(c) The standards established by the United States Environmental Protection Agency pursuant to the Energy Star Program;

(d) The standards established by the American Society of Heating, Refrigerating and Air-Conditioning Engineers or its successor;

(e) The criteria established pursuant to the Federal Energy Management Program established by the United States Department of Energy; and

(f) The criteria established by the International Energy Conservation Code.

4. The regulations adopted pursuant to this section must include provisions for their enforcement.

5. As used in this section, "renewable energy" has the meaning ascribed to it in NRS 701A.220.

Sec. 11. NRS 341.119 is hereby amended to read as follows:

341.119 1. Upon the request of the head of a state agency, the Board may delegate to that agency any of the authority granted the Board pursuant to NRS 341.141 to 341.148, inclusive ~~[.]~~ ***, and section 10 of this act.***

2. This section does not limit any of the authority of the Legislature when the Legislature is in regular or special session or the Interim Finance Committee when the Legislature is not in regular or special session to consult with the Board concerning a construction project or to approve the advance planning of a project.

Sec. 12. NRS 341.153 is hereby amended to read as follows:

341.153 1. The Legislature hereby finds as facts:

(a) That the construction of public buildings is a specialized field requiring for its successful accomplishment a high degree of skill and

experience not ordinarily acquired by public officers and employees whose primary duty lies in some other field.

(b) That this construction involves the expenditure of large amounts of public money which, whatever their particular constitutional, statutory or governmental source, involve a public trust.

(c) That the application by state agencies of conflicting standards of performance results in wasteful delays and increased costs in the performance of public works.

2. The Legislature therefore declares it to be the policy of this State that all construction of buildings upon property of the State or held in trust for any division of the State Government be supervised by, and final authority for its completion and acceptance vested in, the Board as provided in NRS 341.141 to 341.148, inclusive ~~[.]~~ ***, and section 10 of this act.***

Sec. 13. (Deleted by amendment.)

Sec. 14. (Deleted by amendment.)

Sec. 15. (Deleted by amendment.)

Sec. 16. (Deleted by amendment.)

Sec. 17. (Deleted by amendment.)

Sec. 18. Chapter 482 of NRS is hereby amended by adding thereto a new section to read as follows:

Every vehicle dealer licensed in this State shall ~~*[, upon request, provide to any person a written statement]*~~ ***ensure that, beginning with the 2012 model year and continuing with subsequent model years, each new vehicle he offers for sale is accompanied by a prominent disclosure setting forth the estimated amount of carbon dioxide*** ~~*[that is emitted by each new vehicle]*~~ ***that the vehicle*** ~~*[dealer offers for sale,]*~~ ***emits, unless the information concerning the emissions for that vehicle is unavailable.***

Sec. 19. NRS 482.36414 is hereby amended to read as follows:

482.36414 A person who assumes operation of a franchise pursuant to NRS 482.36396 to 482.36414, inclusive, must be licensed as a dealer pursuant to the provisions of NRS 482.318 to 482.363, inclusive ~~[.]~~ ***, and section 18 of this act.***

Sec. 20. (Deleted by amendment.)

Sec. 21. (Deleted by amendment.)

Sec. 22. (Deleted by amendment.)

Sec. 22.5. (Deleted by amendment.)

Sec. 23. (Deleted by amendment.)

Sec. 24. As soon as practicable after July 1, 2009, the Governor shall appoint to the Commission on Economic Development any new members required to be appointed to the Commission pursuant to NRS 231.040, as amended by section 6 of this act.

Sec. 25. 1. This section and sections 1 to 17, inclusive, and 20 to 24, inclusive, of this act become effective on July 1, 2009.

2. Sections 18 and 19 of this act become effective on January 1, 2010.

Assemblyman Bobzien moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

SECOND READING AND AMENDMENT

Senate Bill No. 182.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 947.

AN ACT relating to common-interest communities; clarifying various provisions of existing law relating to certain ~~[definitions of terms,]~~ provisions of governing documents that violate statutory provisions, elections and the authority of an association to levy certain assessments under certain circumstances; revising certain provisions governing the authority of an association to impose fines under certain circumstances; making various other changes to the provisions governing common-interest communities; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 3 of this bill provides that a person who knowingly, willfully and with the intent to fraudulently alter the outcome of the election of a member to the executive board of an association **or other votes of the units' owners** engages in certain acts pertaining to the ballot or the casting of votes in such election is guilty of a category ~~[C]~~ **D** felony. (NRS 116.31034) Existing law prohibits a community manager, an officer or a member of the executive board from accepting or soliciting compensation that would influence him or appear to be a conflict of interest. (NRS 116.31185) **Section 4** of this bill provides that a community manager or member of the executive board who asks for or receives compensation to influence his vote, opinion or action upon any official matter is guilty of a category ~~[C]~~ **D** felony. **Section 4** also provides that a person who offers or gives any gratuity, compensation or reward, or makes a promise thereof, to a community manager or member of the executive board in exchange for a vote, opinion or action on any official matter is guilty of a category ~~[C]~~ **D** felony.

Existing law requires each agency to provide by regulation for the filing and prompt disposition of petitions for declaratory orders and advisory opinions as to the applicability of any statutory provision, agency regulation or decision of the agency, and the Department of Business and Industry, which includes the Real Estate Division, has accordingly adopted regulations for such petitions. (NRS 233B.120; NAC 232.020) However, the Real Estate Division has not adopted any regulations pertaining to such petitions. **Section 5** of this bill enacts a specific statutory provision requiring the Real Estate Division to adopt regulations pertaining to such petitions.

~~[Under existing law, a "common-interest community" is defined as "real estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate other than that unit." (NRS 116.021) Section 6~~

~~of this bill clarifies existing law with respect to this definition by providing explicitly that, as used in this definition, the term "real estate other than that unit" does not include any interest in any covenants, conditions or restrictions to which the unit is subject, and the fact that the unit is subject to covenants, conditions or restrictions is not relevant and not to be considered in determining whether real estate is a "common-interest community."]~~

Existing law contains provisions concerning units or common elements of an association that are acquired by eminent domain. (NRS 116.1107) **Section 7** of this bill clarifies that existing law does not authorize an association to exercise the power of eminent domain. **Section 8** of this bill clarifies that any provision contained in a declaration, bylaw or other governing document of a common-interest community that violates the provisions of chapter 116 of NRS is superseded by the provisions of chapter 116 of NRS, regardless of whether the provision became effective before the enactment of the statutory provision being violated. (NRS 116.1206)

Section 8.5 of this bill provides that an association may not charge a fee for entry into the common-interest community against a person providing services to a unit, a unit's owner or a tenant of a unit's owner or against a visitor, guest or invitee of a unit's owner or a tenant of a unit's owner. (NRS 116.2111)

Section 9 of this bill revises existing law to limit an association's power to include certain provisions in certain contracts involving the association. (NRS 116.3102)

Existing law authorizes an executive board to impose fines under certain circumstances. (NRS 116.31031) **Section 12** of this bill limits the imposition of fines against a unit's owner for violations of the governing documents by a tenant or **an** invitee of the unit's owner **~~[.]~~ or the tenant.**

Sections 13, 14 and 16 of this bill revise provisions relating to certain elections and meetings of an association by: (1) requiring members of the executive board to be units' owners; (2) providing that officers of an association are not required to be units' owners, unless the governing documents provide otherwise; (3) providing certain rights for candidates for election to an executive board; (4) reducing the votes necessary for removal of a member of an executive board; (5) prohibiting an association from interfering with the collection of signatures for a special meeting or removal election; and (6) providing immunity from criminal or civil liability for an association, its officers, employees and agents for the disclosure or publication of certain information pursuant to certain duties required of the association or its officers, employees and agents. (NRS 116.31034, 116.31036, 116.3108)

Section 15 of this bill clarifies existing law concerning the respective duties of an association and the units' owners regarding the maintenance, repair and replacement of the common elements and the units. (NRS 116.3107)

Sections 17-19 of this bill revise provisions relating to board meetings and hearings by: (1) requiring that meetings of the executive board be audio recorded and available in a certain manner; (2) requiring that certain written complaints be placed on the agenda; and (3) providing due process protections to units' owners at certain hearings. (NRS 116.31083, 116.31085, 116.31087) **Section 17** also revises existing law to allow public comments to be made at both the beginning and the end of a meeting. (NRS 116.31083)

Existing law provides that an association has the statutory obligation to: (1) fund adequately its reserves; (2) include in its annual budget a statement concerning its reserves and whether it will be necessary to impose any special assessments; and (3) review its study of the reserves on an annual basis and make any appropriate adjustments necessary to ensure that the reserves are always funded adequately. (NRS 116.3115, 116.31151, 116.31152) **Section 21** of this bill clarifies existing law by explicitly stating that notwithstanding any provision of the governing documents to the contrary, the executive board may, without seeking or obtaining the approval of units' owners, impose any necessary and reasonable assessments to establish adequate reserves. **This section also provides that any such assessments imposed must be based on the study of the reserves of the association conducted pursuant to NRS 116.31152.**

Section 22 of this bill authorizes the filing of a civil action to recover certain fees, administrative penalties and interest that were imposed erroneously. (NRS 116.31155)

Sections 24, 26 and 28 of this bill provide certain additional rights to units' owners by: (1) increasing the scope and definition of prohibited retaliatory action; (2) authorizing the exhibition of certain political signs in certain areas; and (3) mandating notice before interruption of utility service to a unit's owner. (NRS 116.31183, 116.325, 116.345)

Section 25 of this bill expands the prohibition against certain contracts between an association and a member of the executive board or officer to include contracts involving financing. (NRS 116.31187) **Section 27** of this bill: (1) provides that existing law concerning drought tolerant landscaping must be construed broadly; and (2) clarifies the definition of "drought tolerant landscaping." (NRS 116.330) **Section 29** of this bill provides that if a community manager fails or refuses to comply with the governing documents of the association or the provisions of chapter 116 of NRS, any person or class of persons may bring a civil action for damages or other relief. (NRS 116.4117)

Section 30 of this bill increases the membership of the Commission by adding two members who are units' owners but who are not required to have served as members of an executive board. (NRS 116.600) **Section 31** of this bill revises provisions relating to the Commission's duties by providing for the use of training officers to perform certain duties. (NRS 116.605)

~~[Section 35 of this bill: (1) eliminates the authority of the Commission or hearing panel to order a respondent to pay the costs of the attorney's fees of~~

~~the Division; and (2) provides that in any matter brought before the Commission or a hearing panel, attorney's fees must not be granted to the prevailing party, regardless of whether the governing documents provide for such fees to be granted to a prevailing party. (NRS 116.785)~~**]** **Section 36** of this bill clarifies that if the Commission or hearing officer orders an audit of an association, the audit is conducted at the expense of the association. (NRS 116.790)

Existing law provides that a written affidavit, supporting documentation and information compiled as the result of an investigation of an alleged violation are confidential unless and until a formal complaint is filed. (NRS 116.757, 116A.270) **Sections 33 and 37** of this bill clarify existing law to provide that such confidential information must not be disclosed to any person, including a person who is the subject of an investigation or complaint, unless and until a formal complaint is filed.

Section 39 of this bill provides that the Commission must adopt regulations requiring an applicant for a certificate as a community manager **or the applicant's employer** to post a bond. (NRS 116A.410)

Section 40 of this bill revises existing law to provide that upon selection or appointment of an arbitrator, the arbitrator must provide certain information concerning the procedures of the arbitration and applicable law to each party to the arbitration, and each party must return to the arbitrator an acknowledgment of the information provided by the arbitrator. (NRS 38.330)

~~[Whereas, The Nevada Legislature previously deemed it important to set forth its intent regarding the creation and proper functioning of planned communities; and~~

~~Whereas, The Nevada Legislature previously noted that planned communities are a dominant method of residential development in the State of Nevada; and~~

~~Whereas, The Nevada Legislature previously noted that planned communities are developed for the purposes of preserving neighborhood continuity and creating desirable places to reside; and~~

~~Whereas, The Nevada Legislature previously noted that planned communities are governed by specific rules and regulations and by unit-owners' associations; and~~

~~Whereas, The Nevada Legislature previously noted that a unit-owners' association is the form of self-government closest to the people; and~~

~~Whereas, The Nevada Legislature previously declared that all forms of government should follow the basic principles of democracy found in the United States Constitution and the Nevada Constitution; and~~

~~Whereas, The Nevada Legislature previously noted that some unit-owners' associations in this State have a history of abuse of power; and~~

~~Whereas, The Nevada Legislature previously noted that unit-owners' associations have power over one of the most important aspects of a person's life, his residence; and~~

~~Whereas, The Nevada Legislature previously noted that homeowners invest financially and emotionally in their homes; and~~

~~Whereas, The Nevada Legislature previously declared that homeowners have the right to reside in a community without fear of illegal, unfair, unnecessary, unduly burdensome or costly interference with their property rights; and~~

~~Whereas, Many of the concerns previously noted by the Nevada Legislature persist to this day; and~~

~~Whereas, The Nevada Legislature deems it necessary and important to reiterate and endorse both the intent and the concerns previously expressed by the Nevada Legislature; and~~

~~Whereas, The establishment of planned communities is required by many local governments as a condition of granting necessary building permits for residential housing; and~~

~~Whereas, The form of self-government of a unit owners' association includes legislative, executive and quasi-judicial powers and functions; now, therefore,~~**]**

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

Section 1. Chapter 116 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

Sec. 2. (Deleted by amendment.)

Sec. 3. ***1. A person shall not knowingly, willfully and with the intent to fraudulently alter the true outcome of an election of a member of the executive board <u>or any other vote of the units' owners</u> engage in, attempt to engage in, or conspire with another person to engage in, any of the following acts:***

(a) Changing or falsifying a voter's ballot so that the ballot does not reflect the voter's true ballot.

(b) Forging or falsely signing a voter's ballot.

(c) Fraudulently casting a vote for himself or for another person that the person is not authorized to cast.

(d) Rejecting, failing to count, destroying, defacing or otherwise invalidating the valid ballot of another voter.

(e) Submitting a counterfeit ballot.

2. A person who violates this section is guilty of a category ~~[C]~~ <u>D</u> felony and shall be punished as provided in NRS 193.130.

Sec. 4. ***1. Except as otherwise provided in subsection 3, a community manager or member of the executive board who asks for or receives, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon an agreement or understanding that his vote, opinion or action upon any matter then pending or which may be brought before him in his capacity as a community manager or member of the executive board,***

will be influenced thereby, is guilty of a category ~~[C]~~ D felony and shall be punished as provided in NRS 193.130.

2. Except as otherwise provided in subsection 3, a person who offers or gives, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon an agreement or understanding that the vote, opinion or action of a community manager or member of the executive board upon any matter then pending or which may be brought before the community manager or member of the executive board in his capacity as a community manager or member of the executive board will be influenced thereby, is guilty of a category ~~[C]~~ D felony and shall be punished as provided in NRS 193.130.

3. The provisions of this section do not prohibit:

(a) An employee of a declarant or an affiliate of a declarant who is a member of an executive board from asking for or receiving, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, from the declarant or affiliate.

(b) A declarant or an affiliate of a declarant whose employee is a member of an executive board from offering or giving, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, to the employee who is a member of the executive board.

(c) A community manager from asking for or receiving, directly or indirectly, or an employer of a community manager from offering or giving, directly or indirectly, any compensation for work performed by the community manager pursuant to the laws of this State.

Sec. 5. ***1. The Division shall provide by regulation for the filing and prompt disposition of petitions for declaratory orders and advisory opinions as to the applicability or interpretation of:***

(a) Any provision of this chapter or chapter 116A or 116B of NRS;

(b) Any regulation adopted by the Commission, the Administrator or the Division; or

(c) Any decision of the Commission, the Administrator or the Division or any of its sections.

2. Declaratory orders disposing of petitions filed pursuant to this section have the same status as agency decisions.

3. A petition filed pursuant to this section must:

(a) Set forth the name and address of the petitioner; and

(b) Contain a clear and concise statement of the issues to be decided by the Division in its declaratory order or advisory opinion.

4. A petition filed pursuant to this section is submitted for consideration by the Division when it is filed with the Administrator.

5. The Division shall:

(a) Respond to a petition filed pursuant to this section within 60 days after the date on which the petition is submitted for consideration; and

(b) Upon issuing its declaratory order or advisory opinion, mail a copy of the declaratory order or advisory opinion to the petitioner.

Sec. 6. ~~[NRS 116.021 is hereby amended to read as follows:~~

~~116.021 *1.* "Common interest community" means real estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate other than that unit.~~

~~*2. As used in this section:*~~

~~*(a)* "Ownership of a unit" does not include holding a leasehold interest of less than 20 years in a unit, including options to renew.~~

~~*(b) "Real estate other than that unit" does not include any interest in any covenants, conditions or restrictions to which the unit is subject, and the fact that the unit is subject to covenants, conditions or restrictions is not relevant and not to be considered in determining whether real estate is a "common interest community" pursuant to this section.]~~ **(Deleted by amendment.)**

Sec. 7. NRS 116.1107 is hereby amended to read as follows:

116.1107 1. If a unit is acquired by eminent domain or part of a unit is acquired by eminent domain leaving the unit's owner with a remnant that may not practically or lawfully be used for any purpose permitted by the declaration, the award must include compensation to the unit's owner for that unit and its allocated interests, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

2. Except as otherwise provided in subsection 1, if part of a unit is acquired by eminent domain, the award must compensate the unit's owner for the reduction in value of the unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides:

(a) That unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration; and

(b) The portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and to the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

3. If part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken must be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.

4. The judicial decree must be recorded in every county in which any portion of the common-interest community is located.

5. The provisions of this section do not authorize an association to exercise the power of eminent domain pursuant to chapter 37 of NRS, and an association may not exercise the power of eminent domain, as provided in NRS 37.0097.

Sec. 8. NRS 116.1206 is hereby amended to read as follows:

116.1206 1. Any provision contained in a declaration, bylaw or other governing document of a common-interest community that violates the provisions of this chapter **[**~~shall~~**]** ***:***

(a) Shall be deemed to conform with those provisions by operation of law, and any such declaration, bylaw or other governing document is not required to be amended to conform to those provisions.

(b) Is superseded by the provisions of this chapter, regardless of whether the provision contained in the declaration, bylaw or other governing document became effective before the enactment of the provision of this chapter that is being violated.

2. In the case of amendments to the declaration, bylaws or plats and plans of any common-interest community created before January 1, 1992:

(a) If the result accomplished by the amendment was permitted by law before January 1, 1992, the amendment may be made either in accordance with that law, in which case that law applies to that amendment, or it may be made under this chapter; and

(b) If the result accomplished by the amendment is permitted by this chapter, and was not permitted by law before January 1, 1992, the amendment may be made under this chapter.

3. An amendment to the declaration, bylaws or plats and plans authorized by this section to be made under this chapter must be adopted in conformity with the applicable provisions of chapter 117 or 278A of NRS and with the procedures and requirements specified by those instruments. If an amendment grants to any person any rights, powers or privileges permitted by this chapter, all correlative obligations, liabilities and restrictions in this chapter also apply to that person.

Sec. 8.5. **NRS 116.2111 is hereby amended to read as follows:**

116.2111 1. Except as otherwise provided in this section and subject to the provisions of the declaration and other provisions of law, a unit's owner:

(a) May make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common-interest community;

(b) May not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the common-interest community, without permission of the association; and

(c) After acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those

acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common-interest community. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

2. An association may not:

(a) Unreasonably restrict, prohibit or otherwise impede the lawful rights of a unit's owner to have reasonable access to his unit.

(b) ***Charge any fee for a person to enter the common-interest community to provide services to a unit, a unit's owner or a tenant of a unit's owner or for any visitor to the common-interest community or invitee of a unit's owner or a tenant of a unit's owner to enter the common-interest community.***

(c) Unreasonably restrict, prohibit or withhold approval for a unit's owner to add to a unit:

(1) Improvements such as ramps, railings or elevators that are necessary to improve access to the unit for any occupant of the unit who has a disability;

(2) Additional locks to improve the security of the unit;

(3) Shutters to improve the security of the unit or to reduce the costs of energy for the unit; or

(4) A system that uses wind energy to reduce the costs of energy for the unit if the boundaries of the unit encompass 2 acres or more within the common-interest community.

~~[(c)]~~ ***(d)*** With regard to approving or disapproving any improvement or alteration made to a unit, act in violation of any state or federal law.

3. Any improvement or alteration made pursuant to subsection 2 that is visible from any other portion of the common-interest community must be installed, constructed or added in accordance with the procedures set forth in the governing documents of the association and must be selected or designed to the maximum extent practicable to be compatible with the style of the common-interest community.

4. A unit's owner may not add to the unit a system that uses wind energy as described in subparagraph 4 of paragraph ~~[(b)]~~ ***(c)*** of subsection 2 unless he first obtains the written consent of each owner of property within 300 feet of any boundary of the unit.

Sec. 9. NRS 116.3102 is hereby amended to read as follows:

116.3102 1. Except as otherwise provided in subsection 2, and subject to the provisions of the declaration, the association may do any or all of the following:

(a) Adopt and amend bylaws, rules and regulations.

(b) Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from the units' owners.

(c) Hire and discharge managing agents and other employees, agents and independent contractors.

(d) Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common-interest community.

(e) Make contracts and incur liabilities. ***Any contract between the association and a private entity for the furnishing of goods or services must not include a provision granting the private entity the right of first refusal with respect to extension or renewal of the contract.***

(f) Regulate the use, maintenance, repair, replacement and modification of common elements.

(g) Cause additional improvements to be made as a part of the common elements.

(h) Acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but:

(1) Common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to NRS 116.3112; and

(2) Part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to NRS 116.3112.

(i) Grant easements, leases, licenses and concessions through or over the common elements.

(j) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of NRS 116.2102, and for services provided to the units' owners.

(k) Impose charges for late payment of assessments.

(l) Impose construction penalties when authorized pursuant to NRS 116.310305.

(m) Impose reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in NRS 116.31031.

(n) Impose reasonable charges for the preparation and recordation of any amendments to the declaration or any statements of unpaid assessments, and impose reasonable fees, not to exceed the amounts authorized by NRS 116.4109, for preparing and furnishing the documents and certificate required by that section.

(o) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance.

(p) Assign its right to future income, including the right to receive assessments for common expenses, but only to the extent the declaration expressly so provides.

(q) Exercise any other powers conferred by the declaration or bylaws.

(r) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association.

(s) Direct the removal of vehicles improperly parked on property owned or leased by the association, as authorized pursuant to NRS 487.038, or improperly parked on any road, street, alley or other thoroughfare within the common-interest community in violation of the governing documents. In addition to complying with the requirements of NRS 487.038 and any requirements in the governing documents, if a vehicle is improperly parked as described in this paragraph, the association must post written notice in a conspicuous place on the vehicle or provide oral or written notice to the owner or operator of the vehicle at least 48 hours before the association may direct the removal of the vehicle, unless the vehicle:

(1) Is blocking a fire hydrant, fire lane or parking space designated for the handicapped; or

(2) Poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community.

(t) Exercise any other powers necessary and proper for the governance and operation of the association.

2. The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

Sec. 10. (Deleted by amendment.)

Sec. 11. (Deleted by amendment.)

Sec. 12. NRS 116.31031 is hereby amended to read as follows:

116.31031 1. Except as otherwise provided in this section, if a unit's owner or a tenant or ~~[~~guest~~]~~ ***an invitee*** of a unit's owner ***or a tenant*** violates any provision of the governing documents of an association, the executive board may, if the governing documents so provide:

(a) Prohibit, for a reasonable time, the unit's owner or the tenant or ~~[~~guest~~]~~ ***the invitee*** of the unit's owner ***or the tenant*** from:

(1) Voting on matters related to the common-interest community.

(2) Using the common elements. The provisions of this subparagraph do not prohibit the unit's owner or the tenant or ~~[~~guest~~]~~ ***the invitee*** of the unit's owner ***or the tenant*** from using any vehicular or pedestrian ingress or egress to go to or from the unit, including any area used for parking.

(b) Impose a fine against the unit's owner or the tenant or ~~[~~guest~~]~~ ***the invitee*** of the unit's owner ***or the tenant*** for each violation, except that a fine may not be imposed for a violation that is the subject of a construction penalty pursuant to NRS 116.310305. If the violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents. If the violation does not pose an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the

units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents, but the amount of the fine must not exceed $100 for each violation or a total amount of $1,000, whichever is less. The limitations on the amount of the fine do not apply to any interest, charges or costs that may be collected by the association pursuant to this section if the fine becomes past due.

2. ***The executive board may not impose a fine pursuant to subsection 1 against a unit's owner for a violation of any provision of the governing documents of an association committed by an invitee of the unit's owner or the tenant unless the unit's owner:***

(a) Participated in or authorized the violation;

(b) Had prior notice of the violation; or

(c) Had an opportunity to stop the violation and failed to do so.

3. The executive board may not impose a fine pursuant to subsection 1 unless:

(a) Not less than 30 days before the violation, the person against whom the fine will be imposed had been provided with written notice of the applicable provisions of the governing documents that form the basis of the violation; and

(b) Within a reasonable time after the discovery of the violation, the person against whom the fine will be imposed has been provided with:

(1) Written notice specifying the details of the violation, the amount of the fine, and the date, time and location for a hearing on the violation; and

(2) A reasonable opportunity to contest the violation at the hearing.

~~[3.]~~ ***4.*** The executive board must schedule the date, time and location for the hearing on the violation so that the person against whom the fine will be imposed is provided with a reasonable opportunity to prepare for the hearing and to be present at the hearing.

~~[4.]~~ ***5.*** The executive board must hold a hearing before it may impose the fine, unless the person against whom the fine will be imposed:

(a) Pays the fine;

(b) Executes a written waiver of the right to the hearing; or

(c) Fails to appear at the hearing after being provided with proper notice of the hearing.

~~[5.]~~ ***6.*** If a fine is imposed pursuant to subsection 1 and the violation is not cured within 14 days, or within any longer period that may be established by the executive board, the violation shall be deemed a continuing violation. Thereafter, the executive board may impose an additional fine for the violation for each 7-day period or portion thereof that the violation is not cured. Any additional fine may be imposed without notice and an opportunity to be heard.

~~[6.]~~ ***7.*** If the governing documents so provide, the executive board may appoint a committee, with not less than three members, to conduct hearings

on violations and to impose fines pursuant to this section. While acting on behalf of the executive board for those limited purposes, the committee and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the executive board and its members.

~~[7.]~~ ***8.*** The provisions of this section establish the minimum procedural requirements that the executive board must follow before it may impose a fine. The provisions of this section do not preempt any provisions of the governing documents that provide greater procedural protections.

~~[8.]~~ ***9.*** Any past due fine:

(a) Bears interest at the rate established by the association, not to exceed the legal rate per annum.

(b) May include any costs of collecting the past due fine at a rate established by the association. If the past due fine is for a violation that does not threaten the health, safety or welfare of the residents of the common-interest community, the rate established by the association for the costs of collecting the past due fine:

(1) May not exceed $20, if the outstanding balance is less than $200.

(2) May not exceed $50, if the outstanding balance is $200 or more, but is less than $500.

(3) May not exceed $100, if the outstanding balance is $500 or more, but is less than $1,000.

(4) May not exceed $250, if the outstanding balance is $1,000 or more, but is less than $5,000.

(5) May not exceed $500, if the outstanding balance is $5,000 or more.

(c) May include any costs incurred by the association during a civil action to enforce the payment of the past due fine.

~~[9.]~~ ***10.*** As used in this section:

(a) "Costs of collecting" includes, without limitation, any collection fee, filing fee, recording fee, referral fee, fee for postage or delivery, and any other fee or cost that an association may reasonably charge to the unit's owner for the collection of a past due fine. The term does not include any costs incurred by an association during a civil action to enforce the payment of a past due fine.

(b) "Outstanding balance" means the amount of a past due fine that remains unpaid before any interest, charges for late payment or costs of collecting the past due fine are added.

Sec. 12.5. NRS 116.310315 is hereby amended to read as follows:

116.310315 If an association has imposed a fine against a unit's owner or a tenant or ~~[~~guest~~]~~ ***an invitee*** of a unit's owner ***or a tenant*** pursuant to NRS 116.31031 for violations of the governing documents of the association, the association:

1. Shall, in the books and records of the association, account for the fine separately from any assessment, fee or other charge; and

2. Shall not apply, in whole or in part, any payment made by the unit's owner for any assessment, fee or other charge toward the payment of the

outstanding balance of the fine or any costs of collecting the fine, unless the unit's owner provides written authorization which directs the association to apply the payment made by the unit's owner in such a manner.

Sec. 13. NRS 116.31034 is hereby amended to read as follows:

116.31034 1. Except as otherwise provided in subsection 5 of NRS 116.212, not later than the termination of any period of declarant's control, the units' owners shall elect an executive board of at least three members, ~~[at least a majority]~~ ***all*** of whom must be units' owners. ~~[Unless the governing documents provide otherwise, the remaining members of the executive board do not have to be units' owners.]~~ The executive board shall elect the officers of the association. ***Unless the governing documents provide otherwise, the officers of the association are not required to be units' owners.*** The members of the executive board and the officers of the association shall take office upon election.

2. The term of office of a member of the executive board may not exceed 2 years, except for members who are appointed by the declarant. Unless the governing documents provide otherwise, there is no limitation on the number of terms that a person may serve as a member of the executive board.

3. The governing documents of the association must provide for terms of office that are staggered in such a manner that, to the extent possible, an equal number of members of the executive board are elected at each election. The provisions of this subsection do not apply to:

(a) Members of the executive board who are appointed by the declarant; and

(b) Members of the executive board who serve a term of 1 year or less.

4. Not less than 30 days before the preparation of a ballot for the election of members of the executive board, the secretary or other officer specified in the bylaws of the association shall cause notice to be given to each unit's owner of his eligibility to serve as a member of the executive board. Each unit's owner who is qualified to serve as a member of the executive board may have his name placed on the ballot along with the names of the nominees selected by the members of the executive board or a nominating committee established by the association.

5. Each person whose name is placed on the ballot as a candidate for a member of the executive board must:

(a) Make a good faith effort to disclose any financial, business, professional or personal relationship or interest that would result or would appear to a reasonable person to result in a potential conflict of interest for the candidate if the candidate were to be elected to serve as a member of the executive board; and

(b) Disclose whether the candidate is a member in good standing. For the purposes of this paragraph, a candidate shall not be deemed to be in "good standing" if the candidate has any unpaid and past due assessments or construction penalties that are required to be paid to the association.

➥ The candidate must make all disclosures required pursuant to this subsection in writing to the association with his candidacy information. The association shall distribute the disclosures to each member of the association with the ballot in the manner established in the bylaws of the association.

6. Unless a person is appointed by the declarant:

(a) A person may not be a member of the executive board or an officer of the association if the person, his spouse or his parent or child, by blood, marriage or adoption, performs the duties of a community manager for that association.

(b) A person may not be a member of the executive board of a master association or an officer of that master association if the person, his spouse or his parent or child, by blood, marriage or adoption, performs the duties of a community manager for:

(1) That master association; or

(2) Any association that is subject to the governing documents of that master association.

7. An officer, employee, agent or director of a corporate owner of a unit, a trustee or designated beneficiary of a trust that owns a unit, a partner of a partnership that owns a unit, a member or manager of a limited-liability company that owns a unit, and a fiduciary of an estate that owns a unit may be an officer of the association or a member of the executive board. In all events where the person serving or offering to serve as an officer of the association or a member of the executive board is not the record owner, he shall file proof in the records of the association that:

(a) He is associated with the corporate owner, trust, partnership, limited-liability company or estate as required by this subsection; and

(b) Identifies the unit or units owned by the corporate owner, trust, partnership, limited-liability company or estate.

8. The election of any member of the executive board must be conducted by secret written ballot unless the declaration of the association provides that voting rights may be exercised by delegates or representatives as set forth in NRS 116.31105. If the election of any member of the executive board is conducted by secret written ballot:

(a) The secretary or other officer specified in the bylaws of the association shall cause a secret ballot and a return envelope to be sent, prepaid by United States mail, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner.

(b) Each unit's owner must be provided with at least 15 days after the date the secret written ballot is mailed to the unit's owner to return the secret written ballot to the association.

(c) A quorum is not required for the election of any member of the executive board.

(d) Only the secret written ballots that are returned to the association may be counted to determine the outcome of the election.

(e) The secret written ballots must be opened and counted at a meeting of the association. A quorum is not required to be present when the secret written ballots are opened and counted at the meeting.

(f) The incumbent members of the executive board and each person whose name is placed on the ballot as a candidate for a member of the executive board may not possess, be given access to or participate in the opening or counting of the secret written ballots that are returned to the association before those secret written ballots have been opened and counted at a meeting of the association.

9. ***An association shall not adopt any rule or regulation that has the effect of prohibiting or unreasonably interfering with a candidate in his campaign for election as a member of the executive board, except that his campaign may be limited to 90 days before the date that ballots are required to be returned to the association. A candidate may request that the secretary or other officer specified in the bylaws of the association send, 30 days before the date of the election and at the association's expense, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner a candidate informational statement. The candidate informational statement:***

(a) Must be no longer than a single, typed page;

(b) Must not contain any defamatory, libelous or profane information; and

(c) May be sent with the secret ballot mailed pursuant to subsection 8 or in a separate mailing.

➥ The association and its directors, officers, employees and agents are immune from criminal or civil liability for any act or omission which arises out of the publication or disclosure of any information related to any person and which occurs in the course of carrying out any duties required pursuant to this subsection.

10. Each member of the executive board shall, within 90 days after his appointment or election, certify in writing to the association, on a form prescribed by the Administrator, that he has read and understands the governing documents of the association and the provisions of this chapter to the best of his ability. The Administrator may require the association to submit a copy of the certification of each member of the executive board of that association at the time the association registers with the Ombudsman pursuant to NRS 116.31158.

Sec. 14. NRS 116.31036 is hereby amended to read as follows:

116.31036 1. Notwithstanding any provision of the declaration or bylaws to the contrary, any member of the executive board, other than a member appointed by the declarant, may be removed from the executive board, with or without cause, if at a removal election held pursuant to this section ~~[~~the~~]~~ ***:***

(a) The number of votes cast ~~[~~in favor of removal~~]~~ constitutes ~~[~~:

~~(a) At~~ ***at*** least 35 percent of the total number of voting members of the association; and

(b) At least a majority of all votes cast in that removal election ~~.~~ ***are cast in favor of removal.***

2. The removal of any member of the executive board must be conducted by secret written ballot unless the declaration of the association provides that voting rights may be exercised by delegates or representatives as set forth in NRS 116.31105. If the removal of a member of the executive board is conducted by secret written ballot:

(a) The secretary or other officer specified in the bylaws of the association shall cause a secret ballot and a return envelope to be sent, prepaid by United States mail, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner.

(b) Each unit's owner must be provided with at least 15 days after the date the secret written ballot is mailed to the unit's owner to return the secret written ballot to the association.

(c) Only the secret written ballots that are returned to the association may be counted to determine the outcome.

(d) The secret written ballots must be opened and counted at a meeting of the association. A quorum is not required to be present when the secret written ballots are opened and counted at the meeting.

(e) The incumbent members of the executive board, including, without limitation, the member who is subject to the removal, may not possess, be given access to or participate in the opening or counting of the secret written ballots that are returned to the association before those secret written ballots have been opened and counted at a meeting of the association.

3. If a member of an executive board is named as a respondent or sued for liability for actions undertaken in his role as a member of the board, the association shall indemnify him for his losses or claims, and undertake all costs of defense, unless it is proven that he acted with willful or wanton misfeasance or with gross negligence. After such proof, the association is no longer liable for the cost of defense, and may recover costs already expended from the member of the executive board who so acted. Members of the executive board are not personally liable to the victims of crimes occurring on the property. Punitive damages may not be recovered against the association ~~, but may be recovered from persons whose activity gave rise to the damages.~~

4. The provisions of this section do not prohibit the Commission from taking any disciplinary action against a member of an executive board pursuant to NRS 116.745 to 116.795, inclusive.

Sec. 15. NRS 116.3107 is hereby amended to read as follows:

116.3107 1. Except to the extent provided by the declaration, subsection 2 and NRS 116.31135, the association ~~is responsible~~ ***has the duty to provide*** for ***the*** maintenance, repair and replacement of the common

elements, and each unit's owner ~~[is responsible]~~ ***has the duty to provide*** for ***the*** maintenance, repair and replacement of his unit. Each unit's owner shall afford to the association and the other units' owners, and to their agents or employees, access through his unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any unit through which access is taken, the unit's owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof.

2. In addition to the liability that a declarant as a unit's owner has under this chapter, the declarant alone is liable for all expenses in connection with real estate subject to developmental rights. No other unit's owner and no other portion of the common-interest community is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to developmental rights inures to the declarant.

3. In a planned community, if all developmental rights have expired with respect to any real estate, the declarant remains liable for all expenses of that real estate unless, upon expiration, the declaration provides that the real estate becomes common elements or units.

Sec. 16. NRS 116.3108 is hereby amended to read as follows:

116.3108 1. A meeting of the units' owners must be held at least once each year. If the governing documents do not designate an annual meeting date of the units' owners, a meeting of the units' owners must be held 1 year after the date of the last meeting of the units' owners. If the units' owners have not held a meeting for 1 year, a meeting of the units' owners must be held on the following March 1.

2. Special meetings of the units' owners may be called by the president, by a majority of the executive board or by units' owners constituting at least 10 percent, or any lower percentage specified in the bylaws, of the total number of voting members of the association. The same number of units' owners may also call a removal election pursuant to NRS 116.31036. To call a special meeting or a removal election, the units' owners must submit a written petition which is signed by the required percentage of the total number of voting members of the association pursuant to this section and which is mailed, return receipt requested, or served by a process server to the executive board or the community manager for the association. If the petition calls for a special meeting, the executive board shall set the date for the special meeting so that the special meeting is held not less than 15 days or more than 60 days after the date on which the petition is received. If the petition calls for a removal election and:

(a) The voting rights of the units' owners will be exercised by delegates or representatives as set forth in NRS 116.31105, the executive board shall set the date for the removal election so that the removal election is held not less than 15 days or more than 60 days after the date on which the petition is received; or

(b) The voting rights of the units' owners will be exercised through the use of secret written ballots pursuant to NRS 116.31036, the secret written ballots for the removal election must be sent in the manner required by NRS 116.31036 not less than 15 days or more than 60 days after the date on which the petition is received, and the executive board shall set the date for the meeting to open and count the secret written ballots so that the meeting is held not more than 15 days after the deadline for returning the secret written ballots.

➥ ***The association shall not adopt any rule or regulation which prevents*** ~~*[,*~~ ~~*discourages]*~~ ***or*** ***unreasonably*** ***interferes with the collection of the required percentage of signatures for a petition pursuant to this subsection.***

3. Not less than 15 days or more than 60 days in advance of any meeting of the units' owners, the secretary or other officer specified in the bylaws shall cause notice of the meeting to be hand-delivered, sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner or, if the association offers to send notice by electronic mail, sent by electronic mail at the request of the unit's owner to an electronic mail address designated in writing by the unit's owner. The notice of the meeting must state the time and place of the meeting and include a copy of the agenda for the meeting. The notice must include notification of the right of a unit's owner to:

(a) Have a copy of the minutes or a summary of the minutes of the meeting provided to the unit's owner upon request and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.

(b) Speak to the association or executive board, unless the executive board is meeting in executive session.

4. The agenda for a meeting of the units' owners must consist of:

(a) A clear and complete statement of the topics scheduled to be considered during the meeting, including, without limitation, any proposed amendment to the declaration or bylaws, any fees or assessments to be imposed or increased by the association, any budgetary changes and any proposal to remove an officer of the association or member of the executive board.

(b) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items. In an emergency, the units' owners may take action on an item which is not listed on the agenda as an item on which action may be taken.

(c) A period devoted to comments by units' owners and discussion of those comments. Except in emergencies, no action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to paragraph (b).

5. If the association adopts a policy imposing fines for any violations of the governing documents of the association, the secretary or other officer

specified in the bylaws shall prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner, a schedule of the fines that may be imposed for those violations.

6. The secretary or other officer specified in the bylaws shall cause minutes to be recorded or otherwise taken at each meeting of the units' owners. Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the minutes or a summary of the minutes of the meeting to be made available to the units' owners. A copy of the minutes or a summary of the minutes must be provided to any unit's owner upon request and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.

7. Except as otherwise provided in subsection 8, the minutes of each meeting of the units' owners must include:

(a) The date, time and place of the meeting;

(b) The substance of all matters proposed, discussed or decided at the meeting; and

(c) The substance of remarks made by any unit's owner at the meeting if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.

8. The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of a meeting of the units' owners.

9. The association shall maintain the minutes of each meeting of the units' owners until the common-interest community is terminated.

10. A unit's owner may record on audiotape or any other means of sound reproduction a meeting of the units' owners if the unit's owner, before recording the meeting, provides notice of his intent to record the meeting to the other units' owners who are in attendance at the meeting.

11. The units' owners may approve, at the annual meeting of the units' owners, the minutes of the prior annual meeting of the units' owners and the minutes of any prior special meetings of the units' owners. A quorum is not required to be present when the units' owners approve the minutes.

12. As used in this section, "emergency" means any occurrence or combination of occurrences that:

(a) Could not have been reasonably foreseen;

(b) Affects the health, welfare and safety of the units' owners or residents of the common-interest community;

(c) Requires the immediate attention of, and possible action by, the executive board; and

(d) Makes it impracticable to comply with the provisions of subsection 3 or 4.

Sec. 17. NRS 116.31083 is hereby amended to read as follows:

116.31083 1. A meeting of the executive board must be held at least once every 90 days.

2. Except in an emergency or unless the bylaws of an association require a longer period of notice, the secretary or other officer specified in the bylaws of the association shall, not less than 10 days before the date of a meeting of the executive board, cause notice of the meeting to be given to the units' owners. Such notice must be:

(a) Sent prepaid by United States mail to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner;

(b) If the association offers to send notice by electronic mail, sent by electronic mail at the request of the unit's owner to an electronic mail address designated in writing by the unit's owner; or

(c) Published in a newsletter or other similar publication that is circulated to each unit's owner.

3. In an emergency, the secretary or other officer specified in the bylaws of the association shall, if practicable, cause notice of the meeting to be sent prepaid by United States mail to the mailing address of each unit within the common-interest community. If delivery of the notice in this manner is impracticable, the notice must be hand-delivered to each unit within the common-interest community or posted in a prominent place or places within the common elements of the association.

4. The notice of a meeting of the executive board must state the time and place of the meeting and include a copy of the agenda for the meeting or the date on which and the locations where copies of the agenda may be conveniently obtained by the units' owners. The notice must include notification of the right of a unit's owner to:

(a) Have a copy of the ***audio recording, the*** minutes or a summary of the minutes of the meeting provided to the unit's owner upon request and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.

(b) Speak to the association or executive board, unless the executive board is meeting in executive session.

5. The agenda of the meeting of the executive board must comply with the provisions of subsection 4 of NRS 116.3108. ~~[The]~~ ***A*** period required to be devoted to comments by the units' owners and discussion of those comments must be scheduled for ***both*** the beginning ***and the end*** of each meeting. ***During the period devoted to comments by the units' owners and discussion of those comments at the beginning of each meeting, comments by the units' owners and discussion of those comments must be limited to items listed on the agenda.*** In an emergency, the executive board may take action on an item which is not listed on the agenda as an item on which action may be taken.

6. At least once every 90 days, unless the declaration or bylaws of the association impose more stringent standards, the executive board shall review, at a minimum, the following financial information at one of its meetings:

(a) A current year-to-date financial statement of the association;

(b) A current year-to-date schedule of revenues and expenses for the operating account and the reserve account, compared to the budget for those accounts;

(c) A current reconciliation of the operating account of the association;

(d) A current reconciliation of the reserve account of the association;

(e) The latest account statements prepared by the financial institutions in which the accounts of the association are maintained; and

(f) The current status of any civil action or claim submitted to arbitration or mediation in which the association is a party.

7. The secretary or other officer specified in the bylaws shall cause ***each meeting of the executive board to be audio recorded and the*** minutes to be recorded or otherwise taken at each meeting of the executive board ~~[.]~~ ***, but if the executive board is meeting in executive session, the meeting must not be audio recorded.*** Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the ***audio recording of the meeting, the*** minutes ~~[or]~~ ***of the meeting and*** a summary of the minutes of the ~~[meetings]~~ ***meeting*** to be made available to the units' owners. A copy of the ***audio recording, the*** minutes or a summary of the minutes must be provided to any unit's owner upon request and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.

8. Except as otherwise provided in subsection 9 and NRS 116.31085, the minutes of each meeting of the executive board must include:

(a) The date, time and place of the meeting;

(b) Those members of the executive board who were present and those members who were absent at the meeting;

(c) The substance of all matters proposed, discussed or decided at the meeting;

(d) A record of each member's vote on any matter decided by vote at the meeting; and

(e) The substance of remarks made by any unit's owner who addresses the executive board at the meeting if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.

9. The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of its meetings.

10. The association shall maintain the minutes of each meeting of the executive board until the common-interest community is terminated.

11. A unit's owner may record on audiotape or any other means of sound reproduction a meeting of the executive board, unless the executive board is meeting in executive session, if the unit's owner, before recording the meeting, provides notice of his intent to record the meeting to the members of the executive board and the other units' owners who are in attendance at the meeting.

12. As used in this section, "emergency" means any occurrence or combination of occurrences that:

(a) Could not have been reasonably foreseen;

(b) Affects the health, welfare and safety of the units' owners or residents of the common-interest community;

(c) Requires the immediate attention of, and possible action by, the executive board; and

(d) Makes it impracticable to comply with the provisions of subsection 2 or 5.

Sec. 18. NRS 116.31085 is hereby amended to read as follows:

116.31085 1. Except as otherwise provided in this section, a unit's owner may attend any meeting of the units' owners or of the executive board and speak at any such meeting. The executive board may establish reasonable limitations on the time a unit's owner may speak at such a meeting.

2. An executive board may not meet in executive session to enter into, renew, modify, terminate or take any other action regarding a contract **. [**~~, unless it is a contract between the association and an attorney.~~**]**

3. An executive board may meet in executive session only to:

(a) Consult with the attorney for the association on matters relating to proposed or pending litigation if the contents of the discussion would otherwise be governed by the privilege set forth in NRS 49.035 to 49.115, inclusive **. [**~~, or to enter into, renew, modify, terminate or take any other action regarding a contract between the association and the attorney.~~**]**

(b) Discuss the character, alleged misconduct, professional competence, or physical or mental health of a community manager or an employee of the association.

(c) Except as otherwise provided in subsection 4, discuss a violation of the governing documents, including, without limitation, the failure to pay an assessment.

(d) Discuss the alleged failure of a unit's owner to adhere to a schedule required pursuant to NRS 116.310305 if the alleged failure may subject the unit's owner to a construction penalty.

4. An executive board shall meet in executive session to hold a hearing on an alleged violation of the governing documents unless the person who may be sanctioned for the alleged violation requests in writing that an open hearing be conducted by the executive board. If the person who may be sanctioned for the alleged violation requests in writing that an open hearing be conducted, the person:

(a) Is entitled to attend all portions of the hearing related to the alleged violation, including, without limitation, the presentation of evidence and the testimony of witnesses; **[**~~and~~**]**

(b) ***Is entitled to due process, as set forth in the standards adopted by regulation by the Commission, which must include, without limitation, the right to counsel, the right to present witnesses and the right to present***

information relating to any conflict of interest of any member of the hearing panel; and

(c) Is not entitled to attend the deliberations of the executive board.

5. ***The provisions of subsection 4 establish the minimum protections that the executive board must provide before it may make a decision. The provisions of subsection 4 do not preempt any provisions of the governing documents that provide greater protections.***

6. Except as otherwise provided in this subsection, any matter discussed by the executive board when it meets in executive session must be generally noted in the minutes of the meeting of the executive board. The executive board shall maintain minutes of any decision made pursuant to subsection 4 concerning an alleged violation and, upon request, provide a copy of the decision to the person who was subject to being sanctioned at the hearing or to his designated representative.

~~[6.]~~ ***7.*** Except as otherwise provided in subsection 4, a unit's owner is not entitled to attend or speak at a meeting of the executive board held in executive session.

Sec. 19. NRS 116.31087 is hereby amended to read as follows:

116.31087 1. If an executive board receives a written complaint from a unit's owner alleging that the executive board has violated any provision of this chapter or any provision of the governing documents of the association, the executive board shall ~~[, if action is required by the executive board,]~~ ***, upon the written request of the unit's owner,*** place the subject of the complaint on the agenda of the next regularly scheduled meeting of the executive board.

2. Not later than 10 business days after the date that the association receives such a complaint, the executive board or an authorized representative of the association shall acknowledge the receipt of the complaint and notify the unit's owner that, if ~~[action is required by the executive board,]~~ ***the unit's owner submits a written request that the subject of the complaint be placed on the agenda of the next regularly scheduled meeting of the executive board,*** the subject of the complaint will be placed on the agenda of the next regularly scheduled meeting of the executive board.

Sec. 20. (Deleted by amendment.)

Sec. 21. NRS 116.3115 is hereby amended to read as follows:

116.3115 1. Until the association makes an assessment for common expenses, the declarant shall pay all common expenses. After an assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association in accordance with the requirements set forth in NRS 116.31151. Unless the declaration imposes more stringent standards, the budget must include a budget for the daily operation of the association and a budget for the reserves required by paragraph (b) of subsection 2.

2. Except for assessments under subsections 4 to 7, inclusive:

(a) All common expenses, including the reserves, must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to subsections 1 and 2 of NRS 116.2107.

(b) The association shall establish adequate reserves, funded on a reasonable basis, for the repair, replacement and restoration of the major components of the common elements. The reserves may be used only for those purposes, including, without limitation, repairing, replacing and restoring roofs, roads and sidewalks, and must not be used for daily maintenance. The association may comply with the provisions of this paragraph through a funding plan that is designed to allocate the costs for the repair, replacement and restoration of the major components of the common elements over a period of years if the funding plan is designed in an actuarially sound manner which will ensure that sufficient money is available when the repair, replacement and restoration of the major components of the common elements are necessary. ***Notwithstanding any provision of the governing documents to the contrary, to establish adequate reserves pursuant to this paragraph, including, without limitation, to establish or carry out a funding plan, the executive board may, without seeking or obtaining the approval of the units' owners, impose any necessary and reasonable assessments against the units in the common-interest community. Any such assessments imposed by the executive board must be based on the study of the reserves of the association conducted pursuant to NRS 116.31152.***

3. Any past due assessment for common expenses or installment thereof bears interest at the rate established by the association not exceeding 18 percent per year.

4. To the extent required by the declaration:

(a) Any common expense associated with the maintenance, repair, restoration or replacement of a limited common element must be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides;

(b) Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited; and

(c) The costs of insurance must be assessed in proportion to risk and the costs of utilities must be assessed in proportion to usage.

5. Assessments to pay a judgment against the association may be made only against the units in the common-interest community at the time the judgment was entered, in proportion to their liabilities for common expenses.

6. If any common expense is caused by the misconduct of any unit's owner, the association may assess that expense exclusively against his unit.

7. The association of a common-interest community created before January 1, 1992, is not required to make an assessment against a vacant lot located within the community that is owned by the declarant.

8. If liabilities for common expenses are reallocated, assessments for common expenses and any installment thereof not yet due must be recalculated in accordance with the reallocated liabilities.

9. The association shall provide written notice to each unit's owner of a meeting at which an assessment for a capital improvement is to be considered or action is to be taken on such an assessment at least 21 calendar days before the date of the meeting.

Sec. 22. NRS 116.31155 is hereby amended to read as follows:

116.31155 1. Except as otherwise provided in subsection 2, an association shall:

(a) If the association is required to pay the fee imposed by NRS 78.150, 82.193, 86.263, 87.541, 87A.560 or 88.591, pay to the Administrator a fee established by regulation of the Administrator for every unit in the association used for residential use.

(b) If the association is organized as a trust or partnership, or as any other authorized business entity, pay to the Administrator a fee established by regulation of the Administrator for each unit in the association.

2. If an association is subject to the governing documents of a master association, the master association shall pay the fees required pursuant to this section for each unit in the association that is subject to the governing documents of the master association, unless the governing documents of the master association provide otherwise. The provisions of this subsection do not relieve any association that is subject to the governing documents of a master association from its ultimate responsibility to pay the fees required pursuant to this section to the Administrator if they are not paid by the master association.

3. The fees required to be paid pursuant to this section must be:

(a) Paid at such times as are established by the Division.

(b) Deposited with the State Treasurer for credit to the Account for Common-Interest Communities and Condominium Hotels created by NRS 116.630.

(c) Established on the basis of the actual costs of administering the Office of the Ombudsman and the Commission and not on a basis which includes any subsidy beyond those actual costs. In no event may the fees required to be paid pursuant to this section exceed $3 per unit.

4. The Division shall impose an administrative penalty against an association or master association that violates the provisions of this section by failing to pay the fees owed by the association or master association within the times established by the Division. The administrative penalty that is imposed for each violation must equal 10 percent of the amount of the fees owed by the association or master association or $500, whichever amount is less. The amount of the unpaid fees owed by the association or master association bears interest at the rate set forth in NRS 99.040 from the date the fees are due until the date the fees are paid in full.

5. A unit's owner may not be required to pay any portion of the fees or any administrative penalties or interest required to be paid pursuant to this section to both an association and a master association.

6. An association that is subject to the governing documents of a master association may not be required to pay any portion of the fees or any administrative penalties or interest required to be paid pursuant to this section to the extent they have already been paid by the master association.

7. A master association may not be required to pay any portion of the fees or any administrative penalties or interest required to be paid pursuant to this section to the extent they have already been paid by an association that is subject to the governing documents of the master association.

8. Upon the payment of the fees and any administrative penalties and interest required by this section, the Administrator shall provide to the association or master association evidence that it paid the fees and the administrative penalties and interest in compliance with this section.

9. Any person, association or master association which has been requested or required to pay any fees, administrative penalties or interest pursuant to this section and which believes that such fees, administrative penalties or interest has been imposed in error may, without exhausting any available administrative remedies, bring an action in a court of competent jurisdiction to recover:

(a) Any amount paid in error for any fees, administrative penalties or interest during the immediately preceding 3 years;

(b) Interest on the amount paid in error at the rate set forth in NRS 99.040; and

(c) Reasonable costs and attorney's fees.

Sec. 23. (Deleted by amendment.)

Sec. 24. NRS 116.31183 is hereby amended to read as follows:

116.31183 ~~*[1.]*~~ An executive board, a member of an executive board ***, a community manager*** or an officer, employee or agent of an association shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner because the unit's owner has:

1. ~~*[(a)]*~~ Complained in good faith about any alleged violation of any provision of this chapter or the governing documents of the association;

~~*[(b)]*~~ ***2. Recommended the selection or replacement of an attorney, community manager or vendor;*** or

~~[2.]~~ ~~*[(c)]*~~ ***3.*** Requested in good faith to review the books, records or other papers of the association.

~~*[2. An executive board, a member of an executive board, a community manager or an officer, employee or agent of an association shall not intentionally interfere with the exercise of any right conferred on a person pursuant to the provisions of this chapter.]*~~

Sec. 25. NRS 116.31187 is hereby amended to read as follows:

116.31187 1. Except as otherwise provided in this section, a member of an executive board or an officer of an association shall not:

(a) On or after October 1, 2003, enter into a contract or renew a contract with the association to provide ***financing,*** goods or services to the association; or

(b) Otherwise accept any commission, personal profit or compensation of any kind from the association for providing ***financing,*** goods or services to the association.

2. The provisions of this section do not prohibit a declarant, an affiliate of a declarant or an officer, employee or agent of a declarant or an affiliate of a declarant from:

(a) Receiving any commission, personal profit or compensation from the association, the declarant or an affiliate of the declarant for any ***financing,*** goods or services furnished to the association;

(b) Entering into contracts with the association, the declarant or affiliate of the declarant; or

(c) Serving as a member of the executive board or as an officer of the association.

Sec. 26. NRS 116.325 is hereby amended to read as follows:

116.325 1. The executive board shall not and the governing documents must not prohibit a unit's owner or an occupant of a unit from exhibiting ~~[a political sign]~~ ***one or more political signs*** within such physical portion of the common-interest community as that owner or occupant has a right to occupy and use exclusively ~~[if the political sign is]~~ ***, subject to the following conditions:***

(a) All political signs exhibited must not ***be*** larger than 24 inches by 36 inches.

(b) If the unit is occupied by a tenant, the unit's owner may not exhibit any political sign unless the tenant consents, in writing, to the exhibition of the political sign.

(c) All political signs exhibited are subject to any applicable provisions of law governing the posting of political signs.

(d) A unit's owner or an occupant of a unit may exhibit as many political signs as desired, but may not exhibit more than one political sign for each candidate, political party or ballot question.

2. The provisions of this section establish the minimum rights of a unit's owner or an occupant of a unit to exhibit ~~[a]~~ political ~~[sign.]~~ ***signs.*** The provisions of this section do not preempt any provisions of the governing documents that provide greater rights and do not require the governing documents or the executive board to impose any restrictions on the exhibition of political signs other than those established by other provisions of law.

3. ~~*[Any provision in a rental agreement which violates the provisions of this section or which requires a tenant to waive any rights pursuant to this section or other provisions of law is void as against public policy.*~~

~~*4.]*~~ As used in this section, "political sign" means a sign that expresses support for or opposition to a candidate, political party or ballot question ~~[.]~~ ***in any federal, state or local election or any election of an association.***

Sec. 27. NRS 116.330 is hereby amended to read as follows:

116.330 1. The executive board shall not and the governing documents must not prohibit a unit's owner from installing or maintaining drought tolerant landscaping within such physical portion of the common-interest community as that owner has a right to occupy and use exclusively, ***including, without limitation, the front yard or back yard of the unit's owner,*** except that:

(a) Before installing drought tolerant landscaping, the unit's owner must submit a detailed description or plans for the drought tolerant landscaping for architectural review and approval in accordance with the procedures, if any, set forth in the governing documents of the association; and

(b) The drought tolerant landscaping must be selected or designed to the maximum extent practicable to be compatible with the style of the common-interest community.

➥ ***The provisions of this subsection must be construed liberally in favor of effectuating the purpose of encouraging the use of drought tolerant landscaping, and the executive board shall not and the governing documents must not unreasonably deny or withhold approval for the installation of drought tolerant landscaping or unreasonably determine that the drought tolerant landscaping is not compatible with the style of the common-interest community.***

2. Installation of drought tolerant landscaping within any common element or conversion of traditional landscaping or cultivated vegetation, such as turf grass, to drought tolerant landscaping within any common element shall not be deemed to be a change of use of the common element unless:

(a) The common element has been designated as a park, open play space or golf course on a recorded plat map; or

(b) The traditional landscaping or cultivated vegetation is required by a governing body under the terms of any applicable zoning ordinance, permit or approval or as a condition of approval of any final subdivision map.

3. As used in this section, "drought tolerant landscaping" means landscaping which conserves water, protects the environment and is adaptable to local conditions. ***The term includes, without limitation, the use of mulches such as decorative rock and artificial turf.***

Sec. 28. NRS 116.345 is hereby amended to read as follows:

116.345 1. An association of a planned community may not restrict, prohibit or otherwise impede the lawful residential use of any property that is within or encompassed by the boundaries of the planned community and that is not designated as part of the planned community.

2. Except as otherwise provided in this subsection, an association may not restrict the access of a person to any of his property. An association may restrict access to and from a unit within a planned community if the right to restrict such access was included in the declaration or in a separate recorded instrument at the time that the owner of the unit acquired title to the unit. The

provisions of this subsection do not prohibit an association from charging the owner of the property a reasonable and nondiscriminatory fee to operate or maintain a gate or other similar device designed to control access to the planned community that would otherwise impede ingress or egress to the property.

3. An association may not expand, construct or situate a building or structure that is not part of any plat or plan of the planned community if the expansion, construction or situation of the building or structure was not previously disclosed to the units' owners of the planned community unless the association obtains the written consent of a majority of the units' owners and residents of the planned community who own property or reside within 500 feet of the proposed location of the building or structure.

4. ***An association may not interrupt any utility service furnished to a unit's owner or a tenant of a unit's owner except for the nonpayment of utility charges when due. The interruption of any utility service pursuant to this subsection must be performed in a manner which is consistent with all laws, regulations and governing documents relating to the interruption of any utility service. An association shall in every case send a written notice of its intent to interrupt any utility service to the unit's owner or the tenant of the unit's owner at least 10 days before the association interrupts any utility service.***

5. The provisions of this section do not abrogate any easement, restrictive covenant, decision of a court, agreement of a party or any contract, governing document or declaration of covenants, conditions and restrictions, or any other decision, rule or regulation that a local governing body or other entity that makes decisions concerning land use or planning is authorized to make or enact that exists before October 1, 1999, including, without limitation, a zoning ordinance, permit or approval process or any other requirement of a local government or other entity that makes decisions concerning land use or planning.

Sec. 29. NRS 116.4117 is hereby amended to read as follows:

116.4117 1. ~~[If]~~ ***Subject to the requirements set forth in subsection 2, if*** a declarant ***, community manager*** or any other person subject to this chapter fails to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons suffering actual damages from the failure to comply ~~[has a claim]~~ ***may bring a civil action*** for ***damages or other*** appropriate relief.

2. Subject to the requirements set forth in NRS 38.310 and except as otherwise provided in NRS 116.3111, a civil action for damages ~~[caused by]~~ ***or other appropriate relief for*** a failure or refusal to comply with any provision of this chapter or the governing documents of an association may be brought:

(a) By the association against:

(1) A declarant; ~~[or]~~

(2) ***A community manager; or***

(3) A unit's owner.

(b) By a unit's owner against:

(1) The association;

(2) A declarant; or

(3) Another unit's owner of the association.

(c) By a class of units' owners constituting at least 10 percent of the total number of voting members of the association against a community manager.

3. ~~[~~Punitive~~]~~ ***Except as otherwise provided in NRS 116.31036, punitive*** damages may be awarded for a willful and material failure to comply with ***any provision of*** this chapter if the failure is established by clear and convincing evidence.

4. The court may award reasonable attorney's fees to the prevailing party.

5. The civil remedy provided by this section is in addition to, and not exclusive of, any other available remedy or penalty.

Sec. 30. NRS 116.600 is hereby amended to read as follows:

116.600 1. The Commission for Common-Interest Communities and Condominium Hotels is hereby created.

2. The Commission consists of ~~[~~five~~]~~ ***seven*** members appointed by the Governor. The Governor shall appoint to the Commission:

(a) One member who is a unit's owner residing in this State and who has served as a member of an executive board in this State;

(b) ***Two members who are units' owners residing in this State but who are not required to have served as members of an executive board;***

(c) One member who is in the business of developing common-interest communities in this State;

~~[~~(c)~~]~~ ***(d)*** One member who holds a certificate;

~~[~~(d)~~]~~ ***(e)*** One member who is a certified public accountant licensed to practice in this State pursuant to the provisions of chapter 628 of NRS; and

~~[~~(e)~~]~~ ***(f)*** One member who is an attorney licensed to practice in this State.

3. Each member of the Commission must be a resident of this State. At least ~~[~~three~~]~~ ***four*** members of the Commission must be residents of a county whose population is 400,000 or more.

4. Each member of the Commission must have resided in a common-interest community or have been actively engaged in a business or profession related to common-interest communities for not less than 3 years immediately preceding the date of his appointment.

5. After the initial terms, each member of the Commission serves a term of 3 years. Each member may serve not more than two consecutive full terms. If a vacancy occurs during a member's term, the Governor shall appoint a person qualified under this section to replace the member for the remainder of the unexpired term.

6. While engaged in the business of the Commission, each member is entitled to receive:

(a) A salary of not more than $80 per day, as established by the Commission; and

(b) The per diem allowance and travel expenses provided for state officers and employees generally.

Sec. 31. NRS 116.605 is hereby amended to read as follows:

116.605 1. The Division shall ***employ one or more training officers who are qualified by training and experience to*** provide ~~[or arrange to have provided]~~ to each member of the Commission courses of instruction concerning rules of procedure and substantive law appropriate for members of the Commission. ***Such courses of instruction may be made available to the staff of the Division as well as to community managers.***

2. ***The training officer shall:***

(a) Prepare and make available a manual containing the policies and procedures to be followed by executive boards and community managers; and

(b) Perform any other duties as directed by the Division.

3. Each member of the Commission must attend the courses of instruction ***described in subsection 1*** not later than 6 months after the date that the member is first appointed to the Commission.

Sec. 32. NRS 116.675 is hereby amended to read as follows:

116.675 1. The Commission may appoint one or more hearing panels. Each hearing panel must consist of one or more independent hearing officers. ***An independent hearing officer may be, without limitation, a member of the Commission or an employee of the Commission.***

2. The Commission may by regulation delegate to one or more hearing panels the power of the Commission to conduct hearings and other proceedings, determine violations, impose fines and penalties and take other disciplinary action authorized by the provisions of this chapter.

3. While acting under the authority of the Commission, a hearing panel and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the Commission and its members.

4. A final order of a hearing panel:

(a) May be appealed to the Commission if, not later than 20 days after the date that the final order is issued by the hearing panel, any party aggrieved by the final order files a written notice of appeal with the Commission.

(b) Must be reviewed and approved by the Commission if, not later than 40 days after the date that the final order is issued by the hearing panel, the Division, upon the direction of the Chairman of the Commission, provides written notice to all parties of the intention of the Commission to review the final order.

Sec. 33. NRS 116.757 is hereby amended to read as follows:

116.757 1. Except as otherwise provided in this section and NRS 239.0115, a written affidavit filed with the Division pursuant to NRS 116.760, all documents and other information filed with the written affidavit and all documents and other information compiled as a result of an

investigation conducted to determine whether to file a formal complaint with the Commission are confidential. ***The Division shall not disclose any information that is confidential pursuant to this subsection, in whole or in part, to any person, including, without limitation, a person who is the subject of an investigation or complaint, unless and until a formal complaint is filed pursuant to subsection 2 and the disclosure is required pursuant to subsection 2.***

2. A formal complaint filed ***by the Administrator*** with the Commission and all documents and other information considered by the Commission or a hearing panel when determining whether to impose discipline or take other administrative action pursuant to NRS 116.745 to 116.795, inclusive, are public records.

Sec. 34. (Deleted by amendment.)

Sec. 35. ~~[NRS 116.785 is hereby amended to read as follows:~~

~~116.785 1. If the Commission or the hearing panel, after notice and hearing, finds that the respondent has committed a violation, the Commission or the hearing panel may take any or all of the following actions:~~

~~(a) Issue an order directing the respondent to cease and desist from continuing to engage in the unlawful conduct that resulted in the violation.~~

~~(b) Issue an order directing the respondent to take affirmative action to correct any conditions resulting from the violation.~~

~~(c) Impose an administrative fine of not more than $1,000 for each violation.~~

~~2. If the respondent is a member of an executive board or an officer of an association, the Commission or the hearing panel may order the respondent removed from his office or position if the Commission or the hearing panel, after notice and hearing, finds that:~~

~~(a) The respondent has knowingly and willfully committed a violation; and~~

~~(b) The removal is in the best interest of the association.~~

~~3. If the respondent violates any order issued by the Commission or the hearing panel pursuant to this section, the Commission or the hearing panel, after notice and hearing, may impose an administrative fine of not more than $1,000 for each violation.~~

~~4. If the Commission or the hearing panel takes any disciplinary action pursuant to this section, the Commission or the hearing panel may order the respondent to pay the costs of the proceedings incurred by the Division, including, without limitation, the cost of the investigation .~~ ~~[~~and reasonable attorney's fees.~~]~~

~~5. *In any matter brought before the Commission or a hearing panel pursuant to the provisions of this chapter, attorney's fees must not be granted to a prevailing party, regardless of whether the governing documents provide for such fees to be granted to a prevailing party.*~~

~~*6.* Notwithstanding any other provision of this section, unless the respondent has knowingly and willfully committed a violation, if the respondent is a member of an executive board or an officer of an association:~~

~~(a) The association is liable for all fines and costs imposed against the respondent pursuant to this section; and~~

~~(b) The respondent may not be held personally liable for those fines and costs.~~ **] (Deleted by amendment.)**

Sec. 36. NRS 116.790 is hereby amended to read as follows:

116.790 1. If the Commission or a hearing panel, after notice and hearing, finds that the executive board or any person acting on behalf of the association has committed a violation, the Commission or the hearing panel may take any or all of the following actions:

(a) Order an audit of the association ~~[.]~~ ***, at the expense of the association.***

(b) Require the executive board to hire a community manager who holds a certificate.

2. The Commission, or the Division with the approval of the Commission, may apply to a court of competent jurisdiction for the appointment of a receiver for an association if, after notice and a hearing, the Commission or a hearing officer finds that any of the following violations occurred:

(a) The executive board, or any member thereof, has been guilty of fraud or collusion or gross mismanagement in the conduct or control of its affairs;

(b) The executive board, or any member thereof, has been guilty of misfeasance, malfeasance or nonfeasance; or

(c) The assets of the association are in danger of waste or loss through attachment, foreclosure, litigation or otherwise.

3. In any application for the appointment of a receiver pursuant to this section, notice of a temporary appointment of a receiver may be given to the association alone, by process as in the case of an application for a temporary restraining order or injunction. The hearing thereon may be had after 5 days' notice unless the court directs a longer or different notice and different parties.

4. The court may, if good cause exists, appoint one or more receivers pursuant to this section to carry out the business of the association. The members of the executive board who have not been guilty of negligence or active breach of duty must be preferred in making the appointment.

5. The powers of any receiver appointed pursuant to this section may be continued as long as the court deems necessary and proper. At any time, for sufficient cause, the court may order the receivership terminated.

6. Any receiver appointed pursuant to this section has, among the usual powers, all the functions, powers, tenure and duties to be exercised under the direction of the court as are conferred on receivers and as provided in NRS 78.635, 78.640 and 78.645, whether or not the association is insolvent. Such powers include, without limitation, the powers to:

(a) Take charge of the estate and effects of the association;

(b) Appoint an agent or agents;

(c) Collect any debts and property due and belonging to the association and prosecute and defend, in the name of the association, or otherwise, any civil action as may be necessary or proper for the purposes of collecting debts and property;

(d) Perform any other act in accordance with the governing documents of the association and this chapter that may be necessary for the association to carry out its obligations; and

(e) By injunction, restrain the association from exercising any of its powers or doing business in any way except by and through a receiver appointed by the court.

Sec. 37. NRS 116A.270 is hereby amended to read as follows:

116A.270 1. Except as otherwise provided in this section and NRS 239.0115, a complaint filed with the Division alleging a violation of this chapter or chapter 116 or 116B of NRS, all documents and other information filed with the complaint and all documents and other information compiled as a result of an investigation conducted to determine whether to initiate disciplinary action are confidential **.** ~~[and may be disclosed]~~

2. The Division shall not disclose any information that is confidential pursuant to subsection 1, in whole or in part ~~[only]~~ ***, to any person, including, without limitation, a person who is the subject of an investigation or complaint, unless and until a formal complaint is filed pursuant to subsection 3 and the disclosure is required pursuant to subsection 3, except that the Division may disclose the information described in subsection 1*** as necessary in the course of administering this chapter or to a licensing board or agency or any other governmental agency, including, without limitation, a law enforcement agency, that is investigating a person who holds a certificate or permit issued pursuant to this chapter.

~~[2.]~~ ***3.*** The ***formal*** complaint or other charging documents filed ***by the Administrator*** with the Commission to initiate disciplinary action and all documents and other information considered by the Commission or a hearing panel when determining whether to impose discipline are public records.

Sec. 38. NRS 116A.300 is hereby amended to read as follows:

116A.300 1. The Commission may appoint one or more hearing panels. Each hearing panel must consist of one or more independent hearing officers. ***An independent hearing officer may be, without limitation, a member of the Commission or an employee of the Commission.***

2. The Commission may by regulation delegate to one or more hearing panels the power of the Commission to conduct hearings and other proceedings, determine violations, impose fines and penalties and take other disciplinary action authorized by the provisions of this chapter.

3. While acting under the authority of the Commission, a hearing panel and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the Commission and its members.

4. A final order of a hearing panel:

(a) May be appealed to the Commission if, not later than 20 days after the date that the final order is issued by the hearing panel, any party aggrieved by the final order files a written notice of appeal with the Commission.

(b) Must be reviewed and approved by the Commission if, not later than 40 days after the date that the final order is issued by the hearing panel, the Division, upon the direction of the Chairman of the Commission, provides written notice to all parties of the intention of the Commission to review the final order.

Sec. 39. NRS 116A.410 is hereby amended to read as follows:

116A.410 1. The Commission shall by regulation provide for the issuance by the Division of certificates. The regulations:

(a) Must establish the qualifications for the issuance of such a certificate, including, without limitation, the education and experience required to obtain such a certificate.

(b) ***Must require an applicant or the employer of the applicant to post a bond in an amount established by regulation. The Commission shall, by regulation, adopt a sliding scale for the amount of the bond that is based upon the amount of money that applicants are expected to control.***

(c) May require applicants to pass an examination in order to obtain a certificate. If the regulations require such an examination, the Commission shall by regulation establish fees to pay the costs of the examination, including any costs which are necessary for the administration of the examination.

~~[(c)]~~ ***(d)*** May require an investigation of an applicant's background. If the regulations require such an investigation, the Commission shall by regulation establish fees to pay the costs of the investigation.

~~[(d)]~~ ***(e)*** Must establish the grounds for initiating disciplinary action against a person to whom a certificate has been issued, including, without limitation, the grounds for placing conditions, limitations or restrictions on a certificate and for the suspension or revocation of a certificate.

~~[(e)]~~ ***(f)*** Must establish rules of practice and procedure for conducting disciplinary hearings.

2. The Division may collect a fee for the issuance of a certificate in an amount not to exceed the administrative costs of issuing the certificate.

Sec. 40. NRS 38.330 is hereby amended to read as follows:

38.330 1. If all parties named in a written claim filed pursuant to NRS 38.320 agree to have the claim submitted for mediation, the parties shall reduce the agreement to writing and shall select a mediator from the list of mediators maintained by the Division pursuant to NRS 38.340. Any mediator selected must be available within the geographic area. If the parties fail to agree upon a mediator, the Division shall appoint a mediator from the list of mediators maintained by the Division. Any mediator appointed must be available within the geographic area. Unless otherwise provided by an agreement of the parties, mediation must be completed within 60 days after the parties agree to mediation. Any agreement obtained through mediation

conducted pursuant to this section must, within 20 days after the conclusion of mediation, be reduced to writing by the mediator and a copy thereof provided to each party. The agreement may be enforced as any other written agreement. Except as otherwise provided in this section, the parties are responsible for all costs of mediation conducted pursuant to this section.

2. If all the parties named in the claim do not agree to mediation, the parties shall select an arbitrator from the list of arbitrators maintained by the Division pursuant to NRS 38.340. Any arbitrator selected must be available within the geographic area. If the parties fail to agree upon an arbitrator, the Division shall appoint an arbitrator from the list maintained by the Division. Any arbitrator appointed must be available within the geographic area. Upon appointing an arbitrator, the Division shall provide the name of the arbitrator to each party. ***An arbitrator shall, not later than 5 days after his selection or appointment pursuant to this subsection, provide to the parties an informational statement relating to the arbitration of a claim pursuant to this section. The written informational statement:***

(a) Must be written in plain English;

(b) Must explain the procedures and applicable law relating to the arbitration of a claim conducted pursuant to this section, including, without limitation, the procedures, timelines and applicable law relating to confirmation of an award pursuant to NRS 38.239, vacation of an award pursuant to NRS 38.241, judgment on an award pursuant to NRS 38.243, and any applicable statute or court rule governing the award of attorney's fees or costs to any party; and

(c) Must be accompanied by a separate form acknowledging that the party has received and read the informational statement, which must be returned to the arbitrator by the party not later than 10 days after receipt of the informational statement.

3. The Division may provide for the payment of the fees for a mediator or an arbitrator selected or appointed pursuant to this section from the Account for Common-Interest Communities and Condominium Hotels created by NRS 116.630, to the extent that:

(a) The Commission for Common-Interest Communities and Condominium Hotels approves the payment; and

(b) There is money available in the account for this purpose.

4. Except as otherwise provided in this section and except where inconsistent with the provisions of NRS 38.300 to 38.360, inclusive, the arbitration of a claim pursuant to this section must be conducted in accordance with the provisions of NRS 38.231, 38.232, 38.233, 38.236 to 38.239, inclusive, 38.242 and 38.243. At any time during the arbitration of a claim relating to the interpretation, application or enforcement of any covenants, conditions or restrictions applicable to residential property or any bylaws, rules or regulations adopted by an association, the arbitrator may issue an order prohibiting the action upon which the claim is based. An

award must be made within 30 days after the conclusion of arbitration, unless a shorter period is agreed upon by the parties to the arbitration.

5. If all the parties have agreed to nonbinding arbitration, any party to the ***nonbinding*** arbitration may, within 30 days after a decision and award have been served upon the parties, commence a civil action in the proper court concerning the claim which was submitted for arbitration. Any complaint filed in such an action must contain a sworn statement indicating that the issues addressed in the complaint have been arbitrated pursuant to the provisions of NRS 38.300 to 38.360, inclusive. If such an action is not commenced within that period, any party to the arbitration may, within 1 year after the service of the award, apply to the proper court for a confirmation of the award pursuant to NRS 38.239.

6. If all the parties agree in writing to binding arbitration, the arbitration must be conducted in accordance with the provisions of this chapter. An award procured pursuant to such ***binding*** arbitration may be vacated and a rehearing granted upon application of a party pursuant to the provisions of NRS 38.241.

7. If, after the conclusion of ***binding*** arbitration, a party:

(a) Applies to have an award vacated and a rehearing granted pursuant to NRS 38.241; or

(b) Commences a civil action based upon any claim which was the subject of arbitration,

➥ the party shall, if he fails to obtain a more favorable award or judgment than that which was obtained in the initial ***binding*** arbitration, pay all costs and reasonable attorney's fees incurred by the opposing party after the application for a rehearing was made or after the complaint in the civil action was filed.

8. Upon request by a party, the Division shall provide a statement to the party indicating the amount of the fees for a mediator or an arbitrator selected or appointed pursuant to this section.

9. As used in this section, "geographic area" means an area within 150 miles from any residential property or association which is the subject of a written claim submitted pursuant to NRS 38.320.

Sec. 41. The Governor shall appoint to the Commission for Common-Interest Communities and Condominium Hotels pursuant to NRS 116.600, as amended by section 30 of this act:

1. One member who is a unit's owner residing in this State whose term begins on October 1, 2009, and expires on October 1, 2010; and

2. One member who is a unit's owner residing in this State whose term begins on October 1, 2009, and expires on October 1, 2011.

Sec. 42. The manual described in subsection 2 of NRS 116.605, as amended by section 31 of this act, must be prepared and made available by October 1, 2010.

Assemblyman Anderson moved the adoption of the amendment.
Amendment adopted.
Bill ordered reprinted, reengrossed and to third reading.

Assemblyman Oceguera moved that the Assembly recess until 7 p.m.
Motion carried.

Assembly in recess at 4:54 p.m.

ASSEMBLY IN SESSION

At 9:05 p.m.
Madam Speaker presiding.
Quorum present.

UNFINISHED BUSINESS

REPORTS OF CONFERENCE COMMITTEES

Madam Speaker:

The Conference Committee concerning Senate Bill No. 54, consisting of the undersigned members, has met and reports that:

It has agreed to recommend that Amendment No. 647 of the Assembly be concurred in.

It has agreed to recommend that the bill be further amended as set forth in Conference Amendment No. 2, which is attached to and hereby made a part of this report.

SHEILA LESLIE	VALERIE WIENER
DEBBIE SMITH	JOYCE WOODHOUSE
JOE HARDY	DENNIS NOLAN
Assembly Conference Committee	*Senate Conference Committee*

Conference Amendment No. CA2.

SUMMARY—Revises the qualifications of the State Health Officer. (BDR 40-336)

AN ACT relating to public health; revising provisions governing the State Health Officer; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the State Health Officer to be a citizen of the United States and to be licensed, or eligible for licensure, as a physician or administrative physician in Nevada. (NRS 439.090) **Section 1** of this bill revises those qualifications by requiring the State Health Officer to be a citizen of the United States, to have not less than 5 years' experience in population-based health care and to be **:** ~~[either:]~~ (1) licensed or eligible for a license as a physician or administrative physician in Nevada; ~~[or]~~ (2) ~~[a]~~ licensed **or eligible for a license as a** physician or ~~[licensed]~~ administrative physician in another state **; or (3) a physician or administrative physician** with a master's or doctoral degree in public health or a related field. **Section 2** of this bill provides that if the State Health Officer is not licensed to practice medicine in this State, he shall not, while carrying out his duties, engage in the practice of medicine. (NRS 439.130)

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

Section 1. NRS 439.090 is hereby amended to read as follows:

439.090 1. The State Health Officer must:

(a) Be a citizen of the United States ~~[.]~~ ***;***

(b) ***Have not less than 5 years' experience in population-based health care; and***

(c) Be ~~[licensed,]~~ ***:***

(1) Licensed in good standing or eligible for ~~[licensure,]~~ ***a license*** as a physician or administrative physician in Nevada ~~[.]~~ ***;*** ~~*[or]*~~

(2) Licensed in good standing or eligible for a license as a physician or administrative physician ~~*[by]*~~ ***in the District of Columbia or in any state or territory of the United States*** ~~*[and have]*~~ ***; or***

(3) A physician or administrative physician who has a master's degree or doctoral degree in public health or a related field.

2. The Administrator must have 2 years' experience, or the equivalent, in a responsible administrative position in:

(a) A full-time county or city health facility or department; or

(b) A major health program at a state or national level.

3. As used in this section, "population-based health care" means the use of various approaches to medical care for specific groups or populations based upon common demographic characteristics, risk factors or diseases.

Sec. 2. NRS 439.130 is hereby amended to read as follows:

439.130 1. The State Health Officer shall:

(a) Enforce all laws and regulations pertaining to the public health.

(b) Investigate causes of disease, epidemics, source of mortality, nuisances affecting the public health, and all other matters related to the health and life of the people, and to this end he may enter upon and inspect any public or private property in the State.

(c) Direct the work of subordinates and may authorize them to act in his place and stead.

(d) Perform such other duties as the Director may, from time to time, prescribe.

➥ If the State Health Officer is not licensed to practice medicine in this State, he shall not, in carrying out his duties as the State Health Officer, engage in the practice of medicine.

2. The Administrator shall direct the work of the Health Division, administer the Division and perform such other duties as the Director may, from time to time, prescribe.

Sec. 3. Notwithstanding the amendatory provisions of section 1 of this act, any person who, on the effective date of this act, is serving as the State Health Officer and who is otherwise qualified to serve as the State Health Officer on that date may continue to serve in that capacity until his successor

is appointed by the Director of the Department of Health and Human Services pursuant to chapter 439 of NRS.

Sec. 4. This act becomes effective upon passage and approval.

Assemblywoman Smith moved that the Assembly adopt the report of the Conference Committee concerning Senate Bill No. 54.

Remarks by Assemblywoman Smith.

Motion carried by a constitutional majority.

Madam Speaker announced if there were no objections, the Assembly would recess subject to the call of the Chair.

Assembly in recess at 9:09 p.m.

ASSEMBLY IN SESSION

At 9:40 p.m.

Madam Speaker presiding.

Quorum present.

MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, May 28, 2009

To the Honorable the Assembly:

I have the honor to inform your honorable body that the Senate on this day passed, as amended, Senate Bill No. 427.

SHERRY L. RODRIGUEZ
Assistant Secretary of the Senate

INTRODUCTION, FIRST READING AND REFERENCE

Senate Bill No. 427.

Assemblyman Oceguera moved that all rules be suspended, reading so far had considered first reading, rules further suspended, Senate Bill No. 427 considered engrossed, declared an emergency measure under the *Constitution*, and placed on third reading and final passage.

Motion carried.

GENERAL FILE AND THIRD READING

Senate Bill No. 427.

Bill read third time.

Remarks by Assemblymen Goicoechea, Oceguera, and Gansert.

Assemblywoman Gansert requested that the following remarks be entered in the Journal.

ASSEMBLYMAN GOICOECHEA:

Thank you, Madam Speaker. As I look at the bill, especially the latter portion of Senate Bill 427, which is the collective bargaining portion, I think the one thing I really like about it is that it does require a real transparency between any agreement. As I look at section 13 on page 22, it states “Any new, extended or modified collective bargaining agreement” has to be fully disclosed in a public meeting, as I read that. I want to clarify and make sure that is the proper understanding. Once it has been reached, it has to be completely out in the public sector?

ASSEMBLYMAN OCEGUERA:

Thank you, Madam Speaker. To my colleague, yes, that is exactly what it means. After the approval, then the fiscal impact and the impacts of that contract will be fully disclosed in a public hearing.

ASSEMBLYMAN GOICOECHEA:

That would be in a full fiscal hearing rather than just on a consent calendar or something like that? I think it is essential that we do get all the facts out before the public.

ASSEMBLYMAN OCEGUERA:

That is correct. We discussed at length that it should not be on a consent agenda and should be agendized so it can be discussed fully.

ASSEMBLYWOMAN GANSERT:

Thank you, Madam Speaker. I have a continuation of that question to the Majority Leader. The contract itself will be available, just not the impacts, but the contract will be available in the hearings?

ASSEMBLYMAN OCEGUERA:

That is correct. Actually the contract is already public record. However, this would just make it more public. The contract would be available and then the fiscal impacts and a report on the fiscal impacts.

ASSEMBLYWOMAN GANSERT:

The fiscal impacts would be over the life of the contract, the duration of the contract?

ASSEMBLYMAN OCEGUERA:

That is correct—depending on the length of contract. You would have to look at the length of the contract, whether it be for one year or if the parties agreed there was a multiple-year contract, then it would be for multiple years.

ASSEMBLYWOMAN GANSERT:

Last question—in subsection 7(b) of section 15, it talks about compensation of other governmental employees, both in and out of state. The governmental employees would be state and local governmental employees? It is at the top of page 21.

ASSEMBLYMAN OCEGUERA:

"To the extent appropriate" would be the modifying words there. So if it was appropriate to look to state accountants, an accountant is an accountant is an accountant, and an engineer is an engineer is an engineer; however, with some other professions, it may not be appropriate, so "to the extent appropriate" would cover that language.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Conklin moved to waive a portion of Assembly Standing Rule No. 23, which requires individual disclosure, for purposes of a group disclosure regarding Senate Bill No. 427.

Motion carried.

ASSEMBLYMAN CONKLIN:

I would like to disclose the same group disclosure for both PERS and PEBP, since this bill covers both, that we have previously made in detail in this body.

GENERAL FILE AND THIRD READING

Potential conflict of interest declared by Assemblywoman Gansert.

Roll call on Senate Bill No. 427:

YEAS—41.

NAYS—None.

EXCUSED—Gustavson.

Senate Bill No. 427 having received a constitutional majority, Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 182.

Bill read third time.

Roll call on Senate Bill No. 182:

YEAS—40.

NAYS—Stewart.

EXCUSED—Gustavson.

Senate Bill No. 182 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Conklin moved that Senate Bill No. 395 be taken from its position on the General File and placed at the bottom of the General File.

Motion carried.

GENERAL FILE AND THIRD READING

Senate Bill No. 434.

Bill read third time.

Remarks by Assemblywoman Leslie.

Roll call on Senate Bill No. 434:

YEAS—41.

NAYS—None.

EXCUSED—Gustavson.

Senate Bill No. 434 having received a constitutional majority, Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Oceguera moved that Senate Bill No. 435 be taken from the Chief Clerk’s desk and placed at the top of the General File.

Motion carried.

GENERAL FILE AND THIRD READING

Senate Bill No. 435.

Bill read third time.

Roll call on Senate Bill No. 435:
YEAS—39.
NAYS—McArthur, Settelmeyer—2.
EXCUSED—Gustavson.

Senate Bill No. 435 having received a two-thirds majority, Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Oceguera moved that Senate Bill No. 395 be taken from the General File and placed on the General File for the next legislative day.

Motion carried.

UNFINISHED BUSINESS

SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the Speaker and Chief Clerk signed Assembly Bills Nos. 478, 483, and 522.

GUESTS EXTENDED PRIVILEGE OF ASSEMBLY FLOOR

On request of Assemblyman Anderson, the privilege of the floor of the Assembly Chamber for this day was extended to Pam Coppa, Tyler Silva and Dan Coppa.

On request of Assemblyman Cobb, the privilege of the floor of the Assembly Chamber for this day was extended to Mark Fleming, Ed Ferencik, and Tyler Bartoo.

On request of Assemblywoman Gansert, the privilege of the floor of the Assembly Chamber for this day was extended to Kelli L. Lui and Katherine E. Lui.

On request of Assemblyman Hardy, the privilege of the floor of the Assembly Chamber for this day was extended to the following students and chaperones from Martha P. King Elementary School: Nicholas Bangle, Diane Bangle, McKenzie Cowan, Emma Downs, Sophia Grasso, Kayla Shambaugh, Emma Harrison, Vivian Harrison, Kevin Jenicke, Catherine Spillars, Braden Klouse, Paul Klouse, Taylor Krumm, Lorene Krumm, Katherine Liu, Kelli Liu, Skylar McKay, Tami McKay, Madison Myro, Paul Myro, Jesslyn Neilson, Melissa Neilson, Tyler Owens, Eve Prahm, Jessica Smith, Susan Smith, Jacob Tagliere, Taylor Thompson, Lisa Combs, Cierra Wachtel, Sandy Wachtel, Robin Lee, Lee Esplin and Mary Scialabba.

On request of Assemblyman Hogan, the privilege of the floor of the Assembly Chamber for this day was extended to the following students and chaperones from Cartwright Elementary School: Hunter Wood, Amari Greenlee, Jan Dacanay, Jasmine Del Rosario, Mekaila Pellegrino, Jenny Han, Sierra Lazaro, Alayzia Ramos, Taraja Booker, Caitlyn Foreman, Cynthia

Lee, Marissa Rodriguez, Tiara Wilson, Grace Gehlen, Mariah Morris, Stephanie Campbell, Emma Wenthe, Kaelin Sumulong, Kayla Woodard, Saysha Palau, Michael Schofield, Adam Eisen, Chance Lazoff, Jessica Morgan, Madison Mildenberger, Brianna Werstein, Nick Reed, Brianna Martinez, Zach Ragusa, Jonah Ceniza, Ben Rifkin, Madison Drozd , Anna Benites, Molly Ragusa, Mari Nishimura, Ashlee Tewksbury, Lauren Suetos, Jason Kallus, Danner Dunston, Nick Bosnos, Anthony Woodson, Lauren Vanderploeg, Brianna Anderson, Madison Peaco, Ian Parvin, Xavier Cardenas, Angelo Venzon, Micco Estrada, Nathan Aune, Michael Johnston, Tiahna Divina, Sadie Conger, Vivian Brennan, Katie Camburn, Mary Gregorich, Maria Feil, Nichole Ragusa, Jacob Vargas, Tyler Osburn, Luke Schober, Rianna Baliza, Bryanna Narvaez, Natalie Gonzalez, Trevor Lyman, Brayden Mauermann, Jayson Kirchand-Patel, Brandon Gibbons, Austin Nesbitt, Brian Mainor, Brittney Mainor, Brandon Mainor, Rachel Mainor, Brenna Mainor, Jake Thomas, Tyler Gannon, Ciara Fung, Gianna Neimeier, Kayla Culpepper, Abbie Cox, Trevor Cox, Ben Thomas, Nason Tripp, Caden Thomas, Regan Thomas, Logan Smidt and Landon Smidt.

On request of Assemblywoman Mastroluca, the privilege of the floor of the Assembly Chamber for this day was extended to Dan Mastroluca.

On request of Assemblywoman Parnell, the privilege of the floor of the Assembly Chamber for this day was extended to Caleb Holley.

Assemblyman Oceguera moved that the Assembly adjourn until Friday, May 29, 2009, at 9 a.m.

Motion carried.

Assembly adjourned at 9:57 p.m.

Approved: BARBARA E. BUCKLEY
Speaker of the Assembly

Attest: SUSAN FURLONG REIL
Chief Clerk of the Assembly