A PROPOSED EVIDENCE CODE

FOR THE

STATE OF NEVADA

LEGISLATIVE COMMISSION OF THE
LEGISLATIVE COUNSEL BUREAU

STATE OF NEVADA

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A PROPOSED EVIDENCE CODE FOR THE STATE OF NEVADA

TABLE OF CONTENTS

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LEGISLATIVE COMMISSION

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CARL F. DODGE
F. W. (BILL) FARR
JAMES I. GIBSON
WARREN L. MONROE
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Assembly Concurrent Resolution No. 13—Committee on Judiciary

FILE NUMBER 89

ASSEMBLY CONCURRENT RESOLUTION—Directing the legislative commission to draft an evidence code.

WHEREAS, Rules of evidence are now scattered throughout Nevada Revised Statutes; and

WHEREAS, It would be more convenient and serve a beneficial purpose to have all rules of evidence collectively enacted in Nevada Revised Statutes; now, therefore, be it

Resolved by the Assembly of the State of Nevada, the Senate concurring, That the legislative commission is directed to prepare a draft of a new evidence code to be submitted to the 56th session of the legislature of the State of Nevada.

REPORT OF THE LEGISLATIVE COMMISSION

To the Members of the 56th Session of the Nevada Legislature:

This report is submitted in compliance with Assembly Concurrent Resolution No. 13 of the 55th Session, which directed the preparation and submission to you of a draft of a new evidence code. On June 20, 1969, the legislative commission appointed to prepare the draft a subcommittee consisting of Assemblyman Melvin D. Close, Jr., chairman, Senators C. Clifton Young and C. Coe Swobe, and Assemblymen Leslie Mack Fry, Richard H. Bryan and Harry M. Reid.

This subcommittee in turn enlisted the aid of several distinguished lawyers and judges of the state in reviewing, reconciling and where necessary revising the many statutes and decisions involved. The product of their combined effort and learning was approved by this commission on September 11, 1970.

The subcommittee's report and suggested draft legislation are attached for your examination.

Respectfully submitted,

LEGISLATIVE COMMISSION
State of Nevada

Carson City, Nevada
September 11, 1970

REPORT OF THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE FOR STUDY OF AN EVIDENCE CODE

The task of preparing a draft evidence code for the State of Nevada, as contemplated by Assembly Concurrent Resolution No. 13 of the 55th session, was not a project of law reform but of collecting, systematically arranging and, where necessary, harmonizing existing law. Upon many aspects of evidence, this existing law is not statutory but must be ascertained from court decisions, and in turn some of these points have not been resolved by the Supreme Court of Nevada. Thus the law is left open to dispute, and one of the benefits to be derived from a statutory codification is certainty and uniformity in the trial courts.

The subcommittee's first problem was to select a format, for the existing Title 4 of Nevada Revised Statutes, which deals with Witnesses and Evidence, is more limited in its treatment than the desired codification. In considering codifications previously developed, the original Model Code of Evidence promulgated by the American Law Institute in 1942 was set aside as too old in view of the relatively rapid development of new evidence rules in the field of criminal law. The three models principally considered were therefore (1) the Model Rules of Evidence proposed by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in 1953, (2) the Evidence Code enacted by the California legislature in 1965, which became effective January 1, 1967, and (3) the Proposed Rules of Evidence for United States Courts and Magistrates submitted on January 30, 1969, by the Advisory Committee on Federal Rules of Evidence. The subcommittee chose the federal model of organization primarily because it was designed to work in close harmony with the existing Federal Rules of Civil Procedure and Federal Rules of Criminal Procedure, whose substance has already been adopted in the Nevada Rules of Civil Procedure and Title 14 of NRS, respectively. At the same time it determined to consider, with respect to each substantive provision of the Draft Federal Rules, the comparable provisions of the Uniform Rules, the California Evidence Code and existing Nevada law, both statutory and decisional.

The next stage of the subcommittee's work was therefore a detailed examination of the Draft Federal Rules, comparing at each step the relevant provisions of the other sources and deciding which to adopt. This examination revealed that for the most part the federal provisions were consistent with existing Nevada statutes and decisions, or represented logical extensions thereof. In these cases, the federal provisions were adopted. Where, however, as in the husband-wife and doctor-patient testimonial privileges, the proposed federal provisions would have curtailed sharply the privileges under existing Nevada law, the Nevada law was retained. (See sections 50–53, 58 and 59 of the draft bill.) A contrary illustration is the treatment of judge or juror as potential witness, where the Nevada statute (now NRS 48.100), dating from the act of 1869 when most trials were held in small communities and accordingly permitting either to testify, was replaced by the draft federal provision forbidding testimony

by either because of its disruptive effect on the remainder of the proceedings. (See sections 75 and 76 of the draft bill.) Provisions of Nevada law such as the means of securing the attendance of witnesses, which have no counterpart in the Draft Federal Rules but are appropriate in a statutory treatment, were generally retained without substantive change but usually relocated to an appropriate place in the new codification.

Finally, after thus determining the content of the revised Title 4 on Witnesses and Evidence, the subcommittee reviewed all other Titles of NRS to find provisions which would require conformation. Illustrations are the deletion of individual provisions for judicial notice of statutes, ordinances and rules, and for the evidentiary effect of public records, in favor of single, uniform treatment of these subjects in Title 4. Presumptions, on the other hand, required a different treatment: Their general effect is established and certain presumptions of general applicability are listed in Title 4, but for the most part the individual presumptions, each of which necessarily relates to a limited and special area of the law, are left with the other provisions of law respectively applicable to those areas.

It must be understood, finally, that any codification of the law of evidence is necessarily illustrative rather than definitive. This is most clearly shown in the treatment of exceptions to the hearsay rule, where two classes of exceptions are each defined in general terms and illustrated by specific examples without restricting the generality of the definitions. (See sections 108 and 132 of the draft bill.) The principle, however, underlies the entire draft. Professor Wigmore's noble treatise, in its latest edition, reaches a length of some 6,739 pages without purporting to exhaust the field. A statute which commanded instead of discussing would of course be shorter, but this example suffices to illustrate the impossibility of exhaustive treatment. The common situations can be treated, and a desirable uniformity among the courts thus secured, but the law must be recognized as free to grow and to adapt to situations unforeseen, for this, as Mr. Justice Holmes wrote "is the peculiar boast and excellence of the common law." *(Hurtado v. California,* 110 U.S. 516, 530.)

Because the new codification (attached as Exhibit A) represents few innovations, the subcommittee recommends that it become effective on the normal date of July 1, 1971.

In conclusion, the subcommittee takes this opportunity to express its thanks to the distinguished attorneys and judges who served as its advisors, contributing freely of their effort, experience and wisdom: Justice John C. Mowbray, Judge Howard W. Babcock, Judge John W. Barrett, Herbert F. Ahlswede, Esq., Frank J. Fahrenkopf, Jr., Esq., and Neil G. Galatz, Esq.

MELVIN D. CLOSE, JR., *Chairman*
RICHARD H. BRYAN
LESLIE MACK FRY
HARRY M. REID
C. COE SWOBE
C. CLIFTON YOUNG

EXHIBIT A

SUMMARY—Codifies law of evidence. (BDR 4-5)

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to evidence; to harmonize and codify the applicable law; 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. Chapter 47 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 25, inclusive, of this act.

GENERAL PROVISIONS

SCOPE.

SEC. 2. *1. This Title governs proceedings in the courts of the State of Nevada and before magistrates, except:*

(a) To the extent to which its provisions are relaxed by a statute or procedural rule applicable to the specific situation; and

(b) As otherwise provided in subsection 3.

2. The provisions of chapter 49 of NRS with respect to privileges apply at all stages of all proceedings.

3. The other provisions of this Title do not apply to:

(a) Issuance of warrants for arrest, criminal summonses and search warrants.

(b) Proceedings with respect to release on bail.

(c) Sentencing, granting or revoking probation.

(d) Proceedings for extradition.

Comment—1. This section contains the substance of Draft Federal Evidence Rules 1–01 and 11–01 and Uniform Rule 2, insofar as applicable to Nevada and consistent with other Nevada law. NRS 172.135 requires in general the application of the law of evidence to proceedings before a grand jury. The extent to which, if at all, specific exceptions should be made relating to the evidence receivable by a grand jury should be considered in a separate bill.

2. See also comment to section 6.

PURPOSES.

SEC. 3. *The purposes of this Title are to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.*

Comment—Adapted from Draft Federal Rule 1–02. Strictly speaking, it is a proper function of the legislature to declare its purpose in enacting a statute, but the prerogative of the courts to construe it without legislative direction as to manner.

RULINGS ON EVIDENCE: EFFECT OF ERROR.

SEC. 4. *1. Except as otherwise provided in subsection 2, error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and:*

(a) In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection.

(b) In case the ruling is one excluding evidence, the substance of the evidence was made known to the judge by offer or was apparent from the context within which questions were asked.

2. This section does not preclude taking notice of plain errors affecting substantial rights although they were not brought to the attention of the judge.

Comment—Taken from subdivisions (a) and (d) of Draft Federal Rule 1–03. Subsection 1 is consistent with N.R.C.P. 43(c), N.R.C.P. 61, NRS 177.255 and 178.598. Subsection 2 is consistent with NRS 178.602.

RULINGS ON EVIDENCE: RECORD OF OFFER AND RULING.

SEC. 5. *The judge may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made and the ruling thereon. He may direct the making of an offer in question and answer form, and on request shall do so in actions tried without a jury, unless it clearly appears that the evidence is not admissible on any ground or is privileged.*

Comment—Taken from subdivision (b) of Draft Federal Rule 1–03. Consistent with F.R.C.P. 43(c).

PRELIMINARY QUESTIONS OF ADMISSIBILITY: DETERMINATION.

SEC. 6. *1. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege or the admissibility of evidence shall be determined by the judge, subject to the provisions of section 7 of this act.*

2. In making his determination he is not bound by the provisions of this Title except the provisions of chapter 49 of NRS with respect to privileges.

Comment—Adapted from subdivision (a) of Draft Federal Rule 1–04. The exception as to privileges is restated in the clearer language of Draft Federal Rule 11–01, subdivisions (c) and (d); compare section 2 of this draft bill. Because this section is "a statute * * * applicable to the specific situation," it appears unnecessary to duplicate subsection 2 in section 2.

PRELIMINARY QUESTIONS OF ADMISSIBILITY: RELEVANCY CONDITIONED ON FACT.

SEC. 7. *1. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the judge shall admit it upon the introduction of evidence sufficient to support a finding of the fulfillment of the condition.*

2. If under all the evidence upon the issue the jury might reasonably find that the fulfillment of the condition is not established, the judge shall instruct the jury to consider the issue and to disregard the evidence unless they find the condition was fulfilled.

3. If under all the evidence upon the issue the jury could not reasonably find that the condition was fulfilled, the judge shall instruct the jury to disregard the evidence.

Comment—Taken from subdivision (b) of Draft Federal Rule 1–04. This section does not require the introduction of evidence of fulfillment of the condition prior to the conditional introduction of the dependent evidence.

DETERMINATIONS OF ADMISSIBILITY: HEARING OF JURY.

SEC. 8. *In jury cases, hearings on preliminary questions of admissibility, offers of proof in narrative or question and answer form, and statements of the judge showing the character of the evidence shall to the extent practicable, unless further restricted by section 9 of this act, be conducted out of the hearing of the jury, to prevent the suggestion of inadmissible evidence.*

Comment—This section combines the provisions of subdivision (c) of Draft Federal Rules 1–03 and 1–04, for the reason that their applications will sometimes overlap and their purpose appears to be the same.

PRELIMINARY HEARINGS ON CONFESSIONS AND EVIDENCE.

SEC. 9. *Preliminary hearings on the admissibility of confessions or statements by the accused or evidence allegedly unlawfully obtained shall be conducted outside the hearing of the jury. The accused does not by testifying at the hearing subject himself to cross-examination as to other issues in the case. Testimony given by him at the hearing is not admissible against him on the issue of guilt at the trial.*

Comment—Taken from subdivision (d) of Draft Federal Rule 1–04.

WEIGHT AND CREDIBILITY.

SEC. 10. *Sections 6 to 9, inclusive, of this act do not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.*

Comment—Taken from subdivision (e) of Draft Federal Rule 1–04.

LIMITED ADMISSIBILITY.

SEC. 11. *When evidence which is admissible as to one party or for one purpose but inadmissible as to another party or for another purpose is admitted, the judge, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.*

Comment—Taken from Draft Federal Rule 1–06.

REMAINDER OF WRITINGS OR RECORDED STATEMENTS.

SEC. 12. *1. When any part of a writing or recorded statement is introduced by a party, he may be required at that time to introduce any other part of it which is relevant to the part introduced, and any party may introduce any other parts.*

2. This section does not limit cross-examination.

Comment—Adapted from Draft Federal Rule 1–07, but reduced to present language of N.R.C.P. 26 concerning depositions. Subsection 2 clarifies that the adverse party may introduce related but different writings upon cross-examination as well as in his own case.

JUDICIAL NOTICE

MATTERS OF FACT.

SEC. 13. *1. The facts subject to judicial notice are facts in issue or facts from which they may be inferred.*

2. A judicially noticed fact must be:

(a) Generally known within the territorial jurisdiction of the trial court; or

(b) Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned,

so that the fact is not subject to reasonable dispute.

Comment—Taken from subdivisions (a) and (b) of Draft Federal Rule 2–01.

MATTERS OF LAW.

SEC. 14. *The laws subject to judicial notice are:*

1. The Constitution and statutes of the United States, and the contents of the Federal Register.

2. The constitution of this state and Nevada Revised Statutes.

3. Any other statute of this state if brought to the attention of the court by its title and the day of its passage.

4. A county, city or town code which has been filed as required by NRS 244.118, 266.160, 269.168 or the city charter and any city ordinance which has been filed or recorded as required by the applicable law.

5. A regulation of an agency of this state which has been adopted pursuant to NRS 233B.060 and filed pursuant to NRS 233B.070.

6. The class and organization of a city incorporated under general law.

7. The constitution, statutes or other written law of any other state or territory of the United States, or of any foreign jurisdiction, as contained in a book or pamphlet published by its authority or proved to be commonly recognized in its courts.

Comment—This section brings together the Nevada statutes on judicial notice of laws, ordinances and regulations, and supplies obvious omissions. For example, 44 U.S.C. § 1507 requires judicial notice of the contents of the Federal Register and NRS 15.020 requires judicial notice of private statutes, but no statute appears to require judicial notice of the respective constitutions or public statutes.

In subsection 4, NRS 266.115 and the Reno city charter accord judicial notice to every "rule, resolution or other regulation of the city council" as well as to ordinances, whereas the Las Vegas city charter limits judicial notice to ordinances and requires recording by the city clerk of ordinances not codified. This narrower provision seems wiser, especially since the law of evidence does not prevent the proof of resolutions and the like by other means.

Subsection 7 follows the language of NRS 49.020 and 49.090. This is done to avoid substantive change in the law, while again not precluding proof by other means.

DISCRETIONARY AND MANDATORY NOTICE.

SEC. 15. *1. A judge or court may take judicial notice, whether requested or not.*

2. A judge or court shall take judicial notice if requested by a party and supplied with the necessary information.

Comment—Taken from subdivisions (c) and (d) of Draft Federal Rule 2–01.

OPPORTUNITY TO BE HEARD.

SEC. 16. *A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter to be noticed.*

Comment—Taken from subdivision (e) of Draft Federal Rule 2–01.

TIME OF TAKING NOTICE.

SEC. 17. *Judicial notice may be taken at any stage of the proceeding.*

Comment—Taken from subdivision (f) of Draft Federal Rule 2–01.

General Comment—Section 12 of article 6 of the Nevada constitution forbids the inclusion of any provision similar to subdivision (g) of Draft Federal Rule 2–01. The judge may charge the jury on matters noticed under section 14 of this draft bill, for this is to "declare the law." The judge may state to the jury a fact noticed under section 13, but it is the responsibility of counsel in argument to explain the appropriate inferences and emphasize or supply the statement. Argument of counsel in this regard is not limited by the constitutional provision or by this draft statute.

PRESUMPTIONS

PRESUMPTIONS GENERALLY: EFFECT, DIRECT EVIDENCE.

SEC. 18. *1. A presumption, other than a presumption against the accused in a criminal action, imposes on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence.*

2. As applied to presumptions, "direct evidence" means evidence which tends to establish the existence or nonexistence of the presumed fact independently of the basic facts.

Comment—1. Subsection 1 is taken from subdivisions (a) and (b) of Draft Federal Rule 3–03. Logically, this general rule and its procedural applications should precede the special rule for criminal actions taken from Draft Federal Rule 3–01.

2. Subsection 2 clarifies the meaning of phrase "direct evidence" as used in sections 19 to 22, inclusive, to prevent its being improperly limited to evidence introduced upon direct examination.

DETERMINATION ON EVIDENCE OF BASIC FACTS.

SEC. 19. *When a presumption is made conclusive by statute or no direct evidence is introduced contrary to the existence of the presumed fact, the question of the existence of the presumed fact depends upon the existence of the basic facts and is determined as follows:*

1. If reasonable minds would necessarily agree that the evidence renders the existence of the basic facts more probable than not, the judge shall direct the jury to find in favor of the existence of the presumed fact.

2. If reasonable minds would necessarily agree that the evidence does not render the existence of the basic facts more probable than not, the judge shall direct the jury to find against the existence of the presumed fact.

3. If reasonable minds would not necessarily agree as to whether the evidence renders the existence of the basic facts more probable than not, the judge shall submit the matter to the jury with an instruction to find in favor of the existence of the presumed fact if they find from the evidence that the existence of the basic facts is more probable than not, but otherwise to find against the existence of the presumed fact.

Comment—Taken from paragraph (1) of subdivision (c) of Draft Federal Rule 3–03. The conclusive presumptions listed in present NRS 52.060 (section 24 of this bill) likewise fall under this section, for direct evidence of the presumed fact is not allowed.

DETERMINATION ON EVIDENCE OF PRESUMED FACT WHERE BASIC FACTS ARE ESTABLISHED.

SEC. 20. *When reasonable minds would necessarily agree that the evidence renders the existence of the basic facts more probable than not, but direct evidence is introduced contrary to the existence of the presumed fact, the question of the existence of the presumed fact is determined as follows:*

1. If reasonable minds would necessarily agree that the direct evidence renders the nonexistence of the presumed fact more probable than not, the judge shall direct the jury to find against the existence of the presumed fact.

2. If reasonable minds would necessarily agree that the direct evidence does not render the nonexistence of the presumed fact more probable than not, the judge shall direct the jury to find in favor of the presumed fact.

3. If reasonable minds would not necessarily agree as to whether the direct evidence renders the nonexistence of the presumed fact more probable than not, the judge shall submit the matter to the jury with an instruction to find in favor of the existence of the presumed fact unless they find from the direct evidence that its nonexistence is more probable than its existence, in which event they should find against its existence.

Comment—Adapted from paragraph (2) of subdivision (c) of Draft Federal Rule 3–03, with the clarifying addition of an explicit reference to the second element of the hypothesis, namely direct evidence as to the presumed fact, and specification that it is this evidence which the jury weighs.

DETERMINATION ON EVIDENCE OF PRESUMED FACT WHERE BASIC FACTS ARE LACKING.

SEC. 21. *When reasonable minds would necessarily agree that the evidence does not render the existence of the basic facts more probable than not, but direct evidence is introduced concerning the existence of the presumed fact, the judge shall submit the matter to the jury with an instruction to determine the existence of the presumed fact from the direct evidence without reference to the presumption.*

Comment—Added to fill a logical gap in subdivision (c) of Draft Federal Rule 3–03 and prevent a presumption from being stood on its head to prove a contrary result.

DETERMINATION ON EVIDENCE OF PRESUMED FACT WHERE BASIC FACTS ARE DOUBTFUL.

SEC. 22. *When reasonable minds would not necessarily agree as to whether the evidence renders the existence of the basic facts more probable than not, and direct evidence is introduced concerning the existence of the presumed fact, the question of the existence of the presumed fact is determined as follows:*

1. If reasonable minds would necessarily agree that the direct evidence renders the existence of the presumed fact more probable than not, the judge shall direct the jury to find in favor of the existence of the presumed fact.

2. If reasonable minds would necessarily agree that the direct evidence renders the nonexistence of the presumed fact more probable than not, the judge shall direct the jury to find against the existence of the presumed fact.

3. If reasonable minds would not necessarily agree that the direct evidence renders the nonexistence of the presumed fact more probable

than not, the judge shall submit the matter to the jury with an instruction to find in favor of the existence of the presumed fact if they find from the evidence that the existence of the basic facts is more probable than not and unless they find the nonexistence of the presumed fact more probable than not, otherwise to find against the existence of the presumed fact.

Comment—Subsections 1 and 2 fill in another logical gap and preclude inversion of the presumption (see comment to section 21); subsection 3 is adapted from Draft Federal Rule 3–03(c)(3).

PRESUMPTIONS AGAINST ACCUSED IN CRIMINAL ACTIONS.

SEC. 23. *1. In criminal actions, presumptions against an accused recognized at common law or created by statute, including statutory provisions that certain facts are prima facie evidence of other facts or of guilt, are governed by this section.*

2. The judge shall not direct the jury to find a presumed fact against the accused. When the presumed fact establishes guilt or is an element of the offense or negatives a defense, the judge may submit the question of guilt or of the existence of the presumed fact to the jury, if, but only if, a reasonable juror on the evidence as a whole, including the evidence of the basic facts, could find guilt or the presumed fact beyond a reasonable doubt. Under other presumptions, the existence of the presumed fact may be submitted to the jury if the basic facts are supported by substantial evidence, or are otherwise established, unless the evidence as a whole negatives the existence of the presumed fact.

3. Whenever the existence of a presumed fact against the accused is submitted to the jury, the judge shall give an instruction that the law declares that the jury may regard the basic facts as sufficient evidence of the presumed fact but does not require it to do so. In addition, if the presumed fact establishes guilt or is an element of the offense or negatives a defense, the judge shall instruct the jury that its existence must, on all the evidence, be proved beyond a reasonable doubt.

Comment—Taken from Draft Federal Rule 3–01.

SPECIFICATION OF CONCLUSIVE PRESUMPTIONS.

SEC. 24. *The following presumptions, and no others, are conclusive:*

1. A malicious and guilty intent, from the deliberate commission of an unlawful act, for the purpose of injuring another.

2. The truth of the fact recited, from the recital in a written instrument between the parties thereto, or their successors in interest by a subsequent title, but this rule does not apply to the recital of a consideration.

3. Whenever a party has, by his own declaration, act or omission, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it.

4. A tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation.

5. The issue of a wife cohabiting with her husband, who is not impotent, is indisputably presumed to be legitimate.

6. The judgment or order of a court, when declared by Titles 2, 3 and 6 of NRS to be conclusive; but such judgment or order must be alleged in the pleadings if there is an opportunity to do so; if there is no such opportunity, the judgment or order may be used as evidence.

7. Any other presumption which, by statute, is expressly made conclusive.

Comment—Transfers NRS 52.060, without substantive change, to its proper place in the new codification.

ALL OTHER PRESUMPTIONS MAY BE CONTROVERTED.

SEC. 25. *All other presumptions are disputable. The following are of that kind:*

1. That an unlawful act was done with an unlawful intent.

2. That a person intends the ordinary consequences of his voluntary act.

3. That evidence willfully suppressed would be adverse if produced.

4. That higher evidence would be adverse from inferior being produced.

5. That money paid by one to another was due to the latter.

6. That a thing delivered by one to another belonged to the latter.

7. That things which a person possesses are owned by him.

8. That a person is the owner of property from exercising acts of ownership over it, or from common reputation of his ownership.

9. That official duty has been regularly performed.

10. That a court or judge, acting as such, whether in this state or any other state or country, was acting in the lawful exercise of his jurisdiction.

11. That a judicial record, when not conclusive, does still correctly determine or set forth the rights of the parties.

12. That a writing is truly dated.

13. That a letter duly directed and mailed was received in the regular course of the mail.

14. That a person not heard from in 7 years is dead.

15. That a child born in lawful wedlock is legitimate.

16. That the law has been obeyed.

17. That a trustee or other person, whose duty it was to convey real property to a particular person, has actually conveyed to him, when such presumption is necessary to perfect the title of such person or his successor in interest.

18. In situations not governed by the Uniform Commercial Code:

(a) That an obligation delivered up to the debtor has been paid.

(b) That private transactions have been fair and regular.

(c) That the ordinary course of business has been followed.

(d) That there was good and sufficient consideration for a written contract.

Comment—Transfers list of disputable presumptions from present NRS 52.070 to its proper place in the new codification. The omitted "presumption of innocence" found in subsection 1 is really a rule of public policy and is separately established by NRS 175.191 and 175.201. The presumptions stated in subsections 4, 9, 12, 16, 19, 21, 22, 23, 24 and 26 were omitted because the subcommittee did not believe them to be valid as general propositions, but this

omission is not meant to preclude a trier of fact from drawing the same inference if warranted by the particular situation. The subject matter of subsections 28, 29 and 30 is covered in sections 148 and 152 respectively of this draft bill. The subject matter of subsections 31 and 32 is transferred to chapters 452 and 111 of NRS, respectively, where it more logically belongs.

SEC. 26. Chapter 48 of NRS is hereby amended by adding thereto the provisions set forth as sections 27 to 37, inclusive, of this act.

"RELEVANT EVIDENCE" DEFINED.

SEC. 27. *As used in this chapter, "relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.*

Comment—Taken from Draft Federal Rule 4–01.

RELEVANT EVIDENCE GENERALLY ADMISSIBLE; IRRELEVANT EVIDENCE INADMISSIBLE.

SEC. 28. *1. All relevant evidence is admissible, except:*

(a) As otherwise provided by this Title;

(b) As limited by the Constitution of the United States or of the State of Nevada; or

(c) Where a statute limits the review of an administrative determination to the record made or evidence offered before that tribunal.

2. Evidence which is not relevant is not admissible.

Comment—Taken from Draft Federal Rule 4–02, with the addition of paragraph (c) of subsection 1.

EXCLUSION OF RELEVANT EVIDENCE ON GROUNDS OF PREJUDICE, CONFUSION, SURPRISE OR WASTE OF TIME.

SEC. 29. *1. Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury.*

2. Although relevant, evidence may be excluded if its probative value is substantially outweighed by:

(a) Considerations of undue delay, waste of time or needless presentation of cumulative evidence; or

(b) The risk that its admission will unfairly and harmfully surprise a party who has not had reasonable opportunity to anticipate that such evidence would be offered.

Comment—Adapted from Draft Federal Rule 4–03, with the added element of surprise as stated in Uniform Rule 45.

CHARACTER EVIDENCE NOT ADMISSIBLE TO PROVE CONDUCT; EXCEPTIONS; OTHER CRIMES.

SEC. 30. *1. Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:*

(a) Evidence of his charatcer or a trait of his character offered by an accused, and similar evidence offered by the prosecution to rebut such evidence;

(b) Evidence of the character or a trait of character of the victim of the crime offered by an accused, and similar evidence offered by the prosecution to rebut such evidence; and

(c) Evidence of the character of a witness, offered to attack or support his credibility, within the limits provided by section 78 of this act.

2. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Comment—Taken from Draft Federal Rule 4–04.

METHODS OF PROVING CHARACTER.

SEC. 31. *1. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or in the form of an opinion.*

2. In cases in which character or a trait of character of a person is an essential element of a charge, claim or defense, proof may also be made of specific instances of his conduct.

Comment—Taken from Draft Federal Rule 4–05.

HABIT; ROUTINE PRACTICE.

SEC. 32. *1. Evidence of the habit of a person of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.*

2. Habit or routine practice may be proved by testimony in the form of an opinion or by specific instances of conduct sufficient in number to warrant a finding that the habit existed or that the practice was routine.

Comment—Taken from Draft Federal Rule 4–06.

SUBSEQUENT REMEDIAL MEASURES.

SEC. 33. *1. When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of*

the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event.

2. This section does not require the exclusion of evidence of subsequent remedial measures when offered for another purpose, such as proving ownership, control, feasibility of precautionary measures, or impeachment.

Comment—Taken from Draft Federal Rule 4–07.

COMPROMISE AND OFFERS TO COMPROMISE.

SEC. 34. *1. Evidence of:*

(a) Furnishing or offering or promising to furnish; or

(b) Accepting or offering or promising to accept,

a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible.

2. This section does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Comment—Taken from Draft Federal Rule 4–08.

PAYMENT OF MEDICAL AND SIMILAR EXPENSES.

SEC. 35. *Evidence of furnishing or offering or promising to pay medical, hospital or similar expenses occasioned by an injury is not admissible to prove liability for the injury.*

Comment—Taken from Draft Federal Rule 4–09.

OFFER TO PLEAD GUILTY; NOLO CONTENDERE; WITHDRAWN PLEA OF GUILTY.

SEC. 36. *1. Evidence of a plea of guilty, later withdrawn, or of an offer to plead guilty to the crime charged or any other crime is not admissible in a criminal proceeding involving the person who made the plea or offer.*

2. Evidence of a plea of nolo contendere or of an offer to plead nolo contendere to the crime charged or any other crime is not admissible in a civil or criminal proceeding involving the person who made the plea or offer.

Comment—Adapted from Draft Federal Rule 4–10, but narrowed to make evidence only as to a plea of nolo contendere inadmissible in a civil action.

LIABILITY INSURANCE.

SEC. 37. *1. Evidence that a person was or was not insured against liability is not admissible upon the issue whether he acted negligently or otherwise wrongfully.*

2. This section does not require the exclusion of evidence of insurance against liability when it is relevant for another purpose, such as proof of agency, ownership or control, or bias or prejudice of a witness.

Comment—Taken from Draft Federal Rule 4–11.

SEC. 38. Chapter 49 of NRS is hereby amended by adding thereto the provisions set forth as sections 39 to 69, inclusive, of this act.

GENERAL PROVISIONS

PRIVILEGES RECOGNIZED ONLY AS PROVIDED.

SEC. 39. *1. Except as otherwise required by the Constitution of the United States or of the State of Nevada, and except as provided in this Title or Title 14 of NRS, no person has a privilege to:*

(a) Refuse to be a witness;

(b) Refuse to disclose any matter;

(c) Refuse to produce any object or writing; or

(d) Prevent another from being a witness or disclosing any matter or producing any object or writing.

2. This section does not:

(a) Impair any privilege created by Title 14 of NRS or by the Nevada Rules of Civil Procedure which is limited to a particular stage of the proceeding; or

(b) Extend any such privilege to any other stage of a proceeding.

Comment—Subsection 1 is adapted from Draft Federal Rule 5–01. Subsection 2 is added to clarify the relationship between privileges generally (which apply at every stage of a proceeding, see subsection 2 of section 2 of this draft bill) and limited privileges such as those applicable to discovery.

REQUIRED REPORTS PRIVILEGED BY STATUTE.

SEC. 40. *1. A person making a return or report required by law to be made has a privilege to refuse to disclose and to prevent any other person from disclosing the return or report, if the law requiring it to be made so provides.*

2. A public officer or agency to whom a return or report is required by law to be made has a privilege to refuse to disclose the return or report if the law requiring it to be made so provides.

3. No privilege exists under this section in actions involving false statements or fraud in the return or report.

Comment—Taken from Draft Federal Rule 5–02. Required in this codification to eliminate conflict between specific confidentiality statutes and the broad language of section 39.

LAWYER–CLIENT PRIVILEGE

DEFINITIONS.

SEC. 41. *As used in sections 41 to 49, inclusive, of this act, the words and phrases defined in sections 42 to 46, inclusive, of this act have the meanings ascribed to them in sections 42 to 46, inclusive, of this act.*

"CLIENT" DEFINED.

SEC. 42. *"Client" means a person, including a public officer, corporation, association or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from him.*

"CONFIDENTIAL" DEFINED.

SEC. 43. *A communication is "confidential" if it is not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.*

"LAWYER" DEFINED.

SEC. 44. *"Lawyer" means a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.*

"REPRESENTATIVE OF THE CLIENT" DEFINED.

SEC. 45. *"Representative of the client" means a person having authority to obtain professional legal services, or to act on advice rendered pursuant thereto, on behalf of the client.*

"REPRESENTATIVE OF THE LAWYER" DEFINED.

SEC. 46. *"Representative of the lawyer" means a person employed by the lawyer to assist in the rendition of professional legal services.*

GENERAL RULE OF PRIVILEGE.

SEC. 47. *A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications:*

1. Between himself or his representative and his lawyer or his lawyer's representative.

2. Between his lawyer and the lawyer's representative.

3. Made for the purpose of facilitating the rendition of professional legal services to the client, by him or his lawyer to a lawyer representing another in a matter of common interest.

WHO MAY CLAIM THE PRIVILEGE.

SEC. 48. *1. The privilege may be claimed by the client, his guardian or conservator, the personal representative of a deceased client, or the successor, trustee or similar representative of a corporation, association or other organization, whether or not in existence.*

2. The person who was the lawyer at the time of the communication may claim the privilege but only on behalf of the client. His authority to do so is presumed in the absence of evidence to the contrary.

EXCEPTIONS.

SEC. 49. *There is no privilege under section 47 or 48 of this act:*

1. If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud.

2. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction.

3. As to a communication relevant to an issue of breach of duty by the lawyer to his client or by the client to his lawyer.

4. As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness.

5. As to a communication relevant to a matter of common interest between two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients.

Comment—Sections 41 to 49, inclusive, are taken without substantive change from Draft Federal Rule 5–03.

DOCTOR–PATIENT PRIVILEGE

DEFINITIONS.

SEC. 50. *As used in sections 50 to 53, inclusive, of this act:*

1. A communication is "confidential" if it is not intended to be disclosed to third persons other than:

(a) Those present to further the interest of the patient in the consultation, examination or interview;

(b) Persons reasonably necessary for the transmission of the communication; or

(c) Persons who are participating in the diagnosis and treatment under the direction of the doctor, including members of the patient's family.

2. "Doctor" means a person licensed to practice medicine, dentistry, osteopathy or psychology in any state or nation, or a person who is reasonably believed by the patient to be so licensed.

3. "Patient" means a person who consults or is examined or interviewed by a doctor for purposes of diagnosis or treatment.

GENERAL RULE OF PRIVILEGE.

SEC. 51. *A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications among himself, his doctor or persons who are participating in the diagnosis or treatment under the direction of the doctor, including members of the patient's family.*

WHO MAY CLAIM THE PRIVILEGE.

SEC. 52. *1. The privilege may be claimed by the patient, by his guardian or conservator, or by the personal representative of a deceased patient.*

2. The person who was the doctor may claim the privilege but only on behalf of the patient. His authority so to do is presumed in the absence of evidence to the contrary.

EXCEPTIONS.

SEC. 53. *1. There is no privilege under section 51 or 52 of this act for communications relevant to an issue in proceedings to hospitalize the patient for mental illness, if the doctor in the course of diagnosis or treatment has determined that the patient is in need of hospitalization.*

2. If the judge orders an examination of the condition of the patient, communications made in the course thereof are not privileged under section 51 or 52 of this act with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise.

3. There is no privilege under section 51 or 52 of this act as to communications relevant to an issue of the condition of the patient in any proceeding in which the condition is an element of a claim or defense.

4. There is no privilege under section 51 or 52 of this act:

(a) In a prosecution or mandamus proceeding under chapter 441 of NRS.

(b) As to any information communicated to a physician in an effort unlawfully to procure a narcotic, dangerous or hallucinogenic drug, or unlawfully to procure the administration of any such drug.

Comment—Sections 50 to 53, inclusive, are adapted from Draft Federal Rule 5-04, but enlarged to embrace all doctors of medicine, dentistry and osteopathy as well as licensed psychologists. Subsection 4 of section 53 is added to incorporate the existing provisions of NRS 441.270, 441.310, 453.180 and 454.532 (Stats. 1969, p. 285).

OTHER OCCUPATIONAL PRIVILEGES

CONFESSOR AND CONFESSANT PRIVILEGE.

SEC. 54. *A clergyman or priest shall not, without the consent of the person making the confession, be examined as a witness as to any confession made to him in his professional character.*

Comment—Transfers present NRS 48.070 without change to its proper place in the new codification. This narrower form is retained in lieu of Draft Federal Rule 5-06.

PRIVILEGE FOR HOSPITAL AND MEDICAL REVIEW COMMITTEES.

SEC. 55. *1. Except as provided in subsection 2:*

(a) The proceedings and records of organized committees of hospital medical staffs having the responsibility of evaluation and improvement of the quality of care rendered in such hospital and medical review committees of medical societies are not subject to discovery proceedings.

(b) No person who attends a meeting of any such committee may be required to testify concerning the proceedings at such meetings.

2. The provisions of subsection 1 do not apply to:

(a) Any statement made by a person in attendance at such meeting who is a party to an action or proceeding the subject of which is reviewed at such meeting.

(b) Any statement made by a person who is requesting hospital staff privileges.

(c) The proceedings of any meeting considering an action against an insurance carrier alleging bad faith by the carrier in refusing to accept a settlement offer within the policy limits.

Comment—Transfers new privilege created by chapter 363, Statutes of Nevada 1969, to its proper place in new codification.

PRIVILEGE FOR NEWS MEDIA.

SEC. 56. *No reporter or editorial employee of any newspaper, periodical, press association or radio or television station may be required to disclose the source of any information procured or obtained by such person, in any legal proceedings, trial or investigation:*

1. Before any court, grand jury, coroner's inquest, jury or any officer thereof.

2. Before the legislature or any committee thereof.

3. Before any department, agency or commission of the state.

4. Before any local governing body or committee thereof, or any officer of a local government.

Comment—Transfers new privilege created by chapter 476, Statutes of Nevada 1969, to its proper place in new codification.

PUBLIC OFFICER AS WITNESS.

SEC. 57. *A public officer shall not be examined as a witness as to communications made to him in official confidence, when the public interests would suffer by the disclosure.*

MISCELLANEOUS PRIVILEGES

HUSBAND–WIFE PRIVILEGE: GENERAL.

SEC. 58. *A husband cannot be examined as a witness for or against his wife without her consent, nor a wife for or against her husband without his consent. Neither a husband nor a wife can be examined, during the marriage or afterwards, without the consent of the other, as to any communication made by one to the other during marriage, except in a:*

1. Civil proceeding brought by or on behalf of one spouse against the other spouse;

2. Proceeding to commit or otherwise place his spouse, the property of his spouse or both the spouse and the property of the spouse under the control of another because of the alleged mental or physical condition of the spouse;

3. Proceeding brought by or on behalf of a spouse to establish his competence;

4. Proceeding in the juvenile court pursuant to chapter 62 of NRS; or

5. Criminal proceeding in which one spouse is charged with:

(a) A crime against the person or the property of the other spouse or of a child of either, whether such crime was committed before or during marriage.

(b) Bigamy or adultery.

(c) A crime related to abandonment of a child or nonsupport of a wife or child.

Comment—Transfers NRS 48.040, as amended by chapter 208, Statutes of Nevada 1969, to its proper place in new codification. The subcommittee rejected the narrower privilege contained in Draft Federal Rule 5–05.

HUSBAND–WIFE PRIVILEGE: EXCEPTION.

SEC. 59. *When a husband or wife is insane, and has been so declared by a court of competent jurisdiction, the other shall be a competent witness to testify as to any fact which transpired before or during such insanity, but the privilege of so testifying shall cease when the party declared insane has been found by a court of competent jurisdiction to be of sound mind, and the husband and wife shall then have the testimonial limitations and privileges provided in section 58 of this act.*

Comment—Transfers NRS 48.050, as modernized by chapter 208, Statutes of Nevada 1969, to its proper place in new codification, to accompany retained NRS 48.040 above.

POLITICAL VOTE.

SEC. 60. *Every person has a privilege to refuse to disclose the tenor of his vote at a political election conducted by secret ballot unless the vote was cast illegally.*

Comment—Taken from Draft Federal Rule 5–07.

TRADE SECRETS.

SEC. 61. *1. A person has a privilege, which may be claimed by him or his agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by him, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice.*

2. When disclosure is directed, the judge shall take such protective measure as the interests of the holder of the privilege and of the parties and the furtherance of justice may require.

Comment—Taken from Draft Federal Rule 5–08.

IDENTITY OF INFORMER

PRIVILEGE.

SEC. 62. *The state or a political subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished to a law enforcement officer information purporting to reveal the commission of a crime.*

WHO MAY CLAIM.

SEC. 63. *The privilege may be claimed by an appropriate representative of the state, regardless of whether the information was furnished to an officer of the state or a subdivision thereof. The privilege may be claimed by an appropriate representative of a political subdivision if the information was furnished to an officer thereof.*

VOLUNTARY DISCLOSURE; INFORMER A WITNESS.

SEC. 64. *No privilege exists under section 62 or 63 of this act if the identity of the informer or his interest in the subject matter of his communication has been disclosed by a holder of the privilege or by the informer's own action, or if the informer appears as a witness.*

TESTIMONY ON GUILT OR INNOCENCE.

SEC. 65. *If the state or a political subdivision elects not to disclose the identity of an informer and the circumstances indicate a reasonable*

probability that the informer can give testimony necessary to a fair determination of the issue of guilt or innocence, the judge shall on motion of the accused dismiss the proceedings, and he may do so on his own motion.

LEGALITY OF OBTAINING EVIDENCE.

SEC. 66. *1. If information from an informer is relied upon to establish the legality of the means by which evidence was obtained and the judge is not satisfied that the information was received from an informer reasonably believed to be reliable, he may require the identity of the informer to be disclosed.*

2. The judge may permit the disclosure to be made in chambers or make any other order which justice requires. All counsel shall be permitted to be present at every stage at which any counsel is permitted to be present.

3. If disclosure of the identity of the informer is made in chambers, the record thereof shall be sealed and preserved to be made available to the appellate court in the event of an appeal.

Comment—Sections 62 to 66, inclusive, are taken without change of substance from Draft Federal Rule 5–10.

WAIVER AND COMMENT

WAIVER OF PRIVILEGE BY VOLUNTARY DISCLOSURE.

SEC. 67. *1. A person upon whom these rules confer a privilege against disclosure of a confidential matter waives the privilege if he or his predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the matter.*

2. This section does not apply if the disclosure is itself a privileged communication.

Comment—Taken from Draft Federal Rule 5–11.

PRIVILEGED MATTER DISCLOSED UNDER COMPULSION OR WITHOUT OPPORTUNITY TO CLAIM PRIVILEGE.

SEC. 68. *Evidence of a statement or other disclosure of privileged matter is inadmissible against the holder of the privilege if the disclosure was:*

1. Compelled erroneously; or

2. Made without opportunity to claim the privilege.

Comment—Taken from Draft Federal Rule 5–12.

COMMENT UPON OR INFERENCE FROM CLAIM OF PRIVILEGE; INSTRUCTION.

SEC. 69. *1. The claim of a privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel. No inference may be drawn therefrom.*

2. In jury cases, proceedings shall be conducted, to the extent practicable, so as to facilitate the making of claims of privilege outside the presence of the jury.

3. Upon request, any party against whom the jury might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom.

Comment—Taken from Draft Federal Rule 5–13.

SEC. 70. Chapter 50 of NRS is hereby amended by adding thereto the provisions set forth as sections 71 to 100, inclusive, of this act.

GENERAL PROVISIONS

GENERAL RULE OF COMPETENCY.

SEC. 71. *Every person is competent to be a witness except as otherwise provided in this Title.*

Comment—Taken from Draft Federal Rule 6–01.

LACK OF PERSONAL KNOWLEDGE.

SEC. 72. *1. A witness may not testify to a matter unless:*

(a) Evidence is introduced sufficient to support a finding that he has personal knowledge of the matter; or

(b) He states his opinion or inference as an expert.

2. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness himself.

Comment—Taken from Draft Federal Rule 6–02.

OATH OR AFFIRMATION.

SEC. 73. *1. Before testifying, every witness shall be required to declare that he will testify truthfully, by oath or affirmation administered in a form calculated to awaken his conscience and impress his mind with his duty to do so.*

2. An affirmation is sufficient if the witness is addressed in the following terms: "You do solemnly affirm that the evidence you shall give in this issue (or matter), pending between ..... and ....., shall be the truth, the whole truth, and nothing but the truth." Assent to this affirmation shall be made by the answer, "I do."

Comment—Subsection 1 is taken from the Draft Federal Rule 6–03. Subsection 2 preserves the substance of present NRS 48.240, as a guide for use in ordinary cases.

INTERPRETERS.

SEC. 74. *Interpreters are subject to the provisions of this chapter relating to qualification as an expert and the administration of an oath or affirmation in appropriate form.*

Comment—Taken from Draft Federal Rule 6–04.

COMPETENCY OF JUDGE AS WITNESS.

SEC. 75. *1. The judge presiding at the trial shall not testify in that trial as a witness.*

2. If he is called to testify, no objection need be made in order to preserve the point.

Comment—Adapted from Draft Federal Rule 6–05.

COMPETENCY OF JUROR AS WITNESS.

SEC. 76. *1. A member of the jury shall not testify as a witness in the trial of the case in which he is sitting as a juror. If he is called to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.*

2. Upon an inquiry into the validity of a verdict or indictment:

(a) A juror shall not testify concerning the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith.

(b) The affidavit or evidence of any statement by a juror indicating an effect of this kind is inadmissible for any purpose.

Comment—Adapted from Draft Federal Rule 6–06. The subcommittee intends by the final words "for any purpose" to preclude extending into the intangible area of mind and emotions the inquiry into objective misconduct permitted by *McNally v. Walkowski*, 85 Nev. ....., 462 P.2d 1016 (1969).

IMPEACHMENT

WHO MAY IMPEACH.

SEC. 77. *The credibility of a witness may be attacked by any party, including the party calling him.*

Comment—Taken from Draft Federal Rule 6–07.

EVIDENCE OF CHARACTER AND CONDUCT OF WITNESS.

SEC. 78. *1. Opinion evidence as to the character of a witness is admissible to attack or support his credibility but subject to these limitations:*

(a) Opinions are limited to truthfulness or untruthfulness; and

(b) Opinions of truthful character are admissible only after the introduction of opinion evidence of untruthfulness or other evidence impugning his character for truthfulness.

2. Evidence of the reputation of a witness for truthfulness or untruthfulness is inadmissible.

3. Specific instances of the conduct of a witness, for the purpose of attacking or supporting his credibility, other than conviction of crime, may not be proved by extrinsic evidence. They may, however, if relevant

to truthfulness, be inquired into on cross-examination of the witness himself or on cross-examination of a witness who testifies to an opinion of his character for truthfulness or untruthfulness, subject to the general limitations upon relevant evidence and the limitations upon interrogation.

Comment—Taken from Draft Federal Rule 6–08.

IMPEACHMENT BY EVIDENCE OF CONVICTION OF CRIME.

SEC. 79. *1. For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime is admissible but only if the crime was punishable by death or imprisonment in excess of 1 year under the law under which he was convicted.*

2. Evidence of a conviction is inadmissible under this section if a period of more than 10 years has elapsed since:

(a) The date of the release of the witness from confinement; or

(b) The expiration of the period of his parole, probation or sentence, whichever is the later date.

3. Evidence of a conviction is inadmissible under this section if:

(a) The conviction has been the subject of a pardon, honorable discharge from probation, certificate of rehabilitation, or other equivalent procedure; and

(b) The procedure under which the pardon, discharge or certificate was granted or issued required a substantial showing of rehabilitation or was based on innocence.

4. Evidence of juvenile adjudications is inadmissible under this section.

5. The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

Comment—Adapted from Draft Federal Rule 6–09 but restricted to felony convictions. No exceptions are provided in subsection 4 because under present Nevada law (1) the juvenile record is sealed and (2) a judgment of conviction does not sufficiently disclose the offending conduct.

RELIGIOUS BELIEFS OR OPINIONS.

SEC. 80. *Evidence of the beliefs or opinions of a witness on matters of religion is inadmissible for the purpose of showing that by reason of their nature his credibility is impaired or enhanced.*

Comment—Taken from Draft Federal Rule 6–10.

EXAMINATION OF WITNESSES

MODE AND ORDER OF INTERROGATION AND PRESENTATION.

SEC. 81. *1. The judge shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence:*

(a) To make the interrogation and presentation effective for the ascertainment of the truth;

(b) To avoid needless consumption of time; and

(c) To protect witnesses from undue harassment or embarrassment.

2. Cross-examination is limited to the subject matter of the direct examination and matters affecting the credibility of the witness, unless the judge in the exercise of discretion permits inquiry into additional matters as if on direct examination.

3. Except as provided in subsection 4:

(a) Leading questions shall not be used on the direct examination of a witness without the permission of the court.

(b) Leading questions are permitted on cross-examination.

4. In civil cases, a party is entitled to call:

(a) An adverse party; or

(b) A witness identified with an adverse party,

and interrogate by leading questions. The attorney for such adverse party may employ leading questions in cross-examining the party or witness so called only to the extent permissible if he had called such person on direct examination.

Comment—Adapted from Draft Federal Rule 6–11, with the addition of the last sentence. The use of leading questions on direct examination is left entirely to the discretion of the court.

WRITING USED TO REFRESH MEMORY.

SEC. 82. *1. If a witness uses a writing to refresh his memory, either before or while testifying, an adverse party is entitled:*

(a) To have it produced at the hearing;

(b) To inspect it;

(c) To cross-examine the witness thereon; and

(d) To introduce in evidence those portions which relate to the testimony of the witness for the purpose of affecting his credibility.

2. If it is claimed that the writing contains matters not related to the subject matter of the testimony, the judge shall examine the writing in chambers, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal.

3. If a writing is not produced or delivered pursuant to order under this section, the judge shall make any order which justice requires, except that in criminal cases when the state elects not to comply, the order shall be one:

(a) Striking the testimony; or

(b) If the judge in his discretion determines that the interests of justice so require, declaring a mistrial.

Comment—Taken from Draft Federal Rule 6–12.

PRIOR STATEMENTS OF WITNESSES.

SEC. 83. *1. In examining a witness concerning a prior statement made by him, whether written or not, the statement need not be shown*

or its contents disclosed to him, but on request the statement shall be shown or disclosed to opposing counsel.

2. Extrinsic evidence of a prior contradictory statement by a witness is inadmissible unless:

(a) The statement fulfills all the conditions required by subsection 3 of section 104 of this act; or

(b) The witness is afforded an opportunity to explain or deny the statement and the opposite party is afforded an opportunity to interrogate him thereon.

Comment—Taken from Draft Federal Rule 6–13.

CALLING AND INTERROGATION OF WITNESSES BY JUDGE.

SEC. 84. *1. The judge may, on his own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.*

2. The judge may interrogate witnesses, whether called by himself or by a party. The parties may object to questions so asked and to evidence thus adduced at any time prior to the submission of the cause.

Comment—Taken from Draft Federal Rule 6–14.

EXCLUSION AND SEQUESTRATION OF WITNESSES.

SEC. 85. *1. Except as otherwise provided in subsection 2, at the request of a party the judge shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and he may make the order of his own motion.*

2. This section does not authorize exclusion of:

(a) A party who is a natural person;

(b) An officer or employee of a party which is not a natural person designated as its representative by its attorney; or

(c) A person whose presence is shown by a party to be essential to the presentation of his cause.

Comment—Taken from Draft Federal Rule 6–15.

ATTENDANCE OF WITNESSES

DUTY TO APPEAR AND TESTIFY.

SEC. 86. *1. A witness, duly served with a subpena, shall attend at the time appointed, with any papers under his control required by the subpena, to answer all pertinent and legal questions, and, unless sooner discharged, to remain till the testimony is closed.*

2. A person present in court or before a judicial officer may be required to testify in the same manner as if he were in attendance upon a subpena issued by such court or officer.

Comment—Transfers NRS 48.120 and 48.160, without substantive change, to their appropriate place in the new codification.

WITNESS PROTECTED FROM ARREST WHEN ATTENDING OR GONG TO AND RETURNING FROM COURT, JUDGE.

SEC. 87. *Every person who has been, in good faith, served with a subpena to attend as a witness before a court, judge, commissioner, master or other person, in a case where the disobedience of the witness may be punished as a contempt, is exonerated from arrest in a civil action while going to the place of attendance, necessarily remaining there, and returning therefrom.*

Comment—Similarly transfers NRS 48.140.

ARREST OF WITNESS VOID; LIABILITY OF ARRESTING OFFICER; AFFIDAVIT OF WITNESS.

SEC. 88. *1. The arrest of a witness contrary to section 87 of this act is void.*

2. An officer is not liable to the party for making the arrest in ignorance of the facts creating the exoneration, but is liable for any subsequent detention of the party, if such party claims the exemption and makes an affidavit, stating:

(a) That he has been served with a subpena to attend as a witness before a court, officer or other person, specifying the same, the place of attendance and the action or proceeding in which the subpena was issued; and

(b) That he has not been thus served by his own procurement, with the intention of avoiding an arrest.

Comment—Similarly transfers NRS 48.150.

PENALTIES FOR DISOBEDIENCE.

SEC. 89. *1. Refusal to be sworn or to answer as a witness may be punished as a contempt by the court. In a civil action, if the person so refusing is a party, the court may strike any pleading on his behalf, and may enter judgment against him.*

2. A witness disobeying a subpena in a civil action shall also forfeit to the party aggrieved the sum of $100 and all damages which he may sustain by the failure of the witness to attend, which forfeiture and damages may be recovered in a civil action.

3. A witness disobeying a subpena issued on the part of a defendant in a criminal action shall also forfeit to the defendant the sum of $100, which may be recovered in a civil action, unless good cause can be shown for his nonattendance.

Comment—This section contains those portions of NRS 48.170 which are not duplicated in N.R.C.P. 37 or 45 or in NRS 174.385, and transfers from NRS 174.385 the provision for forfeiture by a defense witness in a criminal action.

WARRANT MAY ISSUE FOR ARREST OF WITNESS FAILING TO ATTEND.

SEC. 90. *In case of failure of a witness to attend, the court or officer issuing the subpena, upon proof of the service thereof and of the failure of the witness, may issue a warrant to the sheriff of the county to arrest the witness and bring him before the court or officer where his attendance was required.*

Comment—Transfers NRS 48.180, without substantive change, to its proper place in the new codification.

EXAMINATION OF PRISONER AS WITNESS.

SEC. 91. *1. A person imprisoned in the state prison or in a county jail may be examined as a witness in the district court pursuant to this section. Such examination can only be made on motion of a party upon affidavit showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.*

2. In a civil action, if the witness is imprisoned in the county where the action or proceeding is pending, his production may, in the discretion of the court or judge, be required; in all other cases his examination, when allowed, shall be taken upon deposition.

3. In a criminal action, an order for that purpose may be made by the district court or district judge, at chambers, and executed by the sheriff of the county where the action is pending. The judge may order the sheriff to bring the prisoner before the court at the expense of the state or, in his discretion, at the expense of the defendant.

Comment—Combines NRS 48.200, 48.210, 48.220 and 174.325. Examination of prisoner as witness in justice's court is abolished in civil cases, to conform to 1967 change in criminal cases.

FEES OF WITNESSES

FEES AND EXPENSES OF WITNESSES.

SEC. 92. *Witnesses required to attend in the courts of this state shall receive the following compensation:*

1. For attending in any criminal case, or civil suit or proceeding before a court of record, master, commissioner, justice of the peace, or before the grand jury, in obedience to a subpena, $10 for each day's attendance, which shall include Sundays and holidays.

2. Mileage shall be allowed and paid at the rate of 15 cents a mile, one way only, for each mile necessarily and actually traveled from the place of residence by the shortest and most practical route, provided:

(a) That no person shall be obliged to testify in a civil action or proceeding unless his mileage and at least 1 day's fees have been paid him if he demanded the same.

(b) That any person being in attendance at the trial and sworn as a witness shall be entitled to witness fees irrespective of service of subpena.

3. Witness fees in civil cases shall be taxed as disbursement costs against the defeated party upon proof by affidavit that they have been actually incurred. Costs shall not be allowed for more than two witnesses to the same fact or series of facts, nor shall a party plaintiff or defendant be allowed any fees or mileage for attendance as a witness in his own behalf.

Comment—Transfers NRS 48.290, as amended in 1969, to its proper place in the new codification.

PAYMENT OF WITNESSES IN CRIMINAL CASES IN DISTRICT COURT.

SEC. 93. *1. The county clerk in cases in the district court shall keep a payroll, enrolling thereon all names of witnesses in criminal cases, the number of days in attendance and the actual number of miles traveled by the shortest and most practical route in going to and returning from the place where the court is held, and at the conclusion of the trial shall forthwith give a statement of the amounts due to such witnesses, to the county auditor, who shall draw warrants upon the county treasurer for the payment thereof.*

2. In criminal cases, where witnesses are subpenaed from without the county, or who, being residents of another state, voluntarily appear as witnesses, at the request of the district attorney and the board of county commissioners of the county in which the court is held, they shall be allowed their actual and necessary traveling expenses incurred by them in going to and returning from the place where the court is held, and such sum per diem, not exceeding $3, as may be fixed by the district judge, who shall certify the same to the county clerk for entry upon the payroll hereinbefore required.

PAYMENT OF WITNESSES IN MUNICIPAL COURT CASES BROUGHT BEFORE DISTRICT COURT.

SEC. 94. *Where criminal or quasi-criminal cases originating in the municipal court of an incorporated town or city are brought before the district court, the county clerk shall give a statement of the amounts due to witnesses, in the manner and form provided in NRS 48.300, to the district judge, who shall, upon approval thereof, by an order subscribed by him, direct the treasurer of the town or city to pay the same. Upon the production of the order, or a certified copy thereof, the treasurer of the town or city shall pay the sum specified therein out of any fund in the town or city treasury not otherwise specially appropriated or set apart. It shall not be necessary for such order to be otherwise audited or approved.*

ATTORNEYS NOT ALLOWED WITNESS FEES.

SEC. 95. *No attorney or counselor at law, in any case, shall be allowed any fees for attending as a witness in such case.*

Comment—Transfers NRS 48.300–48.320, without substantive change, to their proper places in the new codification.

OPINIONS AND EXPERT TESTIMONY

OPINION TESTIMONY BY LAY WITNESSES.

SEC. 96. *If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are:*

1. Rationally based on the perception of the witness; and

2. Helpful to a clear understanding of his testimony or the determination of a fact in issue.

Comment—Taken from Draft Federal Rule 7–01.

TESTIMONY BY EXPERTS.

SEC. 97. *If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by special knowledge, skill, experience, training or education may testify to matters within the scope of such knowledge.*

Comment—Taken from Draft Federal Rule 7–02.

OPINION TESTIMONY BY EXPERTS.

SEC. 98. *1. The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing.*

2. If of a type reasonably relied upon by experts in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Comment—Taken from Draft Federal Rule 7–03.

OPINION ON ULTIMATE ISSUE.

SEC. 99. *Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.*

Comment—Taken from Draft Federal Rule 7–04.

DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION.

SEC. 100. *The expert may testify in terms of opinion or inference and give his reasons therefor without prior disclosure of the underlying facts or data, unless the judge requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.*

Comment—Taken from Draft Federal Rule 7–05.

SEC. 101. Chapter 51 of NRS is hereby amended by adding thereto the provisions set forth as sections 102 to 138, inclusive, of this act.

DEFINITIONS.

SEC. 102. *As used in this chapter, unless the context otherwise requires, the words and phrases defined in sections 103 to 106, inclusive, of this act have the meanings ascribed to them in such sections.*

"DECLARANT" DEFINED.

SEC. 103. *"Declarant" means a person who makes a statement.*

Comment—Taken from subdivision (b) of Draft Federal Rule 8–01.

"HEARSAY" DEFINED.

SEC. 104. *"Hearsay" means a statement offered in evidence to prove the truth of the matter asserted unless:*

1. The statement is one made by a witness while testifying at the trial or hearing;

2. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:

(a) Inconsistent with his testimony;

(b) Consistent with his testimony and offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive;

(c) One of identification of a person made soon after perceiving him; or

(d) A transcript of testimony given under oath at a trial or hearing or before a grand jury; or

3. The statement is offered against a party and is:

(a) His own statement, in either his individual or a representative capacity;

(b) A statement of which he has manifested his adoption or belief in its truth;

(c) A statement by a person authorized by him to make a statement concerning the subject;

(d) A statement by his agent or servant concerning a matter within the scope of his agency or employment, made before the termination of the relationship; or

(e) A statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

Comment—Taken from subdivision (c) of Draft Federal Rule 8–01.

"STATEMENT" DEFINED.

SEC. 105. *"Statement" means:*

1. An oral or written assertion; or

2. Nonverbal conduct of a person, if it is intended by him as an assertion.

Comment—Taken from subdivision (a) of Draft Federal Rule 8–01.

"UNAVAILABLE AS A WITNESS" DEFINED.

SEC. 106. *1. A declarant is "unavailable as a witness" if he is:*

(a) Exempted by ruling of the judge on the ground of privilege from testifying concerning the subject matter of his statement;

(b) Persistent in refusing to testify despite an order of the judge to do so;

(c) Unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(d) Absent from the hearing and beyond the jurisdiction of the court to compel appearance and the proponent of his statement has exercised reasonable diligence but has been unable to procure his attendance or to take his deposition.

2. A declarant is not "unavailable as a witness" if his exemption, refusal, inability or absence is due to the procurement or wrongdoing of the proponent of his statement for the purpose of preventing the witness from attending or testifying.

Comment—Taken from subdivision (d) of Draft Federal Rule 8–01, with the addition of the reference to depositions at paragraph (d) of subsection 1.

HEARSAY RULE.

SEC. 107. *1. Hearsay is inadmissible except as provided in this chapter, Title 14 of NRS and the Nevada Rules of Civil Procedure.*

2. This section constitutes the hearsay rule.

Comment—Adapted from Draft Federal Rule 8–02.

HEARSAY EXCEPTIONS: AVAILABILITY OF DECLARANT IMMATERIAL.

SEC. 108. *1. A statement is not excluded by the hearsay rule if its nature and the special circumstances under which it was made offer assurances of accuracy not likely to be enhanced by calling the declarant as a witness, even though he is available.*

2. The provisions of sections 109 to 131, inclusive, of this act are illustrative and not restrictive of the exception provided by this section.

Comment—Adapted from Draft Federal Rule 8–03.

PRESENT SENSE IMPRESSION.

SEC. 109. *A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter, is not inadmissible under the hearsay rule.*

Comment—Taken from Illustration (1) of Draft Federal Rule 8–03.

EXCITED UTTERANCE.

SEC. 110. *A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition is not inadmissible under the hearsay rule.*

Comment—Taken from Illustration (2) of Draft Federal Rule 8–03.

THEN EXISTING MENTAL, EMOTIONAL OR PHYSICAL CONDITION.

SEC. 111. *1. A statement of the declarant's then existing state of mind, emotion, sensation or physical condition, such as intent, plan, motive, design, mental feeling, pain and bodily health, is not inadmissible under the hearsay rule.*

2. A statement of memory or belief to prove the fact remembered or believed is inadmissible under the hearsay rule unless it relates to the execution, revocation, identification or terms of declarant's will.

Comment—Taken from Illustration (3) of Draft Federal Rule 8–03.

STATEMENTS FOR PURPOSES OF MEDICAL DIAGNOSIS OR TREATMENT.

SEC. 112. *Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain or sensations, or the inception or general character of the cause or external source thereof are not inadmissible under the hearsay rule insofar as they were reasonably pertinent to diagnosis or treatment.*

Comment—Taken from Illustration (4) of Draft Federal Rule 8–03.

RECORDED RECOLLECTION.

SEC. 113. *1. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately is not inadmissible under the*

hearsay rule if it is shown to have been made when the matter was fresh in his memory and to reflect that knowledge correctly.

2. The memorandum or record may be read into evidence but may not itself be received unless offered by an adverse party.

Comment—Taken from Illustration (5) of Draft Federal Rule 8–03.

RECORDS OF REGULARLY CONDUCTED ACTIVITY.

SEC. 114. *A memorandum, report, record or data compilation, in any form, of acts, events, conditions, opinions or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, all in the course of a regularly conducted activity, as shown by the testimony of the custodian or other qualified witness, is not inadmissible under the hearsay rule unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.*

Comment—Taken from Illustration (6) of Draft Federal Rule 8–03.

ABSENCE OF ENTRY IN RECORDS OF REGULARLY CONDUCTED ACTIVITY.

SEC. 115. *Evidence that a matter is not included in the memoranda, reports, records or data compilations, in any form, of a regularly conducted activity is not inadmissible under the hearsay rule to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record or data compilation was regularly made and preserved.*

Comment—Taken from Illustration (7) of Draft Federal Rule 8–03.

PUBLIC RECORDS AND REPORTS.

SEC. 116. *Records, reports, statements or data compilations, in any form, of public officials or agencies are not inadmissible under the hearsay rule if they set forth:*

1. The activities of the official or agency;

2. Matters observed pursuant to duty imposed by law; or

3. In civil cases and against the state in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law,

unless the sources of information or the method or circumstances of the investigation indicate lack of trustworthiness.

Comment—Taken from Illustration (8) of Draft Federal Rule 8–03.

REQUIRED REPORTS.

SEC. 117. *Records or data compilations, in any form, of births, fetal deaths, deaths or marriages are not inadmissible under the hearsay rule*

if the report thereof was made to a public office pursuant to requirements of law.

Comment—Taken from Illustration (9) of Draft Federal Rule 8–03.

ABSENCE OF PUBLIC RECORD OR ENTRY.

SEC. 118. *To prove:*

1. The absence of a record, report, statement or data compilation, in any form; or

2. The nonoccurrence or nonexistence of a matter of which a record, report, statement or data compilation, in any form, was regularly made and preserved by a public officer, agency or official,

evidence in the form of a certificate of the custodian or other person authorized to make the certification, or testimony, that diligent search failed to disclose the record, report, statement, data compilation or entry is not inadmissible under the hearsay rule.

Comment—Taken from Illustration (10) of Draft Federal Rule 8–03.

RECORDS OF RELIGIOUS ORGANIZATIONS.

SEC. 119. *Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization, are not inadmissible under the hearsay rule.*

Comment—Taken from Illustration (11) of Draft Federal Rule 8–03.

MARRIAGE, BAPTISMAL AND SIMILAR CERTIFICATES.

SEC. 120. *Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter, are not inadmissible under the hearsay rule.*

Comment—Taken from Illustration (12) of Draft Federal Rule 8–03.

FAMILY RECORDS.

SEC. 121. *Statements of fact contained in family bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts or tombstones, or the like, are not inadmissible under the hearsay rule.*

Comment—Taken from Illustration (13) of Draft Federal Rule 8–03.

RECORDS OF DOCUMENTS AFFECTING AN INTEREST IN PROPERTY.

SEC. 122. *The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, is not inadmissible under the hearsay rule if the record is a record of a public office and an applicable statute authorized the recording of documents of that kind in that office.*

Comment—Taken from Illustration (14) of Draft Federal Rule 8–03.

STATEMENTS IN DOCUMENTS AFFECTING AN INTEREST IN PROPERTY.

SEC. 123. *A statement contained in a document purporting to establish or affect an interest in property is not inadmissible under the hearsay rule if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.*

Comment—Taken from Illustration (15) of Draft Federal Rule 8–03.

STATEMENTS IN ANCIENT DOCUMENTS.

SEC. 124. *Statements in a document more than 20 years old whose authenticity is established are not inadmissible under the hearsay rule.*

Comment—Taken from Illustration (16) of Draft Federal Rule 8–03.

MARKET REPORTS, COMMERCIAL PUBLICATIONS.

SEC. 125. *Market quotations, tabulations, lists, directories or other published compilations, generally used and relied upon by the public or by persons in particular occupations, are not inadmissible under the hearsay rule.*

Comment—Taken from Illustration (17) of Draft Federal Rule 8–03.

LEARNED TREATISES.

SEC. 126. *To the extent called to the attention of an expert witness upon cross-examination or relied upon by him in direct examination, a statement contained in a published treatise, periodical or pamphlet on a subject of history, medicine or other science or art, is not inadmissible under the hearsay rule if such book is established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice.*

Comment—Taken from Illustration (18) of Draft Federal Rule 8–03.

REPUTATION CONCERNING PERSONAL OR FAMILY HISTORY.

SEC. 127. *Reputation among members of a person's family by blood or marriage, or among his associates, or in the community, is not inadmissible under the hearsay rule if it concerns his birth, marriage, divorce, death, legitimacy, relationship by blood or marriage, ancestry or other similar fact of his personal or family history.*

Comment—Taken from Illustration (19) of Draft Federal Rule 8–03.

REPUTATION CONCERNING BOUNDARIES OR GENERAL HISTORY.

SEC. 128. *Reputation in a community, arising before the controversy, as to:*

1. Boundaries of or customs affecting lands in the community; and

2. Events of general history important to the community or to the state or nation in which the community is located,

are not inadmissible under the hearsay rule.

Comment—Taken from Illustration (20) of Draft Federal Rule 8–03.

REPUTATION AS TO CHARACTER.

SEC. 129. *Reputation of a person's character among his associates or in the community is not inadmissible under the hearsay rule.*

Comment—Taken from Illustration (21) of Draft Federal Rule 8–03.

JUDGMENT OF PREVIOUS CONVICTION.

SEC. 130. *1. Evidence of a final judgment, entered after trial or upon a plea of guilty, but not upon a plea of nolo contendere, adjudging a person guilty of a crime punishable by death or imprisonment in excess of 1 year, is not inadmissible under the hearsay rule to prove any fact essential to sustain the judgment.*

2. This section does not make admissible, when offered by the state in a criminal prosecution for purposes other than impeachment, a judgment against a person other than the accused.

3. The pendency of an appeal may be shown but does not affect admissibility.

Comment—Taken from Illustration (22) of Draft Federal Rule 8–03.

JUDGMENT AS TO PERSONAL, FAMILY OR GENERAL HISTORY, OR BOUNDARIES.

SEC. 131. *A judgment is not inadmissible under the hearsay rule as proof of matters of personal, family or general history, or boundaries,*

essential to the judgment, if the matters would be provable by evidence of reputation.

Comment—Taken from Illustration (23) of Draft Federal Rule 8–03.

HEARSAY EXCEPTIONS: DECLARANT UNAVAILABLE.

SEC. 132. *1. A statement is not excluded by the hearsay rule if:*

(a) Its nature and the special circumstances under which it was made offer strong assurances of accuracy; and

(b) The declarant is unavailable as a witness.

2. The provisions of sections 133 to 136, inclusive, of this act are illustrative and not restrictive of the exception provided by this section.

Comment—Adapted from Draft Federal Rule 8–04.

FORMER TESTIMONY.

SEC. 133. *Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of another proceeding, is not inadmissible under the hearsay rule if:*

1. The declarant is unavailable as a witness; and

2. If the proceeding was different, the party against whom the former testimony is offered was a party or is in privity with one of the former parties and the issues are substantially the same.

Comment—Altered from Illustration (1) of Draft Federal Rule 8–04 to preclude, for example, use against a second victim of a multiple accident of testimony elicited in a trial involving the first victim.

STATEMENT UNDER BELIEF OF IMPENDING DEATH.

SEC. 134. *A statement made by a declarant while believing that his death was imminent is not inadmissible under the hearsay rule if the declarant is unavailable as a witness.*

Comment—Taken from Illustration (3) of Draft Federal Rule 8–04.

STATEMENT AGAINST INTEREST.

SEC. 135. *1. A statement which at the time of its making:*

(a) Was so far contrary to the declarant's pecuniary or proprietary interest;

(b) So far tended to subject him to civil or criminal liability;

(c) So far tended to render invalid a claim by him against another; or

(d) So far tended to make him an object of hatred, ridicule or social disapproval,

that a reasonable man in his position would not have made the statement

unless he believed it to be true is not inadmissible under the hearsay rule if the declarant is unavailable as a witness.

2. This section does not make admissible a statement or confession offered against the accused in a criminal case, made by a codefendant or other person implicating both himself and the accused.

Comment—Taken from Illustration (4) of Draft Federal Rule 8–04.

STATEMENT OF PERSONAL OR FAMILY HISTORY.

SEC. 136. *1. A statement concerning the declarant's own birth, marriage, divorce, legitimacy, relationship by blood or marriage, ancestry or other similar fact of personal or family history is not inadmissible under the hearsay rule if the declarant is unavailable as a witness, even though declarant had no means of acquiring personal knowledge of the matter stated.*

2. A statement concerning the matters enumerated in subsection 1, and death also, of another person is not inadmissible under the hearsay rule if the declarant:

(a) Was related to the other by blood or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared; and

(b) Is unavailable as a witness.

Comment—Taken from Illustration (5) of Draft Federal Rule 8–04.

HEARSAY WITHIN HEARSAY.

SEC. 137. *Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms to an exception to the hearsay rule provided in this chapter.*

Comment—Taken from Draft Federal Rule 8–05.

ATTACKING AND SUPPORTING CREDIBILITY OF DECLARANT.

SEC. 138. *1. When a hearsay statement has been admitted in evidence, the credibility of the declarant may be attacked or supported by any evidence which would be admissible for those purposes if declarant had testified as a witness.*

2. Evidence of a statement or conduct by the declarant at any time, inconsistent with his hearsay statement, is not subject to any requirement that he have been afforded an opportunity to deny or explain.

Comment—Taken from Draft Federal Rule 8–06.

SEC. 139. Chapter 52 of NRS is hereby amended by adding thereto the provisions set forth as sections 140 to 170, inclusive, of this act.

AUTHENTICATION AND IDENTIFICATION

REQUIREMENT OF AUTHENTICATION OR IDENTIFICATION.

SEC. 140. *1. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence or other showing sufficient to support a finding that the matter in question is what its proponent claims.*

2. The provisions of sections 141 to 149, inclusive, of this act are illustrative and not restrictive examples of authentication or identification which conform to the requirements of this section.

3. Every authentication or identification is rebuttable by evidence or other showing sufficient to support a contrary finding.

Comment—Adapted from Draft Federal Rule 9–01. Subsection 3 is added to preclude any inference that the following examples, each legislatively declared to be sufficient, are thereby made conclusive.

TESTIMONY OF WITNESS WITH KNOWLEDGE.

SEC. 141. *The testimony of a witness is sufficient for authentication or identification if he has personal knowledge that a matter is what it is claimed to be.*

Comment—Taken from Illustration (1) of Draft Federal Rule 9–01.

NONEXPERT OPINION ON HANDWRITING.

SEC. 142. *Nonexpert opinion as to the genuineness of handwriting is sufficient for authentication or identification if it is based upon familiarity not acquired for purposes of the litigation.*

Comment—Taken from Illustration (2) of Draft Federal Rule 9–01.

COMPARISON BY TRIER OR EXPERT WITNESS.

SEC. 143. *Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated is sufficient for authentication.*

Comment—Taken from Illustration (3) of Draft Federal Rule 9–01.

DISTINCTIVE CHARACTERISTICS AND THE LIKE.

SEC. 144. *Appearance, contents, substance, internal patterns or other distinctive characteristics are sufficient for authentication when taken in conjunction with circumstances.*

Comment—Taken from Illustration (4) of Draft Federal Rule 9–01.

VOICE IDENTIFICATION.

SEC. 145. *A voice, whether heard firsthand or through mechanical or electronic transmission or recording, is sufficiently identified by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.*

Comment—Taken from Illustration (5) of Draft Federal Rule 9–01.

TELEPHONE CALLS.

SEC. 146. *A telephone conversation is sufficiently authenticated by evidence that a call was made to the number supplied by the telephone company for the person in question if:*

1. The call was to a place of business and the conversation related to business reasonably transacted over the telephone; or

2. Circumstances, including self-identification, show the person answering to be the one called.

Comment—Taken from Illustration (6) of Draft Federal Rule 9–01.

PUBLIC RECORDS OR REPORTS.

SEC. 147. *Evidence that:*

1. A writing authorized by law to be recorded or filed and in fact recorded or filed in a public office; or

2. A purported public record, report, statement or data compilation, in any form,

is from the public office where items of this nature are kept is sufficient to authenticate the writing, record, report, statement or compilation.

Comment—Taken from Illustration (7) of Draft Federal Rule 9–01.

ANCIENT DOCUMENTS OR DATA COMPILATIONS.

SEC. 148. *Evidence that a document or data compilation, in any form:*

1. Is in such condition as to create no suspicion concerning its authenticity;

2. Was in a place where it, if authentic, would likely be; and

3. Is at least 20 years old at the time it is offered,

is sufficient to authenticate the document or compilation.

Comment—Taken from Illustration (8) of Draft Federal Rule 9–01.

PROCESS OR SYSTEM.

SEC. 149. *Evidence describing a process or system used to produce a result and showing that the result is accurate is sufficient to authenticate the result.*

Comment—Taken from Illustration (9) of Draft Federal Rule 9–01.

PRESUMPTIONS OF AUTHENTICITY

FOREIGN PUBLIC DOCUMENTS.

SEC. 150. *1. A document purporting to be executed or attested in his official capacity by a person authorized by the laws of a foreign country to make the execution or attestation is presumed to be authentic if it is accompanied by a final certification as to the genuineness of the signature and official position:*

(a) Of the executing or attesting person; or

(b) Of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation.

2. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States.

3. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of an official document the court may, for good cause shown, order that it be treated as presumptively authentic without final certification or permit it to be evidenced by an attested summary with or without final certification.

Comment—Taken from subdivision (c) of Draft Federal Rule 9–02.

CERTIFIED COPIES OF PUBLIC RECORDS.

SEC. 151. *A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, is presumed to be authentic if it is certified as correct by the custodian or other person authorized to make the certification.*

Comment—Adapted from subdivision (d) of Draft Federal Rule 9–02. Inappropriate internal reference omitted.

OFFICIAL PUBLICATIONS.

SEC. 152. *Books, pamphlets or other publications purporting to be issued by public authority are presumed to be authentic.*

Comment—Taken from subdivision (e) of Draft Federal Rule 9–02.

NEWSPAPERS AND PERIODICALS.

SEC. 153. *Printed materials purporting to be newspapers or periodicals are presumed to be authentic.*

Comment—Taken from subdivision (f) of Draft Federal Rule 9–02.

TRADE INSCRIPTIONS AND THE LIKE.

SEC. 154. *Inscriptions, signs, tags or labels purporting to have been affixed in the course of business and indicating ownership, control or origin are presumed to be authentic.*

Comment—Taken from subdivision (g) of Draft Federal Rule 9–02.

ACKNOWLEDGED DOCUMENTS.

SEC. 155. *Documents accompanied by a certificate of acknowledgment of a notary public or other officer authorized by law to take acknowledgments are presumed to be authentic.*

Comment—Adapted from subdivision (h) of Draft Federal Rule 9–02. Reference to seals is omitted because (1) Nevada notaries use stamps and (2) justices of the peace, who may take acknowledgments, have no seals.

General Comment—Subdivisions (a) and (b) of Draft Federal Rule 9–02 are omitted from codification because they confer upon seals an evidentiary effect contrary to that intended by present NRS 50.040. Subdivisions (i) and (j) are not codified because their substance is provided by other statutes, particularly the Uniform Commercial Code.

SUBSCRIBING WITNESS' TESTIMONY UNNECESSARY.

SEC. 156. *The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.*

Comment—Taken from Draft Federal Rule 9–03.

CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

DEFINITIONS.

SEC. 157. *As used in sections 157 to 168, inclusive, of this act, unless the context otherwise requires, the words defined in sections 158 to 161, inclusive, of this act have the meanings ascribed to them in sections 158 to 161, inclusive, of this act.*

"DUPLICATE" DEFINED.

SEC. 158. *"Duplicate" means a counterpart produced:*

1. By the same impression as the original;
2. From the same matrix;
3. By means of photography, including enlargements and miniatures;
4. By mechanical or electronic rerecording;
5. By chemical reproduction; or
6. By other equivalent technique designed to insure an accurate reproduction of the original.

Comment—Taken from subdivision (d) of Draft Federal Rule 10–01.

"ORIGINAL" DEFINED.

SEC. 159. *1. An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it.*

2. An "original" of a photograph includes the negative or any print therefrom.

3. If data are stored in a computer or similar device, any printout or other output readable by sight, shown accurately to reflect the data, is an "original."

Comment—Taken from subdivision (c) of Draft Federal Rule 10–01.

"PHOTOGRAPHS" DEFINED.

SEC. 160. *"Photographs" include still photographs, X-rays and motion pictures.*

Comment—Taken from subdivision (b) of Draft Rule 10–01.

"WRITINGS" AND "RECORDINGS" DEFINED.

SEC. 161. *"Writings" and "recordings" consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.*

Comment—Taken from subdivision (a) of Draft Federal Rule 10–01.

REQUIREMENT OF ORIGINAL.

SEC. 162. *To prove the content of a writing, recording or photograph, the original writing, recording or photograph is required, except as otherwise provided in this Title.*

Comment—Taken from Draft Federal Rule 10–02.

ADMISSIBILITY OF DUPLICATES.

SEC. 163. *1. In addition to the situations governed by subsection 2, a duplicate is admissible to the same extent as an original unless:*

(a) A genuine question is raised as to the authenticity of the original; or

(b) In the circumstances it would be unfair to admit the duplicate in lieu of the original.

2. A duplicate is admissible to the same extent as an original if the person or office having custody of the original was authorized to destroy the original after preparing a duplicate, and in fact did so.

Comment—Taken from Draft Federal Rule 10–03, with the addition of subsection 2 to cover microfilming and the like.

ADMISSIBILITY OF OTHER EVIDENCE OF CONTENTS.

SEC. 164. *The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible, if:*

1. All originals are lost or have been destroyed, unless the loss or destruction resulted from the fraudulent act of the proponent.

2. No original can be obtained by any available judicial process or procedure.

3. At a time when an original was under the control of the party against whom offered, he was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and he does not produce the original at the hearing.

4. The writing, recording or photograph is not closely related to a controlling issue.

Comment—Taken from Draft Federal Rule 10–04.

PUBLIC RECORDS.

SEC. 165. *1. The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct by the custodian or other person authorized to make the certification or testified to be correct by a witness who has compared it with the original.*

2. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

Comment—Adapted from Draft Federal Rule 10–05. Conforms to section 151 of this draft bill.

SUMMARIES.

SEC. 166. *1. The contents of voluminous writings, recordings or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary or calculation.*

2. The originals shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The judge may order that the originals be produced in court.

Comment—Taken from Draft Federal Rule 10–06.

TESTIMONY OR WRITTEN ADMISSION OF PARTY.

SEC. 167. *Contents may be proved by the testimony or deposition of the party against whom offered or by his written admission, without accounting for the nonproduction of the original.*

Comment—Taken from Draft Federal Rule 10–07.

FUNCTIONS OF JUDGE AND JURY.

SEC. 168. *1. Except as otherwise provided in subsection 2, when the admissibility of other evidence of contents under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is for the judge to determine.*

2. When an issue is raised:

(a) Whether the asserted writing ever existed;

(b) Whether another writing, recording or photograph produced at the trial is the original; or

(c) Whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.

Comment—Taken from Draft Federal Rule 10–08.

EXECUTION OF WRITINGS

MARKS INSTEAD OF SIGNATURES; WITNESSES.

SEC. 169. *1. The signature of a party, when required to a written instrument, is equally valid if the party cannot write, if:*

(a) The person makes his mark;

(b) The name of the person making the mark is written near it; and

(c) The mark is witnessed by a person who writes his own name as a witness.

2. In order that a signature by mark may be acknowledged or may serve as the signature to any sworn statement, it must be witnessed by two persons who must subscribe their own names as witnesses thereto.

Comment—Transfers substance of NRS 50.030 to its proper place in new compilation and modernizes language.

SEAL UNNECESSARY TO GIVE INSTRUMENT LEGAL EFFECT.

SEC. 170. *The word "seal," and the initial letters "L. S.," and other words, letters or characters of like import, opposite the name of the signer of any instrument in writing, are unnecessary to give such instrument legal effect, and any omission to use them by the signer of any instrument does not impair the validity of such instrument.*

Comment—Transfers substance of NRS 50.040 to its proper place in new compilation.

SEC. 171. Chapter 53 of NRS is hereby amended by adding thereto the provisions set forth as sections 172 to 174, inclusive, of this act.

UNIFORM FOREIGN DEPOSITIONS ACT

SHORT TITLE.

SEC. 172. *Sections 172 to 174, inclusive, of this act may be cited as the Uniform Foreign Depositions Act.*

AUTHORITY TO ACT.

SEC. 173. *Whenever any mandate, writ or commission is issued out of any court of record in any other state, territory, district or foreign jurisdiction, or whenever upon notice or agreement it is required to take the testimony of a witness or witnesses in this state, witnesses may be compelled to appear and testify in the same manner and by the same process and proceeding as may be employed for the purpose of taking testimony in proceedings pending in this state.*

UNIFORMITY OF INTERPRETATION.

SEC. 174. *Sections 172 to 174, inclusive, of this act shall be so interpreted and construed as to effectuate their general purposes to make uniform the law of those states which enact them.*

Comment—Transfers NRS 48.260 to 48.280, inclusive, without substantive change to their proper place in the new codification.

SEC. 175. NRS 18.010 is hereby amended to read as follows:

18.010 1. The compensation of an attorney and counselor for his services is governed by agreement, express or implied, which is not restrained by law. From the commencement of an action, or the service of an answer containing a counterclaim, the attorney who appears for a party has a lien upon his client's cause of action or counterclaim which attaches to a verdict, report, decision or judgment in his client's favor and the proceeds thereof in whosesoever hands they may come, and cannot be affected by any settlement between the parties before or after judgment. There shall be allowed to the prevailing party in any action, or special proceeding in the nature of an action, in the supreme court and district courts, his costs and necessary disbursements in the action or special proceeding, including:

(a) Clerk's fees.

(b) Costs of depositions obtained by the prevailing party and used by him at the trial.

(c) Jury fees as provided in NRS 6.150.

(d) Witness fees [of witnesses] as provided in [NRS 48.290.] *section 92 of this act.*

2. The court may allow to the prevailing party the fees of expert witnesses in an amount not to exceed $250.

3. The court may make an allowance of attorney's fees to:

(a) The plaintiff as prevailing party when the plaintiff has not recovered more than $10,000; or

(b) The counterclaimant as prevailing party when he has not recovered more than $10,000; or

(c) The defendant as prevailing party when the plaintiff has not sought recovery in excess of $10,000.

Comment—Conforms internal reference to the new codification.

SEC. 176. Chapter 111 of NRS is hereby amended by adding thereto the provisions set forth as sections 177 and 178 of this act.

SEC. 177. *Any instrument affecting the title to real property, 3 years after the instrument has been copied into the proper book of record kept in the office of any county recorder, imparts notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission or informality in the execution of the instrument, or in the certificate of acknowledgment thereof, or the absence of any such certificate; but nothing herein affects the rights of purchasers or encumbrancers previous to March 27, 1935. When such copying in the proper book of record occurred within 5 years prior to the trial of an action, the instrument is not admissible in evidence unless it is first shown that the original instrument was genuine.*

Comment—Transfers special provision for effect of recording defective instrument to its proper place in NRS (cf. NRS 111.350, which is not amended because its significance is primarily historical).

SEC. 178. *In the case of real property owned by two or more persons as joint tenants, it is presumed that all title or interest in and to such real property of each of one or more deceased joint tenants has terminated, and vested solely in the surviving joint tenant or vested jointly in the surviving joint tenants, if there has been recorded in the office of the recorder of the county or counties in which such real property is situate an affidavit, subscribed and sworn to by a person who has knowledge of the hereinafter required facts, which sets forth the following:*

1. The family relationship, if any, of affiant to each of such one or more deceased joint tenants;

2. A description of the instrument or conveyance by which the joint tenancy was created;

3. A description of the real property subject to such joint tenancy; and

4. The date and place of death of each of such one or more deceased joint tenants.

Comment—Transfers to its proper place in the law governing property rights and transactions the specialized presumption created by subsection 32 of NRS 52.070 to facilitate the establishment of title in a surviving joint tenant.

SEC. 179. NRS 126.180 is hereby amended to read as follows:

126.180 [1.] The trial shall be by jury, if either party demands a jury, otherwise by the court, and shall be conducted as in other civil cases.

[2. Both the mother and the alleged father shall be competent but not compellable to give evidence, and if either gives evidence he or she shall be subject to cross-examination.]

Comment—Deletes testimonial privilege in bastardy proceedings inconsistent with sections 28, 58 and 59 of this draft bill.

SEC. 180. NRS 126.200 is hereby amended to read as follows:

126.200 If after the complaint the mother dies or becomes insane or cannot be found within the jurisdiction, the proceeding does not abate, but the child shall be substituted as complainant. [The testimony of the mother taken at the preliminary hearing, and her deposition taken as in other civil cases, may in any such case be read in evidence and in all cases shall be read in evidence, if demanded by the defendant.]

Comment—Deletes provision duplicative of section 133 of this draft bill.

SEC. 181. NRS 175.221 is hereby amended to read as follows:

175.221 1. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by statute.

2. The admissibility of evidence and the competency and privileges of witnesses shall be governed [, except when otherwise provided by statute, by] *by:*

(a) The general provisions of Title 4 of NRS;

(b) The specific provisions of any other applicable statute; and

(c) Where no statute applies, the principles of the common law as they may be interpreted by the courts of the State of Nevada in the light of reason and experience.

Comment—Conforms this criminal procedure provision to recognize the new codification.

SEC. 182. NRS 200.506 is hereby amended to read as follows:

200.506 In any proceeding resulting from a report made or action taken pursuant to the provisions of NRS 200.502, 200.503 and 200.504 or in any proceeding where such report or the contents thereof is sought to be introduced in evidence, such report or contents or any other fact or facts related thereto or to the condition of the child who is the subject of the report shall not be excluded on the ground that the matter [is or may be the subject of confidentiality or similar privilege or rule against disclosure, notwithstanding the provisions of NRS 48.080 or any other law or rule of evidence concerning confidential communications.] *would otherwise be privileged against disclosure under chapter 49 of NRS.*

Comment—Conforms "battered child" exception to testimonial privileges to new codification.

SEC. 183. NRS 233B.040 is hereby amended to read as follows:

233B.040 Unless otherwise provided by law, each agency may adopt reasonable regulations to aid it in carrying out the functions assigned to it by law and shall adopt such regulations as are necessary to the proper execution of those functions. If adopted and filed in accordance with the provisions of this chapter, such regulations shall have the force of law and be enforced by all peace officers. In every instance, the power to adopt regulations to carry out a particular function is limited by the terms of the grant of authority under which the function was assigned. [The courts shall take judicial notice of every regulation duly adopted and filed under the provisions of NRS 233B.060 and 233B.070 from the effective date of such regulation.]

SEC. 184. NRS 244.118 is hereby amended to read as follows:

244.118 Two copies of the county code shall be filed with the librarian of the Nevada state library after such code becomes effective. [, and

thereafter in all civil actions and in all prosecutions for the violation of any of the provisions of such county code, whether in a court of original jurisdiction or in any appellate court, it shall not be necessary to plead or prove the contents of the code, but the court shall take judicial notice of the contents of such code.]

Comment—See comment following section 188.

SEC. 185. NRS 247.120 is hereby amended to read as follows:

247.120 1. Each county recorder must, upon the payment of the statutory fees for the same, record separately, in a fair hand, or typewriting, or by filing or inserting a microfilm picture or photostatic copy thereof, the following specified instruments in large, well-bound separate books, either sewed or of insertable leaves which when placed in the book cannot be removed:

(a) Deeds, grants, *patents issued by the State of Nevada or by the United States,* transfers and mortgages of real estate, releases of mortgages of real estate, powers of attorney to convey real estate, and leases of real estate which have been acknowledged or proved.

(b) Certificates of marriage and marriage contracts.

(c) Wills admitted to probate.

(d) Official bonds.

(e) Notice of mechanics' liens.

(f) Transcripts of judgments, which by law are made liens upon real estate in this state.

(g) Notices of attachment upon real estate.

(h) Notices of the pendency of an action affecting real estate, the title thereto, or the possession thereof.

(i) Instruments describing or relating to the separate property of married women.

(j) Notice of preemption claims.

(k) Births and deaths.

(l) Notices and certificates of location of mining claims.

(m) Affidavits or proof of annual labor on mining claims.

(n) Certificates of sale.

(o) Judgments or decrees.

(p) Declarations of homesteads.

(q) Such other writings as are required or permitted by law to be recorded.

2. Each of the instruments named in paragraph (a) of subsection 1 may be recorded in separate books in the discretion of the county recorder.

3. Before accepting for recording any instrument enumerated in subsection 1, the county recorder may require a copy suitable for recording by photographic or photostatic methods. Where any rights might be adversely affected because of delay in recording caused by such a requirement, the county recorder shall accept the instrument conditionally subject to submission of a suitable copy at a later date. The provisions of this subsection do not apply where it is impossible or impracticable to submit a more suitable copy.

Comment—Transfers to this section the only provision of present NRS 49.100 not covered by other sections of the draft Evidence Code.

SEC. 186. NRS 266.115 is hereby amended to read as follows:

266.115 1. The style of ordinances shall be as follows: "The City Council of the City of ..... do ordain." All proposed ordinances, when first proposed, shall be read by title to the city council and may be referred to a committee of any number of the members of the council for consideration, after which at least one copy of the ordinance shall be filed with the city clerk for public examination. Notice of such filing shall be published once in a newspaper published in the city, if any there be, otherwise in some newspaper published in the county and having a general circulation in the city, at least 1 week prior to the adoption of the ordinance. The city council shall adopt or reject the ordinance, or the ordinance as amended, within 30 days from the date of such publication, except that in cases of emergency, by unanimous consent of the whole council, final action may be taken immediately or at a special meeting called for that purpose.

2. At the next regular or adjourned meeting of the council following the proposal of an ordinance and its reference to committee, the committee shall report the ordinance back to the council, and thereafter it shall be read in full as first introduced, or if amended, as amended, and thereupon the proposed ordinance shall be finally voted upon or action thereon postponed.

3. After final adoption the ordinance shall be signed by the mayor, and, together with the votes cast thereon, shall be published once in a newspaper published in the city, if any there be, otherwise in some newspaper published in the county and having a general circulation in the city. Twenty days after such publication the same shall go into effect, except emergency ordinances which may be effective immediately.

[4. In all prosecutions for the violation of any of the provisions of any city ordinance, rule, resolution, or other regulation of the city council, whether in a court of original jurisdiction or in any appellate court, it shall not be necessary to plead the contents of the same, but the court before which the proceedings may be pending shall take judicial notice of such ordinance, rule, resolution, or other regulation, and of the contents thereof. In all civil actions it shall not be necessary to plead the contents of any ordinance, rule, resolution, or other regulation of the city council, but the same may be pleaded by title, and may be proved prima facie by the introduction of the original entry thereof on the records of the city council, or a copy thereof certified by the city clerk to be a full, true and correct copy of the original entry, or by the introduction of a printed copy published or purported to have been published by authority of the city council.]

SEC. 187. NRS 266.160 is hereby amended to read as follows:

266.160 1. The city council shall have the power to codify and publish a code of its municipal ordinances in the form of a municipal code, which code may, at the election of the council, have incorporated therein a copy of this chapter and such additional data as the council may prescribe. When such a publication is published, two copies shall be filed with the librarian of the Nevada state library. [, and thereafter the same shall be received in all courts of this state as an authorized compilation of the municipal ordinances of the city.]

2. The ordinances in the code shall be arranged in appropriate

chapters, articles and sections, excluding the titles, enacting clauses, signature of the mayor, attestations and other formal parts.

3. The codification shall be adopted by an ordinance which shall not contain any substantive changes, modifications or alterations of existing ordinances and the only title necessary for the ordinance shall be "An ordinance for codifying and compiling the general ordinances of the City of ....."

4. The codification may, by ordinance regularly passed, adopted and published, be amended or extended.

SEC. 188. NRS 269.168 is hereby amended to read as follows:

269.168 Two copies of the town code shall be filed with the librarian of the Nevada state library after such code becomes effective. [, and thereafter in all civil actions and in all prosecutions for the violation of any of the provisions of such town code, whether in a court of original jursdiction or in any appellate court, it shall not be necessary to plead or prove the contents of the code, but the court shall take judicial notice of the contents of such code.]

Comment—Sections 183, 184, 186, 187 and 188, delete provisions for judicial notice which are duplicative of section 14 of this draft bill.

SEC. 189. NRS 321.060 is hereby amended to read as follows:

321.060 1. The state land register is authorized to provide and use a seal for the state land office.

2. The impression of the seal of the state land office upon the original or copy of any paper, plat, map or document emanating from the state land office shall impart verity to the [same, and such paper, plat, map or document bearing the impression of such seal shall be admitted as evidence in any court in this state.] *document so impressed.*

SEC. 190. NRS 340.150 is hereby amended to read as follows:

340.150 Upon the rendition of the final judgment vesting title in the petitioner, the clerk of the court shall make and certify, under the seal of the court, a copy or copies of such judgment, which shall be filed or recorded in the proper county office or offices for the recording of documents pertaining to the real property described therein, and such filing or recording shall constitute notice to all persons of the contents thereof. [A copy of the judgment certified by the clerk of the court as aforesaid shall be competent and admissible evidence in any proceedings at law or in equity.]

SEC. 191. NRS 412.052 is hereby amended to read as follows:

412.052 The adjutant general shall:

1. Supervise the preparation and submission of all such returns and reports pertaining to the militia of the state as may be required by the United States.

2. Be the channel of official military correspondence with the governor, and shall, on or before November 1 of each even-numbered year, make a report to the governor of the transactions, expenditures and condition of the Nevada National Guard. The report shall include the report of the United States Property and Fiscal Officer.

3. Be the custodian of records of officers and enlisted men and all other records and papers required by law or regulations to be filed in his office. He may deposit with the division of archives in the office of the

secretary of state for safekeeping in the secretary of state's official custody records of his office that are used for historical purposes rather than the administrative purposes assigned to his office by law.

4. Attest all military commissions issued and keep a roll of all commissioned officers, with dates of commission and all changes occurring in the commissioned forces.

5. Record, authenticate and communicate to troops and individuals of the militia all orders, instructions and regulations.

6. Cause to be procured, printed and circulated to those concerned all books, blank forms, laws, regulations or other publications governing the militia needful to the proper administration, operation and training thereof or to carry into effect the provisions of this chapter.

7. Have an appropriate seal of office and affix its impression to all certificates of record issued from his office. [, which shall be received in evidence in all cases.]

8. Render such professional aid and assistance and perform such military duties, not otherwise assigned, as may be ordered by the governor.

9. In time of peace, perform the duties of quartermaster general and chief of ordnance.

Comment—Sections 189 to 191, inclusive, delete provisions for authentications and admissibility of public records which are duplicative of sections 147, 151 and 165 of this draft bill.

SEC. 192. NRS 412.154 is hereby amended to read as follows:

412.154 1. Members of the Nevada National Guard ordered into active service of the state pursuant to this chapter are not liable civilly or criminally for any act or acts done by them in the performance of their duty. When an action or proceeding of any nature is commenced in any court by any person against any officer of the militia for any act done by him in his official capacity in the discharge of any duty under this chapter, or an alleged omission by him to do an act which it was his duty to perform, or against any person acting under the authority or order of such officer, or by virtue of any warrant issued by him pursuant to law, the defendant:

(a) May have counsel of his own selection; or

(b) Shall be defended by the attorney general in civil actions and by the state judge advocate in criminal actions; and

(c) May require the person instituting or prosecuting the action or proceeding to file security for the payment of costs that may be awarded to the defendant therein. [; and

(d) In all cases may make a general denial and give the special matter in evidence.]

2. A defendant in whose favor a final judgment is rendered in an action or a final order is made in a special proceeding shall recover his costs.

3. No member of the Nevada National Guard shall be arrested on any civil process while going to, remaining at, or returning from any place at which he may be required to attend for military duty.

Comment—Deletes provision which conflicts with N.R.C.P. 8(c) and 9(d).

SEC. 193. Chapter 426 of NRS is hereby amended by adding thereto a new section which shall read as follows:

The failure of a totally or partially blind person to carry a white or metallic colored cane or to use a guide dog does not constitute contributory negligence per se, but may be admissible as evidence of contributory negligence in a personal injury action by such a blind person against a common carrier or any other means of public conveyance or transportation or a place of public accommodation as defined by NRS 651.050 when the injury arises from such blind person's making use of the facilities or services offered by such carrier or place of public accommodation.

Comment—Transfers, without substantive change, new section added to chapter 52 of NRS by Stats. 1969, page 586, to its proper place in NRS as a special provision for the blind referring only secondarily to evidence.

SEC. 194. NRS 439.200 is hereby amended to read as follows:

439.200 1. The state board of health shall have the power by affirmative vote of a majority of its members to adopt, promulgate, amend and enforce reasonable rules and regulations consistent with law:

(a) To define and control dangerous communicable diseases.

(b) To prevent and control nuisances.

(c) To regulate sanitation and sanitary practices in the interests of the public health.

(d) To provide for the sanitary protection of water and food supplies and the control of sewage disposal.

(e) To govern and define the powers and duties of local boards of health and health officers.

(f) To protect and promote the public health generally.

(g) To carry out all other purposes of this chapter.

2. Such rules and regulations shall have the force and effect of law and shall supersede all local ordinances and regulations heretofore or hereafter enacted inconsistent therewith.

3. A copy of every rule and regulation adopted by the state board of health and every rule and regulation approved by such board pursuant to NRS 439.350 and 439.460, showing the date that any such rules and regulations take effect, shall be filed with the secretary of state, and copies of such rules and regulations shall be published immediately after adoption and issued in pamphlet form for distribution to local health officers and the citizens of the state.

[4. A certified copy of any rules or regulations specified in subsection 3 shall be received by all courts and administrative hearing bodies in this state as prima facie evidence of such rules and regulations.]

SEC. 195. NRS 440.165 is hereby amended to read as follows:

440.165 To preserve original documents, the state registrar is authorized to prepare typewritten, photographic or other reproductions of original records and files in his office. [Such reproductions when certified by him shall be accepted as the original record.]

Comment—Sections 194 and 195 delete provisions for the evidentiary effect of copies of public records which conflict with sections 147, 162 and 163 of this draft bill.

SEC. 196. Chapter 452 of NRS is hereby amended by adding thereto a new section which shall read as follows:

The uninterrupted use by the public of land for a burial ground for 5 years, with the consent of the owner and without a reservation of his rights, is presumptive evidence of his intention to dedicate it to the public for that purpose.

Comment—Transfers to its proper place in NRS the specialized presumption concerning cemeteries established by subsection 31 of NRS 52.070.

SEC. 197. NRS 453.180 is hereby amended to read as follows:

453.180 1. No person shall obtain or attempt to obtain a narcotic drug, or procure or attempt to procure the administration of a narcotic drug:

(a) By fraud, deceit, misrepresentation, or subterfuge; or

(b) By the forgery or alteration of a prescription or of any written order; or

(c) By the concealment of a material fact; or

(d) By the use of a false name or the giving of a false address.

2. [Information communicated to a physician in an effort unlawfully to procure a narcotic drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

3.] No person shall willfully make a false statement in any prescription, order, report, or record, required by NRS 453.010 to 453.240, inclusive.

[4.] *3.* No person shall, for the purpose of obtaining a narcotic drug, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person.

[5.] *4.* No person shall make or utter any false or forged prescription or false or forged written order.

[6.] *5.* No person shall affix any false or forged label to a package or receptacle containing narcotic drugs.

[7.] *6.* The provisions of this section shall apply to all transactions relating to narcotic drugs under the provisions of NRS 453.090, in the same way as they apply to transactions under all other sections.

SEC. 198. NRS 454.532 is hereby amended to read as follows:

454.532 1. It is unlawful for any person to obtain or attempt to obtain a dangerous or hallucinogenic drug, or procure or attempt to procure the administration of a dangerous or hallucinogenic drug:

(a) By fraud, deceit, misrepresentation or subterfuge;

(b) By the forgery or alteration of a prescription or of any written order;

(c) By the concealment of a material fact; or

(d) By the use of a false name or the giving of a false address.

2. [Information communicated to a physician in an effort unlawfully to procure a dangerous or hallucinogenic drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

3.] It is unlawful for any person to make a false statement in any prescription, order, report or record required by NRS 454.180 to 454.460, inclusive.

[4.] *3.* It is unlawful, for the purpose of obtaining a dangerous or hallucinogenic drug, for any person falsely to assume the title of, or represent himself to be, a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian or other authorized person.

[5.] *4.* It is unlawful to affix any false or forged label to a package or receptacle containing dangerous or hallucinogenic drugs.

Comment—Sections 197 and 198 delete provisions transferred to section 53 of this draft bill.

SEC. 199. NRS 485.300 is hereby amended to read as follows:

485.300 [Neither the] *The* report required by NRS 485.150 to 485.180, inclusive, the action taken by the division pursuant to NRS 485.150 to 485.300, inclusive, the findings, if any, of the division upon which such action is based, [nor] *and* the security filed as provided in NRS 485.150 to 485.300, inclusive, [shall be referred to in any way, nor be any evidence of the negligence or due care of either party,] *are privileged against disclosure* at the trial of any action at law to recover damages.

Comment—Conforms language prohibiting use of motorists' financial responsibility information in civil suits to language of section 40 of this draft bill, without change of intended result.

SEC. 200. NRS 517.320 is hereby amended to read as follows:

517.320 1. In every mining district in this state in which the seat of government of any county is situated, the county recorder of that county shall be ex officio mining district recorder, subject, in the discharge of his duties, to such rules, regulations and compensation as may be prescribed by the mining laws of the mining districts to which this section is applicable. He shall, as such ex officio mining district recorder, be responsible on his official bond for the faithful performance of the duties of his office and the correct and safekeeping of all the records thereof, and the correct and safekeeping of the copies of all the records mentioned and referred to in subsection 2.

2. Each mining district recorder of the several mining districts in the state shall, on or before the 1st Monday in January, April, July and October in each year, transcribe into a suitable book or books, to be provided for that purpose, and shall deposit and file with the county recorders of the respective counties in which such mining districts are located a full, true and correct copy of the mining records of the respective mining districts for the 3 months next preceding the 1st Monday in January, April, July and October, duly certified under oath. This section shall not apply to the mining district recorder created by subsection 1.

3. There shall be provided by the boards of county commissioners of the several counties and furnished to each mining district recorder, on his application, suitable books, into which the mining records mentioned in subsection 2 shall be transcribed.

4. The several mining district recorders shall receive, for services required by subsection 2, $1 for the transcript of each claim, including the oath, which shall be paid at the time of recording by the persons making the locations.

5. [The certified copies of the mining records certified to be deposited

and filed as provided in this section shall be received in evidence and shall have the same force and effect in all courts as the originals.

6.] Any person neglecting or refusing to comply with the provisions of subsection 2 shall be guilty of a misdemeanor.

SEC. 201. NRS 517.330 is hereby amended to read as follows:

517.330 1. Each mining district recorder of the several mining districts shall require all persons locating and recording a mining claim to make a duplicate copy of each mining notice, which copy the mining district recorder shall carefully compare with the original and mark "duplicate" on its face or margin. He shall immediately deposit with or transmit the same to the county recorders of the respective counties in which the mining district may be located.

2. At the time of comparing the duplicate notices with the original, the mining district recorders shall collect from the locators of the mining claims the sum of $1 for each notice compared, which sum he shall transmit, together with the duplicate notices, to the county recorders of the respective counties in which the mining claims shall be located.

3. Whenever, owing to the distance of the mining district from the county seat, it becomes inconvenient for the mining district recorder personally to deposit the duplicate copy with the county recorder, he may forward the same by mail or express or such other manner as will insure safe transit and delivery to the county recorder.

4. The county recorders of the several counties shall receive for their services in recording each of the duplicate notices mentioned in subsection 2 the sum of $1. If the location is made outside of an organized mining district, or in the absence of a mining district recorder in any organized mining district, the person or persons making such location shall, within 90 days after making the location, transmit a duplicate copy of such notice to the county recorder of the county in which the location is made and the county recorder shall record the same for a fee of $1.

5. [The record of any original or duplicate notice of the location of a mining claim in the office of the county recorder as provided in this section shall be received in evidence and have the same force and effect in the courts of this state as the original mining district records.

6.] Any person neglecting or refusing to comply with the provisions of this section shall be guilty of a misdemeanor.

SEC. 202. NRS 517.350 is hereby amended to read as follows:

517.350 [1.] All instruments of writing relating to mining claims copied into books of mining records or other records in the office of the county recorders of the several counties prior to February 20, 1873, shall, after February 20, 1873, be deemed to impart to subsequent purchasers and encumbrancers and all other persons whomsoever notice of the contents thereof. Nothing contained in this subsection shall be construed to affect any rights acquired or vested prior to February 20, 1873.

[2. Copies of the records of all such instruments mentioned in subsection 1, duly certified by the county recorder in whose custody such records are, may be read in evidence under the same circumstances and rules as are provided by law for using copies of instruments relating to mining claims or real property, duly executed or acknowledged, or proved and recorded.]

Comment—Sections 200 to 202, inclusive, delete provisions for evidentiary effect of copies which are duplicative of sections 151 and 165 of this draft bill.

SEC. 203. NRS 616.170 is hereby amended to read as follows:

616.170 1. The commission shall have a seal upon which shall be inscribed the words "Nevada Industrial Commission—State of Nevada."

2. The seal shall be fixed to all orders, proceedings, and copies thereof, and to such other instruments as the commission may direct.

[3. All courts shall take judicial notice of the seal, and any copy of any record or proceeding of the commission certified under the seal shall be received in all courts as evidence of the original thereof.]

SEC. 204. NRS 618.160 is hereby amended to read as follows:

618.160 [1.] The department of industrial safety shall have a seal upon which will be the words "Department of Industrial Safety," by which seal it shall authenticate its proceedings and orders.

[2. All papers made under such seal shall be admitted in evidence without further authentication or proof.]

SEC. 205. NRS 642.060 is hereby amended to read as follows:

642.060 1. The members of the board shall have power to adopt such regulations for the transaction of business of the board and management of its affairs as they may deem expedient.

2. The board is authorized to adopt and use a common seal. [Any description of any matter of evidence in the office of the board with the certificate of the secretary thereon attached, under the seal of the board, shall be competent evidence of such matter of record in any court in this state.]

SEC. 206. NRS 673.039 is hereby amended to read as follows:

673.039 1. The savings and loan division may adopt and amend, from time to time, regulations for the orderly conduct of its affairs.

2. The savings and loan division shall:

(a) Have a seal. [which shall be judicially noticed.]

(b) Keep, in the office of the commissioner, records of its proceedings. [In any proceeding in court, civil or criminal, arising out of or founded upon any provision of this chapter, copies of such records certified as correct under the seal of the division shall be admissible in evidence as tending to prove the contents of such records.]

Comment—Sections 203 to 206, inclusive, delete provisions requiring the use of certain official seals for evidentiary purposes which are inconsistent with section 151 of this draft bill and the refusal to adopt Draft Federal Rule 9-02 (a) and (b).

SEC. 207. NRS 680.150 is hereby amended to read as follows:

680.150 1. The commissioner shall have the rights, powers and duties appertaining to the enforcement and execution of all the insurance laws of this state.

2. In addition to the other duties imposed upon him by law, the powers and duties of the commissioner shall be:

(a) To make reasonable rules and regulations as may be necessary for making effective such insurance laws; but nothing in this Title shall be deemed to empower the commissioner, by any rule or regulation, or by an administrative act, to differentiate between persons entitled to act as insurance agents in the State of Nevada on the basis that such persons are engaged in other businesses to which their insurance agency is incidental or supplemental.

(b) To conduct such investigations as may be necessary to determine

whether any person or company has violated any provision of the insurance laws.

(c) To conduct such examinations, investigations and hearings, in addition to those specifically provided for by law, as may be necessary and proper for the efficient administration of the insurance laws of this state.

(d) To classify as confidential certain records and information obtained by the insurance division [when the same] *which* are confidential communications as defined in chapter [48] *49* of NRS, or obtained from a governmental agency upon the express condition that [the same] *they* shall remain confidential.

Comment—Conforms internal reference to the new codification.

SEC. 208. NRS 688.405 is hereby amended to read as follows:

688.405 1. Every society authorized to do business in this state shall appoint in writing the commissioner and each successor in office to be its true and lawful attorney upon whom all lawful process in any action or proceeding against it shall be served, and shall agree in such writing that any lawful process against it which is served on such attorney shall be of the same legal force and validity as if served upon the society, and that the authority shall continue in force so long as any liability remains outstanding in this state. [Copies of such appointment, certified by the commissioner, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted.]

2. Service shall be made only upon the commissioner, or if absent, upon the person in charge of his office. It shall be made in duplicate and shall constitute sufficient service upon the society. When legal process against a society is served upon the commissioner, he shall forthwith forward one of the duplicate copies by registered mail, prepaid, directed to the secretary or corresponding officer.

3. No such service shall require a society to file its answer, pleading or defense in less than 30 days from the date of mailing the copy of the service to a society.

4. Legal process shall not be served upon a society except in the manner herein provided.

5. At the time of serving any process upon the commissioner, the plaintiff or complainant in the action shall pay to the commissioner a fee of $2.

Comment—Deletes provision for evidentiary effect of copies which is duplicative of sections 151 and 165 of this draft bill.

SEC. 209. NRS 15.020, 41.490, 47.010, 48.010 to 48.320, inclusive, 49.010 to 49.100, inclusive, 50.010 to 50.040, inclusive, 51.010 to 51.070, inclusive, 52.010 to 52.080, inclusive, 111.335, 174.355, 175.231, 175.281, 239.060, 239.115, 240.090, 266.065, 266.485, 433.731, 441.270, 441.310, 454.445 and 639.237 are hereby repealed.

SEC. 210. Section 27.5 of the charter of the City of Caliente, being chapter 289, Statutes of Nevada 1957, at page 422, is hereby amended to read as follows:

Section 27.5 Ordinances, How Enacted. The style of ordinances shall be as follows: "The city council of the City of Caliente do ordain,"

and all proposed ordinances when first proposed, shall be read by title to the city council and may be referred to a committee of any number of the members of the council for consideration, after which at least one copy of the ordinance shall be filed with the city clerk for public examination, and notice of such filing shall be published once in a newspaper published in the city, if any there be, otherwise in some newspaper published in the county and having a general circulation in such city, at least 1 week prior to the adoption of the ordinance, and the council shall adopt or reject the ordinance, or the ordinance as amended, within 30 days from the date of such publication, except that in cases of emergency, by unanimous consent of the whole council, such final action may be taken immediately or at a special meeting called for that purpose. At the next regular or adjourned meeting of the council following the proposal of an ordinance and its reference to committee, such committee shall report such ordinance back to the council, and thereafter it shall be read in full as first introduced, or if amended, as amended, and thereupon the proposed ordinance shall be finally voted or action thereon postponed. After final adoption the ordinance shall be signed by the mayor, and, together with the votes cast thereon, be published once in a newspaper published in the city, if any there be, otherwise in some newspaper published in the county and having a general circulation in such city, 20 days after such publication the same shall go into effect except emergency ordinances which may be effective immediately. [In all prosecutions for the violation of any of the provisions of any city ordinance, rule, resolution, or other regulation of the city council, whether in the court of original jurisdiction or in any appellate court, it shall not be necessary to plead the contents of the same, but the court before which the proceedings may be pending shall take judicial notice of such ordinance, rule, resolution or other regulation, and of the contents thereof, and in all civil actions it shall not be necessary to plead the contents of any ordinance, rule, resolution, or other regulation of the city council, but the same may be pleaded by title, and may be proved prima facie by the introduction of the original entry thereon on the records of the city council, or a copy thereof certified by the city clerk to be a full, true, and correct copy of such original entry, or by the introduction of a printed copy published or purported to have been published by authority of the city council.]

SEC. 211. Section 29 of the charter of the City of Caliente, being chapter 289, Statutes of Nevada 1957, at page 423, is hereby amended to read as follows:

Section 29. Ordinances, Municipal Code. The city council shall have the power to codify and publish a code of its municipal ordinances in the form of a municipal code which code may, at the election of the council, have incorporated therein a copy of this act and such additional data as the council may prescribe. When such a publication is published, two copies shall be filed with the librarian of the law library of the State of Nevada. [, and thereafter the same shall be received in all courts of this state as an authorized compilation of the municipal ordinances of the city.] The ordinances in such code shall be arranged in appropriate chapters, articles and sections, excluding the titles, enacting clauses, signatures of mayor, attestations and other formal parts. Such codification shall be adopted by an ordinance which shall not contain any substantive changes, modifications or alterations of existing ordinances and

the only title necessary for such ordinance shall be "An ordinance for codifying and compiling the general ordinances of the City of Caliente." Such codification may, by ordinance regularly passed, adopted and published, be amended or extended.

SEC. 212. Section 2.110 of the charter of Carson City, being chapter 213, Statutes of Nevada 1969, at page 296, is hereby amended to read as follows:

Section 2.110 Ordinances: Enactment procedure; emergency ordinances.

1. All proposed ordinances when first proposed shall be read to the board by title and referred to a committee for consideration, after which an adequate number of copies of the proposed ordinance shall be filed with the clerk for public distribution. Except as otherwise provided in subsection 3, notice of such filing shall be published once in a newspaper qualified pursuant to the provisions of chapter 238 of NRS and published in Carson City at least 1 week prior to the adoption of the ordinance. The board shall adopt or reject the ordinance or an amendment thereto, within 30 days from the date of such publication.

2. At the next regular meeting or adjourned meeting of the board following the proposal of an ordinance and its reference to committee, such committee shall report such ordinance back to the board. Thereafter, it shall be read as first introduced, or as amended, and thereupon the proposed ordinance shall be finally voted upon or action thereon postponed.

3. In cases of emergency or where the ordinance is of a kind specified in section 7.030, by unanimous consent of the board, final action may be taken immediately or at a special meeting called for that purpose, and no notice of the filing of copies of the proposed ordinance with the clerk need be published.

4. All ordinances shall be signed by the mayor, attested by the clerk, and shall be published by title, together with the names of the supervisors voting for or against passage, in a newspaper qualified pursuant to the provisions of chapter 238 of NRS and published in Carson City for at least one publication, before the ordinance shall become effective. The board may, by majority vote, order the publication of the ordinance in full in lieu of publication by title only.

5. The clerk shall record all ordinances in a book kept for that purpose together with the affidavits of publication by the publisher. [; and the book or a certified copy of the ordinances therein recorded, under the seal of the city, shall be received as prima facie evidence in all courts and places without further proof or, if published in book or pamphlet form by authority of the board, they shall be so received.]

SEC. 213. Section 2.120 of the charter of Carson City, being chapter 213, Statutes of Nevada 1969, at page 297, is hereby amended to read as follows:

Section 2.120 Codification of ordinances; publication of code.

1. The board may codify and publish a code of its municipal ordinances in the form of a municipal code, which code may, at the election of the board, have incorporated therein a copy of this charter and such additional data as the board may prescribe. When such a code is published, two copies shall be filed with the librarian of the Nevada state library. [, and thereafter the code shall be received in all courts of this

state as an authorized compilation of the municipal ordinances of Carson City.]

2. The ordinances in the code shall be arranged in appropriate chapters, articles and sections, excluding the titles, enacting clauses, signature of the mayor, attestations and other formal parts.

3. The codification shall be adopted by an ordinance, which shall not contain any substantive changes, modifications or alterations of existing ordinances; and the only title necessary for the ordinance shall be "An ordinance for codifying and compiling the general ordinances of Carson City."

4. The codification may be amended or extended by ordinance.

SEC. 214. Section 29 of chapter II of the charter of the City of Elko, being chapter 417, Statutes of Nevada 1965, as amended by chapter 186, Statutes of Nevada 1967, at page 384, is hereby amended to read as follows:

Section 29. Ordinances when first proposed shall be read aloud in full to the board of supervisors, and final action thereon shall be deferred until the next regular meeting of the board, of which action notice shall be given by publication in a newspaper at least once and at least one week prior to the meeting at which such final action is to be taken, which notice shall state briefly, by reference to the title of the proposed ordinance or by reference to the purpose or content thereof, the nature of such proposed ordinance; provided, however, that in cases of emergency, by unanimous consent of the whole board, such special action may be taken immediately or at a special meeting called for that purpose. No ordinance shall be passed as an emergency measure unless reasons for passing it as such are expressed in its preamble.

No ordinance passed by the board, unless it be an emergency measure, shall go into effect until thirty days, after its passage.

All ordinances shall be signed by the mayor and attested by the city clerk and be published once in full, together with the names of the supervisors voting for or against their passage, in a newspaper published in such city, if any there be; otherwise some newspaper published in the county and having a general circulation in such city, for the period of at least one week before the same shall go into effect. The city clerk shall record all ordinances in a book kept for that purpose, together with the affidavits of publication by the publisher. [, and said book or certified copy of the ordinances therein recorded, in the name of the city, shall be received as prima facie evidence in all courts and places without further proof, or if published in book or pamphlet forms by the authority of the said board of supervisors, they shall be so received.] All ordinances heretofore adopted or amended, unless previously repealed, are hereby declared valid and in full force and effect.

SEC. 215. Section 29.5 of chapter II of the charter of the City of Elko, being chapter 417, Statutes of Nevada 1965, at page 1110, is hereby amended to read as follows:

Section 29.5. 1. The board of supervisors shall have the power to codify and publish a code of its municipal ordinances in the form of a municipal code, which code may, at the election of the board of supervisors, have incorporated therein a copy of this charter and such additional data as the board of supervisors may prescribe. When such a publication is published, two copies shall be filed with the librarian of the

Nevada state library. [, and thereafter the same shall be received in all courts of the state as an authorized compilation of the municipal ordinances of the city.]

2. The ordinances in the code shall be arranged in appropriate chapters, articles and sections, excluding the titles, enacting clauses, signature of the mayor, attestations and other formal parts.

3. The codification shall be adopted by an ordinance which shall not contain any substantive changes, modifications or alterations of existing ordinances, and the only title necessary for the ordinance shall be "An ordinance for codifying and compiling the general ordinances of the City of Elko."

4. The codification may, by ordinance regularly passed, adopted and published, be amended or extended.

SEC. 216. Section 33 of the charter of the City of Gabbs, being chapter 381, Statutes of Nevada 1955, as amended by chapter 186, Statutes of Nevada 1967, at page 385, is hereby amended to read as follows:

Section 33. Ordinances—Procedure—Emergency Measures—Notices. Ordinances when first proposed shall be read aloud in full to the board of councilmen and final action thereon shall be deferred until the next regular meeting of the board, of which action notice shall be given by publication in a newspaper published in the county and having a general circulation in the city, at least once and at least 1 week prior to the meeting at which such final action is to be taken, which notice shall state briefly, by reference to the title of the proposed ordinance or by reference to the purpose or content thereof, the nature of such proposed ordinance; provided, however, that in cases of emergency, by unanimous consent of the whole board, such special action may be taken immediately or at a special meeting called for that purpose. No ordinance shall be passed as an emergency measure unless reasons for passing it as such are expressed in its preamble.

No ordinance passed by the board, unless it be an emergency measure, shall go into effect until 30 days after its passage.

All ordinances shall be signed by the mayor and attested by the city clerk and be published in full, together with the names of the councilmen voting for or against their passage, in a newspaper published in the county and having a general circulation in such city, at least once before the same shall go into effect; provided, that whenever a revision is made and the revised ordinances are published in book or pamphlet forms by the authority of the board, no further publication shall be deemed necessary. The city clerk shall record all ordinances in a book kept for that purpose, together with the affidavits of publication by the publisher. [, and the book or certified copy thereof of the ordinances therein contained, in the name of the city, shall be received as prima facie evidence in all courts and places without further proof, or if published in book or pamphlet forms by the authority of the board of councilmen, they shall be so received.]

SEC. 217. Section 23 of Article VI of the charter of the City of Henderson, being chapter 240, Statutes of Nevada 1965, at page 446, is hereby amended to read as follows:

Section 23. Ordinances: Enactment procedure; emergency ordinances.

1. All proposed ordinances when first proposed shall be read to the

council by title and referred to a committee for consideration, after which an adequate number of copies of the proposed ordinance shall be filed with the city clerk for public distribution. Except as otherwise provided in subsection 3, notice of such filing shall be published once in a newspaper qualified pursuant to the provisions of chapter 238 of NRS and published in the city, if any there be, otherwise in some qualified newspaper published in Clark County and having a general circulation in the city, at least 1 week prior to the adoption of the ordinance. The council shall adopt or reject the ordinance, or the ordinance as amended, within 30 days from the date of such publication.

2. At the next regular meeting or adjourned meeting of the council following the proposal of an ordinance and its reference to committee, such committee shall report such ordinance back to the council. Thereafter, except as provided in section 24, it shall be read in full as first introduced, or if amended, as amended, and thereupon the proposed ordinance shall be finally voted upon or action thereon postponed.

3. In cases of emergency, by unanimous consent of the whole council, final action may be taken immediately or at a special meeting called for that purpose, and no notice of the filing of copies of the proposed ordinance with the city clerk need be published.

4. All ordinances shall be signed by the mayor, attested by the city clerk, and shall be published in full, together with the names of the mayor and councilmen voting for or against passage, in a newspaper qualified pursuant to the provisions of chapter 238 of NRS and published in the city, if any there be, otherwise in some qualified newspaper published in Clark County and having a general circulation in the city, for at least one publication before the same shall become effective.

5. The city clerk shall record all ordinances in a book kept for that purpose together with the affidavits of publication by the publisher. [and the book or a certified copy of the ordinances therein recorded, under the seal of the city, shall be received as prima facie evidence in all courts and places without further proof, or if published in book or pamphlet form, by authority of the council, they shall be so received.]

SEC. 218. Section 25 of Article VI of the charter of the City of Henderson, being chapter 240, Statutes of Nevada 1965, at page 447, is hereby amended to read as follows:

Section 25. Codification of ordinances; publication of code.

1. The city council has the power to codify and publish a code of its municipal ordinances in the form of a municipal code, which code may, at the election of the council, have incorporated therein a copy of this charter and such additional data as the council may prescribe. When such a publication is published, two copies shall be filed with the librarian of the Nevada state library. [, and thereafter the same shall be received in all courts of this state as an authorized compilation of the municipal ordinances of the city.]

2. The ordinances in the code shall be arranged in appropriate chapters, articles and sections, excluding the titles, enacting clauses, signature of the mayor, attestations and other formal parts.

3. The codification shall be adopted by an ordinance which shall not contain any substantive changes, modifications or alterations of existing ordinances and the only title necessary for the ordinance shall be "An

ordinance for codifying and compiling the general ordinances of the city of Henderson."

4. The codification may, by ordinance regularly passed, adopted and published, be amended or extended.

SEC. 219. Section 30 of chapter II of the charter of the City of Las Vegas, being chapter 132, Statutes of Nevada 1911, as last amended by chapter 272, Statutes of Nevada 1959, at page 343, is hereby amended to read as follows:

Section 30. Ordinances—Procedure for Adoption. All proposed ordinances shall first be read by title to the board of commissioners, at a regular meeting, or special meeting called for that purpose, and then referred to a committee for consideration. The committee shall report said ordinances back to the board of commissioners at the next regular meeting, or at a special meeting called for that purpose, when said ordinances shall be read by title as first introduced, or if amended by the committee, as so amended, and shall be adopted or disapproved as so finally read. All ordinances, when adopted, shall be signed by the mayor and attested by the city clerk and be published in full, together with the names of the commissioners voting for or against such adoption, once a week for two successive weeks immediately following such adoption, in a newspaper published in said city, and shall become effective immediately following the second publication thereof; provided, that in cases of emergency, all proposed ordinances shall be read by title when first introduced at a regular meeting, or special meeting called for that purpose and shall be adopted or disapproved as so read, or if amended, adopted as amended, and such ordinances shall be designated as "emergency ordinances." All emergency ordinances shall be signed by the mayor and attested by the city clerk, and be published in full, together with the names of the commissioners voting for or against their adoption, once a week for two successive weeks immediately following said adoption, in a newspaper published in said city, and shall become effective immediately following the second publication thereof.

The board may at any time make an order for the revision or codification of the ordinances of said city. Such revision or codification may, upon its adoption, include amendments, changes, and additions to existing ordinances, and new matters unrelated thereto. The proposed revision or codification of ordinances shall be filed with the city clerk for use and examination of the public for at least one week prior to the adoption of the ordinance adopting such revision or codification, and shall thereafter be adopted by the board after the same has been read by title at a regular meeting or at a special meeting called for that purpose, and shall be signed by the mayor and attested by the city clerk. When such a revision or codification of ordinances shall be so adopted, signed, and attested, and at least fifty copies thereof shall have been printed or typewritten in book, pamphlet or looseleaf form and not less than three copies thereof are filed in the office of the clerk of said city, and a notice referring to such revision or codification, adoption, and filing shall have been published once a week for two successive weeks in a newspaper published in said city, the ordinances as contained in such a revision, or codification shall become effective immediately after the second publication of such notice. It shall not be necessary to publish such revision or codification,

or the ordinance adopting the same, as required in the first paragraph of this section with respect to ordinances generally.

The city clerk shall record all ordinances except the revision or code of ordinances, in a book kept for that purpose, together with the affidavits of publication by the publisher. [, and said book or certified copy of the ordinance therein recorded in the name of the city, and the book or pamphlet containing the revision or codification of ordinances or certified copy of all or any part thereof in the name of the city, shall be prima facie evidence in all courts and places without further proof.]

An ordinance may adopt any specialized or uniform building or plumbing or electrical code, or codes, printed in book or pamphlet form, or any other specialized or uniform code or codes of any nature whatsoever so printed, or any portion thereof, with such changes as may be necessary to make the same applicable to conditions in the city of Las Vegas, and with such other changes as may be desirable, by reference thereto. Such ordinance or the code adopted thereby need not be read or published as required in the first paragraph of this same section, if three (3) copies of such code, either typewritten or printed with such changes, if any, shall have been filed for use and examination by the public in the office of the city clerk at least one week prior to the adoption of the ordinance adopting said code. Notice of such filing shall be given daily in a newspaper in the city of Las Vegas at least one week prior to the adoption of the ordinance adopting said code.

SEC. 220. Section 32 of chapter II of the charter of the city of North Las Vegas, being chapter 283, Statutes of Nevada 1953, as last amended by chapter 186, Statutes of Nevada 1967, at page 399, is hereby amended to read as follows:

Section 32. Enactment of Ordinances.

1. An ordinance may be introduced by any member of the city council at any regular or special meeting of the council. Upon introduction of any ordinance, the city clerk shall distribute a copy to each councilman, the mayor and the city manager, and shall file a reasonable number of copies in the office of the city clerk and in such other public places as the council may order. Final action thereon shall be deferred until the next regular meeting of the board, of which action notice shall be given by publication in a newspaper at least once and at least one week prior to the meeting at which such final action is to be taken, which notice shall state briefly, by reference to the title of the proposed ordinance or by reference to the purpose of content thereof, the nature of such proposed ordinance; provided, however, that in cases of emergency, by unanimous consent of the whole council, such special action may be taken immediately or at a special meeting called for that purpose. No ordinance shall be passed as an emergency measure unless reasons for passing it as such are expressed in its preamble.

2. No ordinance passed by the board, unless it be an emergency measure, shall go into effect until fifteen days after its passage.

3. All ordinances shall be signed by the mayor and attested by the city clerk and shall be published in full together with the names of the councilmen voting for or against their passage, in a newspaper published in such city if there be one; otherwise, some newspaper published in the county and having a general circulation in such city, for a period of at

least two weeks, and at least once a week during such time, before the same shall go into effect; provided, that whenever a revision is made and the revised ordinances are published in a book or pamphlet forms by the authority of the board, no further publication shall be deemed necessary. The city clerk shall record all ordinances in a book kept for that purpose, together with the affidavits of publication by the publishers. [, and the book or certified copy of the ordinances therein recorded, in the name of the city, shall be received as prima-facie evidence in all courts and places without further proof, or if published in book or pamphlet forms by the authority of the city council, they shall be so received.] All ordinances heretofore adopted or amended unless previously repealed, are hereby declared valid and in full force and effect.

SEC. 221. Section 32.5 of chapter II of the charter of the city of North Las Vegas, being chapter 283, Statutes of Nevada 1953, as added by chapter 320, Statutes of Nevada 1963, and amended by chapter 440, Statutes of Nevada 1965, at page 1215, is hereby amended to read as follows:

Section 32.5. Codification of Ordinances; Publication of Municipal Code.

1. The city council shall have the power to codify and publish a code of its municipal ordinances in the form of a municipal code, which code may, at the election of the city council, have incorporated therein a copy of this charter and such additional data as the city council may prescribe. When such a publication is published, two copies shall be filed with the librarian of the Nevada state library and two copies shall be filed with the Clark County law library. [, and thereafter the same shall be received in all courts of this state as an authorized compilation of the municipal ordinances of the city.]

2. The ordinances in the code shall be arranged in appropriate chapters, articles and sections, excluding the titles, enacting clauses, signature of the mayor, attestations and other formal parts.

3. The codification shall be adopted by an ordinance which shall not contain any substantive changes, modifications or alterations of existing ordinances and the only title necessary for the ordinance shall be "An ordinance for codifying and compiling the general ordinances of the City of North Las Vegas."

4. The codification may, by ordinance regularly passed, adopted and published be amended or extended.

SEC. 222. Section 7 of Article XII of the charter of the City of Reno, being chapter 102, Statutes of Nevada 1903, as added by chapter 71, Statutes of Nevada 1905, and last amended by chapter 148, Statutes of Nevada 1949, at page 309, is hereby amended to read as follows:

Section 7. The style of ordinances shall be as follows: "The city council of the city of Reno do ordain," and all proposed ordinances, when first proposed, shall be read by title to the city council and referred to a committee for consideration, after which an adequate number of copies of the ordinance shall be filed with the city clerk for public distribution, and notice of such filing shall be published once in a newspaper published in the city of Reno at least one week prior to the adoption of the ordinance, and the council shall adopt or reject the ordinance, or the ordinance as amended, within thirty days from the date of such publication. At the next regular or adjourned meeting of the council following

the proposal of an ordinance and its reference to committee, such committee shall report such ordinance back to the council, and thereafter it shall be read in full as first introduced, or if amended, as amended, and thereupon said proposed ordinance shall be finally voted upon or action thereon postponed. After final adoption the ordinance shall be signed by the mayor, and, together with the votes cast thereon, be published once in a newspaper published in the city of Reno before the same shall go into effect, except as provided in section 9a, article XII of this act. [In all prosecutions for the violation of any of the provisions of this charter or for the violation of any city ordinance, rule, resolution, or other regulation of the city council, whether in the court of original jurisdiction or in any appellate court, it shall not be necessary to plead the contents of the same, but the court before which the proceedings may be pending shall take judicial notice of this charter and of such ordinance, rule, resolution, or other regulation, and of the contents thereof, and in all civil actions it shall not be necessary to plead the contents of any ordinance, rule, resolution, or other regulation of the city council, but the same may be pleaded by title and may be proved prima facie by the introduction of the original entry thereof on the records of the city council, or a copy thereof certified by the city clerk to be a full, true, and correct copy of such original entry, or by the introduction of a printed copy published or purported to have been published by authority of the city council.]

SEC. 223. Section 9b of Article XII of the charter of the city of Reno, being chapter 102, Statutes of Nevada 1903, as added by chapter 223, Statutes of Nevada 1945, and amended by chapter 83, Statutes of Nevada 1951, at page 96, is hereby amended to read as follows:

Section 9b. The council shall have the power to codify and publish a code of its municipal ordinances in the form of a municipal code, which code may, at the election of the council, have incorporated therein the charter of the city and such additional data as the council may prescribe. When such a publication is published, two copies shall be filed with the librarian of the law library of the State of Nevada. [, and thereafter the same shall be received in all courts of this state as an authorized compilation of the municipal ordinances and charter of the city of Reno.] The ordinances in such code shall be arranged in appropriate chapters, articles, and sections, excluding the titles, enacting clauses, signatures of mayor, attestations and other formal parts. Such codification shall be adopted by an ordinance and the only title necessary for such ordinance shall be "An ordinance for codifying and compiling the general ordinances of the city of Reno." Such codification may, by ordinance regularly passed, adopted and published, be amended or extended.

SEC. 224. Section 7 of Article XIX of the charter of the City of Reno, being chapter 102, Statutes of Nevada 1903, as added by chapter 71, Statutes of Nevada 1905, at page 140, is hereby amended to read as follows:

Section 7. This Act [shall be deemed a public Act and may be read in evidence without further proof, and judicial notice shall be taken thereof in all courts and places, and] shall be in full force and effect immediately upon its approval.

SEC. 225. Section 3.06 of Article III of the charter of the City of Sparks, being chapter 180, Statutes of Nevada 1949, as last amended by

chapter 107, Statutes of Nevada 1960, at page 124, is hereby amended to read as follows:

Section 3.06. The style of all ordinances shall be as follows: "The City Council of the City of Sparks do ordain," and all proposed ordinances when first proposed shall be read by title to the city council and referred to a committee for consideration, after which an adequate number of copies of the ordinance shall be filed with the city clerk for public distribution, and notice of such filing shall be published once in a newspaper published in the city of Sparks, if any there be, otherwise in some newspaper published in the county and having a general circulation in the city, at least 1 week prior to the adoption of the ordinance, or the ordinance as amended, within 30 days from the date of such publication. In cases of emergency, by unanimous consent of the whole council, final action may be taken immediately or at a special meeting called for that purpose, and no notice of the filing of copies of the ordinance with the city clerk need be published. At the next regular meeting or adjourned meeting of the council following the proposal of an ordinance and its reference to committee, such committee shall report such ordinance back to the council, and thereafter it shall be read in full as first introduced, or if amended, as amended, and thereupon the proposed ordinance shall be finally voted upon or action thereon postponed. All ordinances shall be signed by the mayor, attested by the city clerk, and be published in full, together with the names of the councilmen voting for or against their passage, in a newspaper published in the city of Sparks, if any there be, otherwise in some newspaper published in the county and having a general circulation in the city, for at least one publication in such newspaper, before the same shall go into effect; provided, that whenever a revision is made and the revised ordinances are published in book or pamphlet form by authority of the city council, no further publication shall be deemed necessary. The city clerk shall record all ordinances in a book kept for that purpose, together with the affidavits of publication by the publisher. [and the book or a certified copy of the ordinances therein recorded, under the seal of the city, shall be received as prima facie evidence in all courts and places without further proof, or if published in book or pamphlet form, by authority of the city council, they shall be so received.]

The council shall have the power to revise, codify and publish a code of its municipal ordinances in the form of a municipal code, which code may, at the election of the council, have incorporated therein the charter of the city and such additional data as the council may prescribe. When such a publication is published, two copies shall be filed with the state librarian of the state library. [, and thereafter the same shall be received in all courts of this state as an authorized revision and codification of the municipal ordinances and a compilation of the charter of the city of Sparks.] The ordinances in such code shall be arranged in appropriate chapters, articles, and sections, excluding the titles, enacting clauses, signatures of the mayor, attestations and other formal parts. Such revision and codification shall be adopted by an ordinance and the only title necessary for such ordinance shall be "An ordinance for revising, codifying and compiling the general ordinances of the city of Sparks." Such municipal code may, by ordinance regularly passed, adopted and published, be amended or extended.

SEC. 226. Section 39 of chapter II of the charter of the City of Wells, being chapter 159, Statutes of Nevada 1967, at page 297, is hereby amended to read as follows:

Section 39. Ordinances: Procedure; emergency measures; notices.

1. Ordinances when first proposed shall be read aloud in full to the board of councilmen and final action thereon shall be deferred until the next regular meeting of the board, of which action notice shall be given by publication in a newspaper at least once and at least 1 week prior to the meeting at which such final action is to be taken. The notice shall state briefly, by reference to the title of the proposed ordinance or by reference to the purpose or content thereof, the nature of such proposed ordinance. However, in cases of emergency, by unanimous consent of the whole board, special action may be taken immediately or at a special meeting called for that purpose. No ordinance shall be passed as an emergency measure unless reasons for passing it as such are expressed in its preamble.

2. No ordinance passed by the board, unless it is an emergency measure, shall go into effect until 30 days, after its passage. If at any time during the 30 days a petition signed by qualified electors numbering not less than 20 percent of those who voted at the last preceding general municipal election, requesting the repeal of the ordinance or its submission to a referendum, is presented to the board, such ordinance shall thereupon be suspended from going into operation, and it shall be the duty of the board to reconsider such ordinance. If upon reconsideration such ordinance is not repealed, the board shall, after the sufficiency of the referendum petition has been certified to by the city clerk, submit the ordinance to a vote of the electors of the municipality at a special election, unless a regular municipal election is to be held within 90 days, in which event it shall be submitted at such regular municipal election. No ordinance submitted to a vote of the electors shall become operative unless approved by a majority of those voting thereon.

Emergency measures shall be subject to referendum like other ordinances passed by the board, except that they shall go into effect at the time indicated in them. If, when submitted to a vote of the electors, an emergency measure is not approved by a majority of those voting thereon, it shall be considered repealed as regards any further action thereunder.

3. Any proposed ordinance may be submitted to the board by petition signed by qualified electors numbering not less than 20 percent of those who voted at the last preceding general city election. The form, sufficiency and regularity of such petitions shall be determined in the manner herein provided. The petition presenting the proposed ordinance shall contain a statement in not more than 200 words giving the petitioners' reason why such ordinance should be adopted; and if such petition contains a request that the ordinance be submitted to a vote of the people, the board shall either (a) pass such ordinance without alteration at its next regular meeting, after the sufficiency of the petition has been determined and certified to by the clerk, or (b) immediately after its refusal to pass such ordinance at such meeting, and after certification by the clerk as to the sufficiency of the petition, call a special election, unless a general city election is to be held within 90 days thereafter, and at such special or general election submit such proposed ordinance without alteration to a vote of the electors of the city. The ballot used when

voting upon any such ordinance shall contain a brief statement of the nature of the ordinance, and the two propositions in the order here set forth:

For the ordinance
Against the ordinance

and shall be printed as provided herein or in the general election laws. Immediately to the right of each of the propositions shall be placed a square in which the elector, by making a cross (X) mark, may vote for or against the adoption of the ordinance. If a majority of the qualified electors voting on the proposed ordinance vote, in favor thereof, it shall thereupon become a valid and binding ordinance of the municipality. Any number of proposed ordinances may be voted upon at the same election in accordance with the provisions of this section, but there shall not be more than one special election for such purpose in any period of 6 months. Ordinances adopted under the provisions of this section shall not be repealed or amended except by direct vote of the people as herein provided.

4. All ordinances shall be signed by the mayor and attested by the city clerk and shall be published in full, together with the names of the councilmen voting for or against their passage, in a newspaper published in the city, if any there be, and otherwise, in some newspaper published in the county and having a general circulation in the city, for a period of at least 1 week before the same goes into effect, except that whenever a revision is made and the revised ordinances are published in book or pamphlet forms by the authority of the board, no further publication is necessary. The city clerk shall record all ordinances in a book kept for that purpose, together with the affidavits of publication by the publisher. [, and such book or certified copy thereof of the ordinances therein contained, in the name of the city, shall be received as prima facie evidence in all courts and places without further proof, or if published in book or pamphlet forms by the authority of the board of councilmen, they shall be so received.]

SEC. 227. Section 41 of chapter II of the charter of the City of Wells, being chapter 159, Statutes of Nevada 1967, at page 299, is hereby amended to read as follows:

Section 41. Codification of general ordinances.

1. The board of councilmen have the power to codify and publish a code of its municipal ordinances in the form of a municipal code, which code may, at the election of the board of councilmen, have incorporated therein a copy of this charter and such additional data as the board of councilmen may prescribe. When such a publication is published, two copies shall be filed with the librarian of the Nevada state library. [, and thereafter such code shall be received in all courts of this state as an authorized compilation of the municipal ordinances of the city.]

2. The ordinances in the code shall be arranged in appropriate chapters, articles and sections, excluding the titles, enacting clauses, signature of the mayor, attestations and other formal parts.

3. The codification shall be adopted by an ordinance which shall not contain any substantive changes, modifications or alterations of existing ordinances, and the only title necessary for the ordinance shall be "An ordinance for codifying and compiling the general ordinances of the City of Wells."

4. The codification may, by ordinance regularly passed, adopted and published, be amended or extended.

SEC. 228. Section 16 of the charter of the City of Yerington, being chapter 72, Statutes of Nevada 1907, as amended by chapter 190, Statutes of Nevada 1957, at page 277, is hereby amended to read as follows:

Section 16. 1. The style of all ordinances shall be as follows: "The City Council of the City of Yerington do ordain." All proposed ordinances when first proposed shall be read by title to the city council and may be referred to a committee of any number of the members of the council for consideration, after which at least one copy of the ordinance shall be filed with the city clerk for public examination. Notice of such filing shall be published once in a newspaper published in the city, if any there be, and otherwise in some newspaper published in the county and having a general circulation in the city, at least 1 week prior to the adoption of the ordinance. The city council shall adopt or reject the ordinance, or the ordinance as amended, within 30 days from the date of such publication, except that in cases of emergency, by unanimous consent of the whole council, final action may be taken immediately or at a special meeting called for that purpose.

2. At the next regular or adjourned meeting of the council following the proposal of an ordinance and its reference to committee, the committee shall report the ordinance back to the council, and thereafter it shall be read in full as first introduced, or if amended, as amended, and thereupon the proposed ordinance shall be finally voted upon or action thereon postponed.

3. After final adoption the ordinance shall be signed by the mayor, and, together with the votes cast thereon, shall be published once in a newspaper published in the city, if any there be, otherwise in some newspaper published in the county and having a general circulation in the city. Twenty days after such publication the same shall go into effect, except emergency ordinances which may be effective immediately.

[4. In all prosecutions for the violation of any of the provisions of any city ordinance, rule, resolution, or other regulation of the city council, whether in a court of original jurisdiction or in any appellate court, it shall not be necessary to plead the contents of the same, but the court before which the proceedings may be pending shall take judicial notice of such ordinance, rule, resolution, or other regulation, and of the contents thereof. In all civil actions it shall not be necessary to plead the contents of any ordinance, rule, resolution, or other regulation of the city council, but the same may be pleaded by title, and may be proved prima facie by the introduction of the original entry thereof on the records of the city council, or a copy thereof certified by the city clerk to be a full, true and correct copy of the original entry, or by the introduction of a printed copy published or purported to have been published by authority of the city council.]

SEC. 229. Section 49 of the charter of the City of Yerington, being chapter 72, Statutes of Nevada 1907, at page 172, is hereby repealed.

Comment—Sections 210 to 229, inclusive, remove from the respective city charters special provisions for judicial notice which are superseded by section 14 of this draft bill.