

State of Nevada

**Statewide
Ballot Questions**

2004



**To Appear on the November 2, 2004
General Election Ballot**

**Issued by
Dean Heller
Secretary of State**

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STATE OF NEVADA

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**OFFICE OF THE
SECRETARY OF STATE**

Dear Fellow Nevadan:

You will soon be taking advantage of one of your most important rights as an American citizen: the right to vote! As Secretary of State and the state's Chief Election Officer, I take the job of informing the public about various statewide ballot questions very seriously. An informed and knowledgeable electorate is a cornerstone to fair and just elections.

With that in mind, the Secretary of State's office has prepared this booklet detailing the statewide questions that will appear on the 2004 General Election Ballot. The booklet contains "Notes to Voters," a complete listing of the exact wording of each question, along with a summary, arguments for and against each question's passage, and, where applicable, a fiscal note. Any fiscal note included in this booklet explains only adverse impacts and does not note any possible cost savings.

I encourage you to carefully and thoughtfully review the ballot questions listed in the booklet. As a voter, your actions on these ballot questions can create new laws, amend existing laws or amend the Nevada Constitution.

On the 2004 General Election Ballot, there are eight statewide questions. Ballot Question Numbers 7 and 8 appear on the ballot through the actions of the Nevada State Legislature. Ballot Question Numbers 1 through 6 qualified for this year's ballot through the initiative petition process.

You can also view these ballot questions on the Secretary of State's web site at www.secretaryofstate.biz. If you require further assistance or information, please feel free to contact my office at 775/684-5705.

Respectfully,

A handwritten signature in cursive script that reads "Dean Heller".

DEAN HELLER
Secretary of State

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2004 STATEWIDE BALLOT QUESTIONS SUMMARY

Question #	Title	Originated	If passed in 2004
1	Education First	Initiative Petition	Will Go Onto The 2006 General Election Ballot
2	Improve Nevada Public School Funding to the National Average	Initiative Petition	Will Go Onto The 2006 General Election Ballot
3	Keep Our Doctors in Nevada	Initiative Petition	Becomes Law
4	The Insurance Rate Reduction and Reform Act	Initiative Petition	Will Go Onto The 2006 General Election Ballot
5	Stop Frivolous Lawsuits and Protect Your Legal Rights Act	Initiative Petition	Will Go Onto The 2006 General Election Ballot
6	Raise the Minimum Wage for Working Nevadans	Initiative Petition	Will Go Onto The 2006 General Election Ballot
7	Repeals an Obsolete Provision Concerning Those Permitted to Vote	Legislature AJR #3 of the 71 st Session	Becomes Law
8	Sales and Use Tax of 1955	Legislature AB 514 of the 72 nd Session Including Note To Voters	Becomes effective January 1, 2006

NOTE TO VOTERS

NOTE TO VOTERS

Streamlined Sales Tax Project

Ballot Question No. 8 seeks to simplify the state and local tax base by making it uniform as required by the Streamlined Sales Tax Project. The Streamlined Sales Tax Project was created by state governments throughout the United States, with input from local governments and the private sector, to standardize and modernize sales and use tax collection. The goal of streamlining the tax base is to facilitate the collection of sales and use taxes for out-of-state sales and sales over the internet and to ensure that the tax revenues that support state and local governments are not reduced as a result of an increase in such sales.

Currently, certain exemptions from the portion of the Sales and Use Tax that is distributed to the State differ from the exemptions from the portion of the tax that is distributed at the local level. If Ballot Question No. 8 is approved, the exemptions from the portion of the Sales and Use Tax that is distributed to the State will be amended so that they are identical to the exemptions from the portion of the tax that is distributed at the local level. If the question is not approved, the exemptions from the portion of the Sales and Use Tax that is distributed at the local level will be amended so that they are identical to the portion of the tax that is distributed to the State. Regardless of whether the question is approved or not approved, the exemptions for all portions of the Sales and Use Tax will become identical as required by the Streamlined Sales Tax Project.

Sales and Use Tax

Nevada's statewide sales tax consists of three separate parts levied at different rates on the sale and use of tangible personal property in the State. The current combined rate that applies to each county within the State is 6.50 percent. In addition to these three parts, each county also may impose additional taxes subject to the approval of the voters or governing body in that county. These additional taxes have, in nine counties, increased the rate of the sales tax above the 6.50 percent rate imposed statewide.

The tax includes:

	<u>Tax</u>	<u>Rate</u>
1.	The State Sales and Use Tax.....	2.00 percent
2.	The Local School Support Tax (LSST)	2.25 percent
3.	The City-County Relief Tax (CCRT)	2.25 percent
4.	Optional local taxes—currently not more than.....	1.00 percent

The State Sales and Use Tax may be amended or repealed only with the approval of the voters. The Local School Support Tax (LSST) and the City-County Relief Tax (CCRT) may be amended or repealed by the Legislature without the approval of the voters.

QUESTION NO. 1

Amendment to the Nevada Constitution

CONDENSATION (ballot question)

Shall the Nevada Constitution be amended to require the Nevada Legislature to fund the operation of the public schools for kindergarten through grade 12 before funding any other part of the state budget for the next biennium?

Yes..... 446,965
No..... 342,173

EXPLANATION (Ballot Question)

The proposed amendment, if passed, would create five new sections to Section 6 of Article 11 of the Nevada Constitution. The amendment would provide that during a regular session of the Legislature, before any appropriation is enacted to fund a portion of the state budget, the Legislature must appropriate sufficient funds for the operation of Nevada's public schools for kindergarten through grade 12 for the next biennium, and that any appropriation in violation of this requirement is void. The appropriation requirement also applies to certain special sessions of the Legislature.

The following arguments for and against and rebuttals for Question No. 1 were prepared by a committee as required by Nevada Revised Statutes (NRS) 293.252.

ARGUMENT IN SUPPORT OF QUESTION NO. 1

Question One seeks a constitutional amendment changing the process by which public school education is funded at the state Legislature.

Education first ensures our state's public school system will be funded, before any other program for the next fiscal biennium, during each legislative session, by an appropriation the Legislature deems to be sufficient to fund the operation of our public schools for the student population reasonably estimated for that biennium.

Education First preserves the Legislature's ability to first fund the cost of the legislative session or an emergency measure demanding immediate action. Education First does not determine the level or source of funding public school education receives, so there is no fiscal impact to the state.

Education First will substantially enhance Nevada's credibility as a stable environment for students and teachers. As the fastest growing state in the nation, that is critical if Nevada is to keep pace with its growing student population.

For example, for the 2002-03 school year, Nevada hired over 2300 new teachers. Most new teachers are hired from out-of-state because Nevada's University and Community College System cannot meet our state's demand for teachers. Teachers make a serious commitment

when they choose to move and teach here. Education First will help ensure Nevada is equally committed.

The budget deadlock we experienced during the 2003 legislative sessions must never be repeated. The consequences for our schools, our teachers and our children were significant. Schools opened late, new teachers could not be hired, and special programs were jeopardized as those teachers were designated for reassignment to the general classroom. School administrators could not adequately plan for the coming school year, a process that typically begins each January. Education First prevents that from ever happening again.

As long as public school education is allowed to be the last major budget bill considered, special sessions and court intervention could easily become the norm in the legislative process. When education is first, that won't happen, as it did in 2003. Education First will ensure that the funding of education in Nevada will be given the status intended by the framers of our Constitution and will help prevent another Supreme Court ruling that negates the Gibbons tax restraint portion of our Constitution.

Take the politics out of funding Nevada's public schools. A YES vote on Question One will put education and Nevada's children first in line at budget time.

REBUTTAL TO ARGUMENT IN SUPPORT OF QUESTION NO. 1

The Education Funding Crisis of the 2003 Legislative session is the first in 73 regular sessions of the Nevada legislature. It was generated for political reasons to push a huge tax increase. Voters have an opportunity in this election to punish those guilty without changing the constitution. One failure in 73 sessions is insufficient reason to change the constitution.

A "NO" vote on Question 1 will force legislators to do the job we elect them to do. A "YES" vote will NOT correct the grave disregard for the Nevada Constitution by the Nevada Supreme Court during 2003. The Court showed blatant disregard for the people's will of the original Gibbons' petition and there is no reason to believe this will improve their attention to their oath of office. Make Representative government work by voting "NO" on Question 1.

ARGUMENT AGAINST QUESTION NO. 1

The last legislative session showed that education funding can become a political football and few would agree that scenario should ever be repeated; however, a single event should not be a reason to compromise the public health and safety of Nevadans by detrimentally removing the Legislature's and our Governor's ability to determine our state's priorities.

1. The education budget is such a large portion of the budget that it cannot be determined until after the final meeting of the Economic Forum. The Economic Forum is a panel of experts appointed by Nevada elected officials to formulate detailed projections regarding our state's revenue. The Economic Forum's projections would not be done until just prior to April 30th.
2. In the normal 120 day legislative process, the small budgets with little or no changes are processed starting weeks before the end of the legislative session. This allows the

legislative workload to remain reasonable and matters to be handled in a logical manner. Holding all those budgets until the education budget can be decided may actually impede the process of closing budgets and make special sessions more likely, adding unnecessarily to taxpayer expense. Thus, this measure is likely to cause an adverse fiscal impact.

3. Under the current system the smaller budgets come through early providing lawmakers that do not sit on the Assembly Ways and Means or Senate Finance Committees with the time to review these budgets and ask questions. If those budgets are held until the education budget is decided, then the review by other legislators will be lost in the rush to close the session. Public health, safety and the protection of our environment will necessarily be compromised because of the limited time to review non-education budget matters that are equally important to our state's welfare.
4. Further it might be much easier for a lawmaker on the money committees to add “pork” to some budgets without the check and balance time and review process to stop potential wasteful spending.
5. While we agree that the entire budgeting and funding process in Nevada needs to be reviewed to encourage fiscal responsibility and accountability by the legislators and all with budgets within the executive branch, this measure seems to complicate the matter rather than actually improve and simplify the process.

We urge voters not to make the budget process more difficult by passing this measure.

REBUTTAL TO ARGUMENT IN OPPOSITION TO QUESTION NO. 1

1. Public education is one of five major budget bills. According to the Legislative Counsel Bureau, no budget can be closed prior to release of the Economic Forum’s final report. This does not change. When budget bills are enrolled, education will be first.
2. The way the state budget is crafted does not change. The legislative workload is unaffected. The process becomes more logical when such a large component is dealt with first. The Legislature is responsible for managing its workload and adhering to a 120-day session. The status quo is more likely to result in special sessions.
3. Lawmakers not on money committees still participate. Issues are engaged in the same manner as now. Any impact should the Legislature not do its job as required by the state Constitution is its responsibility. Public health, safety, welfare and the environment are not compromised by Education First.
4. Adding pork will always be tempting. Education First does not make it easier. If checks and balances aren’t done, regardless of where in the process, legislators would be derelict in their duties.
5. When public education is no longer the budget’s sacrificial lamb, the process is brought into check, improving accountability and simplicity.

FISCAL NOTE

Financial Impact – No.

Approval of the proposal to amend the *Nevada Constitution* would have no adverse fiscal impact

FULL TEXT OF THE MEASURE

Education First Initiative Petition - State of Nevada

Explanation - Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to the funding of public education; amending the Constitution of the State of Nevada to require the Legislature to fund the operation of the public schools for kindergarten through grade 12 before any other part of the state budget for the next biennium is funded; providing that any appropriation enacted in violation of that requirement is void; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section 1. Section 6 of Article 11 of the Constitution of the State of Nevada is hereby amended to read as follows:

1. In addition to other means provided for the support and maintenance of said university and common schools, the legislature shall provide for their support and maintenance by direct legislative appropriation from the general fund, upon the presentation of budgets in the manner required by law.

2. *During a regular session of the Legislature, before any other appropriation is enacted to fund a portion of the state budget for the next ensuing biennium, the Legislature shall enact one or more appropriations to provide the money the Legislature deems to be sufficient, when combined with the local money reasonably available for this purpose, to fund the operation of the public schools in the State for kindergarten through grade 12 for the next ensuing biennium for the population reasonably estimated for that biennium.*

3. *During a special session of the Legislature that is held between the end of a regular session in which the Legislature has not enacted the appropriation or appropriations required by subsection 2 to fund education for the next ensuing biennium and the first day of that next ensuing biennium, before any other appropriation is enacted other than appropriations required to pay the cost of that special session, the Legislature shall enact one or more appropriations to provide the money the Legislature deems to be sufficient, when combined with the local money reasonably available for this purpose, to fund the operation of the public schools in the State for kindergarten through grade 12 for the next ensuing biennium for the population reasonably estimated for that biennium.*

4. *During a special session of the Legislature that is held in a biennium for which the Legislature has not enacted the appropriation or appropriations required by subsection 2 to fund education for the biennium in which the special session is being held, before any other appropriation is enacted other than appropriations required to pay the cost of that special session, the Legislature shall enact one or more appropriations to provide the money the Legislature deems to be sufficient,*

when combined with the local money reasonably available for this purpose, to fund the operation of the public schools in the State for kindergarten through grade 12 for the population reasonably estimated for the biennium in which the special session is held.

5. Any appropriation of money enacted in violation of subsection 2, 3 or 4 is void.

6. As used in this section, "biennium" means a period of two fiscal years beginning on July 1 of an odd-numbered year and ending on June 30 of the next ensuing odd-numbered year.

QUESTION NO. 2

Amendment to the Nevada Constitution

CONDENSATION (ballot question)

Shall the Nevada Constitution be amended to require that the annual per-pupil expenditure for Nevada's public elementary and secondary schools equals or exceeds the national average?

EXPLANATION

Yes	381,045
No ✓	404,173

The proposed amendment, if passed, would create four new sections to Section 2 of Article 11 of the Nevada Constitution. The amendment would require the Legislature, commencing July 1, 2012, to ensure that in each fiscal year the annual per-pupil expenditure for public elementary and secondary schools equals or exceeds the national average.

The following arguments for and against and rebuttals for Question No. 2 were prepared by a committee as required by Nevada Revised Statutes (NRS) 293.252.

ARGUMENT IN SUPPORT OF QUESTION NO. 2

Question 2 asks the voters to amend the Nevada Constitution to require the Nevada Legislature to bring per pupil expenditures for K-12 education in Nevada to or above the national average beginning in 2012.

Nevada's ranking in the level of per pupil funding has fallen from 35th in 1993 to 45th in the nation today and there is no indication that this trend will reverse without passage of this petition.

Nevada's per pupil expenditures have declined, creating a negative impact on the ability to support class-size reduction, the number of available textbooks and classroom materials, as well as providing remediation and tutoring and the expansion of kindergarten programs. In addition, teacher's salaries are insufficient to keep or recruit the best educators. This has led to a critical teacher shortage in Nevada.

By supporting Question 2, Nevada's citizens will be making the importance of funding education to the national average a clear priority for the Nevada Legislature. The proponents of this petition believe that 8 years is a fair and reasonable length of time to implement this policy.

We ask the voters of Nevada to send a strong message to the Nevada Legislature in support of education funding. It is no longer acceptable for Nevada's children to so significantly lag behind the national average on this measure of educational expenditures per student.

REBUTTAL TO ARGUMENT IN SUPPORT OF QUESTION NO. 2

Already Nevada taxpayers fund our schools very near the national average. Yet money spent per pupil is not what produces superior educational results.

Consider New York, New Jersey and the District of Columbia. They all spend huge amounts. But their results—according to national measures of educational progress—are far inferior to low-spending states like Utah, which rank at the bottom of per-pupil spending.

Class-size reduction programs are no answer. They sound good, but research has shown them to make little difference. Twenty *times* more effective is providing students with skilled teachers who know their subjects. Blocking this in Nevada are current collective-bargaining agreements that ignore teacher performance and reward mere longevity.

State lawmakers have repeatedly approved funds specifically for books and classroom materials—only to find that school officials, in collective bargaining, have diverted these funds into salaries.

Nevada hires over 2,000 teachers per year, so our problem is *not* attracting teachers. Average teacher pay here is *above* the national average. It's Nevada schools' performance that is near the bottom.

Send a message to Nevada's educational establishment: Tell them you want *systematic reform* before you authorize another big increase in Nevada taxes.

Vote "NO" on this constitutional amendment.

ARGUMENT AGAINST QUESTION NO. 2

This amendment would increase per-pupil spending in Nevada *far above* the national average.

It would also require a tax increase of about \$1,100 per year for a Nevada family of four. Otherwise, huge cuts in other important state programs—prisons, human services, mental health, etc.—will have to be made. A bill in the 2003 Legislature to meet the "national average" now would have cost taxpayers \$1.135 billion biennially, so costs in 2012 would be much higher.

This amendment prevents the billions of dollars that Nevada taxpayers pay for school construction and bond debt service from being counted in "annual per-pupil expenditures." This is unfair to Nevada taxpayers, who spend more for new schools than taxpayers in almost any other state in the nation—about twice the national average for both construction and debt service.

Approval of this measure would actually delay needed reforms to Nevada K-12 education. It would pour huge new taxpayer resources into the current wasteful

system without requiring any new levels of performance, productivity or accountability. It would strengthen the hold on the system of the bureaucrats and unions who continually block the reforms that parents and teachers desire.

This proposal will damage the ability of Nevada citizens to direct the education of their children. It does this by writing into the state constitution a blank-check commitment to whatever set of accounting definitions happen to be selected by federal government bureaucrats in Washington, D.C. Nevada voters will have to *amend* the state constitution to adjust these funding formulas. The proposal would also take even more of school funding decisions out of local hands.

A “national average” approach is an extremely poor basis upon which to make important public policy decisions. The whole reason that Nevada has local school boards is because *local* needs are critically important and differ significantly.

This measure would create a treadmill with no “off” switch for taxpayers. Yet it promises no improvement for Nevada students.

Vote *NO* on this proposed constitutional amendment.

REBUTTAL TO ARGUMENT AGAINST QUESTION NO. 2

Revenue from tourism and businesses operating in the state generate the majority of tax dollars. Residents of Nevada contribute to education funding primarily through sales tax. Nevadans may well be called upon to pay more taxes if this amendment is approved, although it is misleading to suggest that this cost will be borne entirely or primarily by Nevada families.

Through the No Child Left Behind law and other legislation, the federal government and the Nevada Legislature have imposed strict accountability requirements on the public schools. But they have *not* provided the money needed to meet those standards, and this amendment will help fill that gap.

Nevada taxpayers spend more for new schools because we build more new schools than almost any other state in the nation. Unfortunately, we are failing to provide basic needs such as textbooks and technology.

There is no proof that the current system in Nevada is wasteful and if the public is paying for these increased costs, than the public will have a say in how the money is spent by communicating their priorities to their legislators. Additional funds can only improve a currently underfunded system.

FISCAL NOTE

Financial Impact – Yes.

Because the average annual per-pupil expenditure of Nevada is currently lower than the national average annual per-pupil expenditure, it is likely the proposal would result in significant increases in the expenditures necessary to support public elementary and secondary schools in Nevada.

Using the latest projections of the national average per-pupil expenditures provided by the National Center for Education Statistics and projections of the average annual per-pupil expenditure of Nevada, it is possible to estimate the cost the proposal would have had for the current fiscal year if the proposal had been in effect. If the proposal were in effect for this fiscal year (Fiscal Year 2004-2005), the difference in the national average and the Nevada average per-pupil expenditures could be approximately \$1,700 per pupil. Based on this projected difference, the cost to increase Nevada's average per-pupil expenditures to the national average in Fiscal Year 2004-2005 would have been approximately \$681 million, which would have been an increase of approximately 25 percent from the projected Fiscal Year 2004-2005 expenditures for public elementary and secondary schools in Nevada.

It is important to note that the proposal does not require Nevada average per-pupil expenditures to be equal to or greater than the national average per-pupil expenditures until the fiscal year that begins on July 1, 2012 (Fiscal Year 2012-2013). The impact the proposal would have in Fiscal Year 2012-2013 depends on the extent to which Nevada's average per-pupil expenditures are below the national average at that time and, if Nevada's average per-pupil expenditures are below the national average at that time, the number of students enrolled in Nevada public schools at that time. Due to these variables, the financial impact of the proposal in Fiscal Year 2012-2013 cannot be determined with any level of certainty.

FULL TEXT OF THE MEASURE

Initiative Petition

State of Nevada

IMPROVE NEVADA PUBLIC SCHOOL FUNDING TO THE NATIONAL AVERAGE

EXPLANATION

Matter in *boldface italics* is new; matter between brackets [deleted material] is material to be deleted.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section 1. Section 2 of Article 11 of the Constitution of the State of Nevada is hereby amended to read

as follows:

[Section 2.] *Sec. 2. 1.* The legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district at least six months in every year, and any school district which shall allow instruction of a sectarian character therein may be deprived of its proportion of the interest of the public school fund during such neglect or infraction, and the legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools.

2. The legislature shall support and maintain a system of public education which helps ensure that every child becomes a productive and responsible adult. In performing this obligation, the legislature shall provide sufficiently for the financial support and maintenance of the public elementary and secondary schools. Commencing with the fiscal year beginning on July 1, 2012, the appropriations made by the legislature for this purpose, when combined with the projected revenue from all other federal, state and local sources, must be in such amounts as the legislature determines are sufficient to ensure in each fiscal year that the annual per-pupil expenditure of Nevada equals or exceeds the national average.

3. In complying with the requirements of subsection 2, the legislature shall, as nearly as practicable in view of available information about projected revenue and enrollment, calculate the annual per-pupil expenditure of Nevada in the same manner as the National Center for Education Statistics calculates current expenditures per pupil in fall enrollment for each state.

4. Nothing in this section shall be deemed to require the legislature to make a supplemental appropriation in the interim between legislative sessions.

5. As used in this section:

(a) “Annual per-pupil expenditure of Nevada” means, for any fiscal year, current expenditures per pupil in fall enrollment for public elementary and secondary schools in Nevada, calculated in the manner provided in subsection 3.

(b) “National average” means current expenditures per pupil in fall enrollment for public elementary and secondary schools in the United States, as most recently determined by the National Center for Education Statistics.

(c) “National Center for Education Statistics” means the National Center for Education Statistics of the United States Department of Education or its successor agency.

QUESTION NO. 3

Amendment to Titles 1 and 3 of the Nevada Revised Statutes

CONDENSATION (ballot question)

Shall Title 1 of the Nevada Revised Statutes governing attorneys, and Title 3 of the Nevada Revised Statutes governing actions for medical or dental malpractice and damage awards, be amended to limit the fees an attorney could charge a person seeking damages against a negligent provider of health care in medical malpractice actions, limit the amount of noneconomic damages a person may recover from a negligent provider of health care in medical malpractice actions, eliminate joint liability of providers of health care in medical malpractice actions, shorten the statute of limitations in medical malpractice actions, prohibit third parties who provided benefits as a result of medical malpractice from recovering such benefits from a negligent provider of health care, and allow negligent providers of health care to make periodic payments of future damages?

Yes..... 468,059
No..... 320,129

EXPLANATION

If passed, the proposal would limit the fees an attorney could charge a person seeking damages against a negligent provider of health care in a medical malpractice action. Professional negligence means a negligent act, or omission to act, by a provider of health care that is the proximate cause of a personal injury or wrongful death. A provider of health care means a physician licensed under Chapters 630 and 633 of the Nevada Revised Statutes, a dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, or a licensed hospital and its employees.

The law currently provides that a person seeking damages in a medical malpractice action is limited to recovering \$350,000 in noneconomic damages from each defendant, with two exceptions. Noneconomic damages is money paid to the injured person to compensate for pain, suffering, inconvenience, physical impairment, and disfigurement, while economic damages is money paid to compensate for the injured person's medical treatment, care or custody, loss of earning and loss of earning capacity. The two current exceptions to the \$350,000 cap on noneconomic damages allow an injured person to receive more than \$350,000 if: (1) the wrongdoer committed gross malpractice, or (2) exceptional circumstances justify an award in excess of the cap. The proposal, if passed, would remove the two statutory exceptions to the existing \$350,000 cap, and limit the recovery of noneconomic damages to \$350,000 per action.

Currently, damages that an injured person is allowed to recover in a medical malpractice action may be reduced by benefits the person received from a third party, such as Medicaid, private insurance, or workers' compensation. If passed, the proposal would not change the reduction of the injured person's damages, but the third parties would no longer be permitted to recover from the wrongdoer the expenses they have paid on behalf of a medical malpractice victim. One

effect of this provision could be an increased burden on the state Medicaid fund, which consists of taxpayer dollars.

Current law provides that each one of multiple defendants in medical malpractice actions is severally, but not jointly liable for noneconomic damages. This means that a single defendant among multiple defendants in a medical malpractice action is required to pay the injured person only the share of noneconomic damages attributable to that defendant's wrongful conduct and would not have to pay the share attributable to the wrongful conduct of another defendant. However, the current law treats economic damages differently, and provides that each defendant is not only severally liable, but also jointly liable for payment of economic damages; a defendant that is jointly liable could be required to pay the injured person for not only his wrongful conduct, but also for the wrongful conduct of all other defendants. The proposal, if passed, would change the current law by repealing joint and several liability for economic damages and treat liability for recovery of economic damages in medical malpractice cases the same as for noneconomic damages, such that defendants are only severally, but not jointly liable. This imposes the risk of nonpayment to the injured party if a defendant is not able to pay his percentage of damages, such as when that defendant has insufficient insurance or assets to pay his share.

The proposal also revises the statute of limitations for the filing of actions. The current law that requires an injured person to file a medical malpractice lawsuit within 3 years of the date of injury remains unchanged. The current law also provides that if the injury was not immediately apparent, the injured person has 2 years from the time the person discovers or should have discovered the injury to file the lawsuit. The proposal would reduce this time from 2 years to 1 year.

Finally, the proposal would make changes to how certain damages are paid by health care providers who have been found negligent, and provides for other matters properly related thereto. It requires that when an award equals or exceeds \$50,000 in future damages, the court must allow the same to be paid in periodic payments instead of a lump sum, if requested by either party.

The following arguments for and against and rebuttals for Question No. 3 were prepared by a committee as required by Nevada Revised Statutes (NRS) 293.252.

ARGUMENT IN SUPPORT OF QUESTION NO. 3

Physicians continue to leave Nevada, and medical malpractice insurers continue to pull out of the Nevada market, at an alarming rate despite the medical malpractice litigation reforms passed by the Nevada legislature in 2002. Why? Because the 2002 legislation does not provide enough specific protection for doctors and their insurers from astronomical jury verdicts, making it impossible to plan for the challenges associated with practicing medicine. As a result, some Nevada doctors pay more than double for liability insurance compared to doctors in Los Angeles. (AMA press release, March 17, 2004). What does this mean to your doctors? They are having difficulty keeping their practices open. What does this mean to you? When you need a doctor, you may have difficulty finding one.

The Keep Our Doctors In Nevada (KODIN) initiative provides several protections to doctors, patients, and their insurers, while still allowing people who have genuinely been injured as a result of physician negligence to recover economic losses. First, KODIN ensures that a higher percentage of an award in a medical malpractice case goes to the injured person, not to attorneys. Second, KODIN provides that, if multiple health care providers are found at fault in a malpractice case, each provider is only responsible for payment of her own share of liability and can't be forced to pay anyone else's share. Third, KODIN stops "double-dipping" by informing juries if plaintiffs are receiving money from other sources for the same injury. Fourth, KODIN allows a health care provider who has been found negligent to make payments to the injured plaintiff over a scheduled period of time instead of all at once. Finally, KODIN sets a \$350,000 limit on the amount a medical malpractice plaintiff can recover for noneconomic damages, like "pain and suffering." KODIN will help stabilize medical malpractice premiums—and help your doctor stay in Nevada.

According to the AMA, Nevada is among a dozen states facing a "full-blown medical liability crisis." KODIN will stabilize Nevada's health care crisis and provide protection for both doctors and patients.

If passed, this initiative will have no impact on the environment. The committee has not identified any fiscal impact on the state budget. The health, safety, and welfare of the public will be improved because physicians of all specialties will be more likely to stay in Nevada to practice medicine.

REBUTTAL TO ARGUMENT IN SUPPORT OF QUESTION NO. 3

The Truth:

1. Doctors are not leaving Nevada. In the last 3 years, the State of Nevada has licensed 1,112 new doctors and 355 of those were licensed in the last 8 months! The number of doctors actively practicing in Nevada actually *increased* each year, including the number of OB/GYNs.
2. Reform of insurance laws is the only way to reduce doctors' insurance rates.
3. The initiative is unfair to patients and victims of malpractice:
 - \$350,000 is not fair compensation for being paralyzed, brain damaged, or killed by medical negligence.
 - It is not fair to make the patient, or taxpayers through Medicaid, pay the cost of medical care for injuries caused by medical malpractice.
 - It is not fair for insurance companies and negligent healthcare providers to make a patient wait years for money they are owed.
 - It is not fair to tell the jury about the patient's insurance coverage, but not about the doctor's malpractice insurance. Current law already prevents "double-dipping."
 - It is not fair to limit the fees for lawyers representing patients/victims of malpractice while allowing unlimited fees for lawyers representing doctors and insurance companies.

Protect your rights from being sacrificed for insurance companies and negligent doctors!
Vote NO!!

ARGUMENT AGAINST QUESTION NO. 3

If you or a family member are injured by medical malpractice, are you ready to limit your legal rights and access to the courts?

Are you ready to give insurance companies and negligent healthcare providers broad, new and unfair legal protections that would allow them to escape responsibility for injuries to you and your family?

As a taxpayer, are you ready to pay the costs of treating patients who are the victims of medical malpractice, while letting negligent healthcare providers and their insurance companies walk away from their responsibilities?

If your answer to these questions is NO, then you should vote NO on Question 3 – because Question 3 substantially limits your current rights if you or a family member are injured by medical malpractice.

It's time to look at the facts:

Question 3 does nothing to solve the problem of high insurance rates.

Insurance rate reduction and reform of insurance laws are the only way to control the cost of insurance to doctors and patients.

Two years ago, the Nevada Legislature passed tort reform laws to put limitations on medical malpractice lawsuits, including a cap of \$350,000 for pain and suffering awards, yet insurance companies have still not reduced doctors' insurance rates.

The insurance industry admits that tort reform measures have not resulted in lower premiums. While doctors have threatened to leave the state in order to persuade consumers to give up their legal rights, there are actually more doctors in Nevada than ever before. There were 335 new doctors licensed in Nevada between 1999 and 2002. A 2004 report by the U.S. Congressional Budget Office found that many reported reductions in the supply of doctors around the country could not be proven.

This initiative shifts the costs of treating injuries caused by medical malpractice to the taxpayers and away from insurance companies and negligent healthcare providers. Healthcare consumers who suffer serious injuries and cannot work or afford to pay their medical bills will have to resort to Medicaid to pay for their care which is funded by taxpayer dollars.

Negligent healthcare providers and their insurance companies should pay for their mistakes, not taxpayers.

Don't give away your legal rights! Vote NO on Question 3.

REBUTTAL TO ARGUMENT AGAINST QUESTION NO. 3

KODIN’s opponents are incorrect in arguing that KODIN “shifts the cost of treating injuries caused by medical malpractice to the taxpayers.” You don’t give up the legal right to be compensated for your injuries if you vote YES on KODIN. Nothing in KODIN changes the rights of injured people to be compensated by negligent healthcare providers for their *economic* damages—their past and future medical bills, their time off work, their expected reduction in future income. KODIN only limits *noneconomic* damages, like those for “pain and suffering,” to \$350,000. KODIN also provides that, if a malpractice plaintiff has already undergone medical treatment paid for by a third party (like a health insurer), the jury can be told about those payments and use that information in deciding what to award to the plaintiff. Currently, Nevada law forbids attorneys from mentioning this information to the jury. This is unfair to defendants when a jury uses the plaintiff’s medical expenses as a factor in determining the damages it awards, but the plaintiff may not have paid some or all of the bills. In conclusion, KODIN is a common-sense measure that protects injured people and their doctors, too.

FISCAL NOTE

Financial Impact – Cannot be determined.

Although the portion of the proposal that would eliminate joint and several liability for providers of health care could potentially impact the State of Nevada’s ability to recoup Medicaid costs, the amount of the reduction in recouped costs cannot be determined. Although the amount of the reduction cannot be determined with any level of certainty, it would appear that the reduction would not be a significant portion of the State’s Medicaid budget, which is approximately \$1.1 billion annually.

FULL TEXT OF MEASURE

KEEP OUR DOCTORS IN NEVADA INITIATIVE

Explanation—Matter in ***bolded italics*** is new, matter between brackets [~~omitted material~~] is material to be omitted.

AN ACT relating to medical malpractice; limiting attorney’s fees in actions against providers of health care; eliminating the exceptions pertaining to noneconomic damages; making changes concerning the payment of damages; revising the statute of limitations for the filing of actions; eliminating joint and several liability; making various other changes concerning such actions; and providing for other matters properly relating thereto.

WHEREAS, There exists a major health care crisis in this state attributable to the skyrocketing cost of medical malpractice insurance; and

WHEREAS, Such skyrocketing medical malpractice insurance costs have resulted in a potential breakdown in the delivery of health care in this state, severe hardships concerning the availability of health care for the medically indigent, a denial of access to health care for the economically marginal, and the depletion of physicians such as to substantially worsen the quality of health care available to the residents of this state; and

WHEREAS, It is necessary to provide an adequate and reasonable remedy to address this health care crisis and to protect the health, welfare and safety of the residents of this state; now, therefore,

The People of the State of Nevada do enact as follows:

Section. 1. Chapter 7 of NRS is hereby amended by adding thereto a new section to read as follows:

1. An attorney shall not contract for or collect a fee contingent on the amount of recovery for representing a person seeking damages in connection with an action for injury or death against a provider of health care based upon professional negligence in excess of:

- (a) Forty percent of the first \$50,000 recovered;*
- (b) Thirty-three and one-third percent of the next \$50,000 recovered;*
- (c) Twenty-five percent of the next \$500,000 recovered; and*
- (d) Fifteen percent of the amount of recovery that exceeds \$600,000.*

2. The limitations set forth in subsection 1 apply to all forms of recovery, including, without limitation, settlement, arbitration and judgment.

3. For the purposes of this section, "recovered" means the net sum recovered by the plaintiff after deducting any disbursements or costs incurred in connection with the prosecution or settlement of the claim. Costs of medical care incurred by the plaintiff and general and administrative expenses incurred by the office of the attorney are not deductible disbursements or costs.

4. As used in this section:

(a) "Professional negligence" means a negligent act or omission to act by a provider of health care in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death. The term does not include services that are outside the scope of services for which the provider of health care is licensed or services for which any restriction has been imposed by the applicable regulatory board or health care facility.

(b) "Provider of health care" means a physician licensed under chapter 630 or 633 of NRS, dentist, registered nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, or a licensed hospital and its employees.

Sec. 2. Chapter 41A of NRS is hereby amended by adding thereto the provisions set forth as sections 3 to 6, inclusive, of this act.

Sec. 3. *"Professional negligence" means a negligent act or omission to act by a provider of health care in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death. The term does not include services that are outside the scope of services for which the provider of health care is licensed or services for which any restriction has been imposed by the applicable regulatory board or health care facility.*

Sec. 4. *"Provider of health care" means a physician licensed under chapter 630 or 633 of NRS, dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, or a licensed hospital and its employees.*

Sec. 5. *In an action for injury or death against a provider of health care based upon professional negligence, the injured plaintiff may recover noneconomic damages, but the amount of noneconomic damages awarded in such an action must not exceed \$350,000.*

Sec. 6. 1. *In an action for injury or death against a provider of health care based upon professional negligence, each defendant is liable to the plaintiff for economic damages and noneconomic damages severally only, and not jointly, for that portion of the judgment which represents the percentage of negligence attributable to the defendant.*

2. *This section is intended to abrogate joint and several liability of a provider of health care in an action for injury or death against the provider of health care based upon professional negligence.*

Sec. 7. NRS 41A.003 is hereby amended to read as follows:

41A.003 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 41A.004 to 41A.013, inclusive, *and sections 3 and 4 of this act* have the meanings ascribed to them in those sections.

Sec. 8. NRS 41A.097 is hereby amended to read as follows:

41A.097 1. Except as otherwise provided in subsection 3, an action for injury or death against a provider of health care may not be commenced more than 4 years after the date of injury or 2 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first, for:

(a) Injury to or the wrongful death of a person occurring before October 1, 2002, based upon alleged professional negligence of the provider of health care;

(b) Injury to or the wrongful death of a person occurring before October 1, 2002, from professional services rendered without consent; or

(c) Injury to or the wrongful death of a person occurring before October 1, 2002, from error or omission in practice by the provider of health care.

2. Except as otherwise provided in subsection 3, an action for injury or death against a provider of health care may not be commenced more than 3 years after the date of injury or [2 years] **1 year** after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first, for:

(a) Injury to or the wrongful death of a person occurring on or after October 1, 2002, based upon alleged professional negligence of the provider of health care;

(b) Injury to or the wrongful death of a person occurring on or after October 1, 2002, from professional services rendered without consent; or

(c) Injury to or the wrongful death of a person occurring on or after October 1, 2002, from error or omission in practice by the provider of health care.

3. This time limitation is tolled for any period during which the provider of health care has concealed any act, error or omission upon which the action is based and which is known or through the use of reasonable diligence should have been known to him.

4. For the purposes of this section, the parent, guardian or legal custodian of any minor child is responsible for exercising reasonable judgment in determining whether to prosecute any cause of action limited by subsection 1 or 2. If the parent, guardian or custodian fails to commence an action on behalf of that child within the prescribed period of limitations, the child may not bring an action based on the same alleged injury against any provider of health care upon the removal of his disability, except that in the case of:

(a) Brain damage or birth defect, the period of limitation is extended until the child attains 10 years of age.

(b) Sterility, the period of limitation is extended until 2 years after the child discovers the injury.

[5. As used in this section, "provider of health care" means a physician licensed under chapter 630 or 633 of NRS, dentist, registered nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, or a licensed hospital as the employer of any such person.]

Sec. 9. Chapter 42 of NRS is hereby amended by adding thereto a new section to read as follows:

1. In an action for injury or death against a provider of health care based upon professional negligence, if the defendant so elects, the defendant may introduce evidence of any amount payable as a benefit to the plaintiff as a result of the injury or death pursuant to the United States Social Security Act, any state or federal income disability or worker's compensation act, any health, sickness or income-disability insurance, accident insurance that provides health benefits or income-disability coverage, and any contract or agreement of any group, organization, partnership or corporation to provide, pay for or reimburse the cost of medical, hospital, dental or other health care services. If the defendant elects to introduce such evidence, the plaintiff may introduce evidence of any amount that the plaintiff has paid or contributed to secure his right to any insurance benefits concerning which the defendant has introduced evidence.

2. A source of collateral benefits introduced pursuant to subsection 1 may not:

(a) Recover any amount against the plaintiff; or

(b) Be subrogated to the rights of the plaintiff against a defendant.

3. In an action for injury or death against a provider of health care based upon professional negligence, a district court shall, at the request of either party, enter a judgment ordering that money damages or its equivalent for future damages of the judgment creditor be paid in whole or in part by periodic payments rather than by a lump-sum payment if the award equals or exceeds \$50,000 in future damages.

4. *In entering a judgment ordering the payment of future damages by periodic payments pursuant to subsection 3, the court shall make a specific finding as to the dollar amount of periodic payments that will compensate the judgment creditor for such future damages. As a condition to authorizing periodic payments of future damages, the court shall require a judgment debtor who is not adequately insured to post security adequate to assure full payment of such damages awarded by the judgment. Upon termination of periodic payments of future damages, the court shall order the return of this security, or so much as remains, to the judgment debtor.*

5. *A judgment ordering the payment of future damages by periodic payments entered pursuant to subsection 3 must specify the recipient or recipients of the payments, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments will be made. Such payments must only be subject to modification in the event of the death of the judgment creditor. Money damages awarded for loss of future earnings must not be reduced or payments terminated by reason of the death of the judgment creditor, but must be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately before his death. In such cases, the court that rendered the original judgment may, upon petition of any party in interest, modify the judgment to award and apportion the unpaid future damages in accordance with this subsection*

6. *If the court finds that the judgment debtor has exhibited a continuing pattern of failing to make the periodic payments as specified pursuant to subsection 5, the court shall find the judgment debtor in contempt of court and, in addition to the required periodic payments, shall order the judgment debtor to pay the judgment creditor all damages caused by the failure to make such periodic payments, including, but not limited to, court costs and attorney's fees.*

7. *Following the occurrence or expiration of all obligations specified in the periodic payment judgment, any obligation of the judgment debtor to make further payments ceases and any security given pursuant to subsection 4 reverts to the judgment debtor.*

8. *As used in this section:*

(a) *“Future damages” includes damages for future medical treatment, care or custody, loss of future earnings, loss of bodily function, or future pain and suffering of the judgment creditor.*

(b) *“Periodic payments” means the payment of money or delivery of other property to the judgment creditor at regular intervals.*

(c) *“Professional negligence” means a negligent act or omission to act by a provider of health care in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death. The term does not include services that are outside the scope of services for which the provider of health care is licensed or services for which any restriction has been imposed by the applicable regulatory board or health care facility.*

(d) *“Provider of health care” means a physician licensed under chapter 630 or 633 of NRS, dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, or a licensed hospital and its employees.*

Sec. 10. NRS 41A.031, 41A.041 and 42.020 are hereby repealed.

Sec. 11. If any provision of this act, or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the provisions or application of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 12. The amendatory provisions of sections 5, 6, and 8 of this act apply only to a cause of action that accrues on or after the effective date of this act.

LEADLINES OF REPEALED SECTIONS

41A.031 Limitations on liability for noneconomic damages; exceptions.

41A.041 Medical malpractice: Several liability for noneconomic damages.

42.020 Actions for damages for medical malpractice: Reduction of damages by amount previously paid or reimbursed; payment of future economic damages.

QUESTION NO. 4

Amendment to the Nevada Constitution

CONDENSATION (ballot question)

Shall the Nevada Constitution be amended to add provisions governing insurance rates and practices in Nevada?

Yes..... 274,752
No..... 516,216

EXPLANATION

The proposed amendment, if passed, would create a new Article of the Nevada Constitution. The amendment requires that: premiums charged for casualty insurance be rolled back to the amount charged on December 1, 2005, and reduced an additional 20%; insurers justify future rate increases to ensure rates are maintained at fair levels; insurers be subject to all laws applicable generally to other Nevada businesses, including consumer protection and antitrust; motor vehicle insurers provide a 20% good driver discount; any statute in effect on December 1, 2006 which limits compensation provided by juries to victims of medical negligence by certain health care providers are void unless insurance companies lower malpractice premiums as a result of such limitations; the Governor appoint an Insurance Commissioner for oversight and regulation of the industry, and; one or more persons be appointed to represent the interests of the Nevada public related to insurance.

The following arguments for and against and rebuttals for Question No. 4 were prepared by a committee as required by Nevada Revised Statutes (NRS) 293.252.

ARGUMENT IN SUPPORT OF QUESTION NO. 4

End excessive and unfair insurance rates.

If you're fed up with paying some of the highest insurance premiums in the country, now you can finally do something about it! Vote "YES" on Question 4 to bring your insurance rates back down to earth.

Question 4 was carefully drafted by experts. The same reforms have slashed rates in other states. Right next door in California, voters got \$1.2 billion in premium refunds when they passed insurance reform in 1988. The average refund check was \$171. The average automobile insurance premium actually dropped 22% between 1988 and 2001. Here in Nevada, it skyrocketed 37%! California's initiative has saved motorists over \$23 billion, according to the Consumer Federation of America.

Consumers like you put Question 4 on the ballot to end excessive and unfair insurance rates. Insurance company lobbyists are simply too influential for politicians to take action on this issue so it's time for us consumers to take matters into our own hands.

Question 4 will save every consumer hundreds of dollars each year on insurance premiums. It will:

1. Cut automobile, homeowner and business insurance premiums by 20% and freeze them at the lower rate for one year.
2. Give safe drivers an additional, permanent 20% Good Driver Discount.
3. Force insurance companies to open their books to justify rate increases before they take effect.
4. Stop overcharging, waste and fraud in the insurance system that eat up over twenty-five cents of every premium dollar you pay.
5. Force insurance companies to compete by eliminating their unfair exemption from the antitrust laws.
6. Require insurance companies to obey Nevada's consumer protection laws.

This law will even help keep our doctors in Nevada by making sure the insurance industry doesn't rip off Nevada's doctors, hospitals and patients. Limits on patients' legal rights were enacted two years ago to reduce medical malpractice insurance premiums for doctors. The insurance companies still haven't reduced the doctors' insurance rates. This law says they have to do so or the limits will be removed.

Best of all, Question #4 will cost taxpayers nothing. It requires insurance companies to pay a fee to cover its costs. And, by lowering the price of insurance, cities and counties will save taxpayers' money.

Beware of false advertising. The insurance companies will spend millions to defeat this initiative. Read the initiative and make your own decisions. Vote YES on Question 4.

REBUTTAL TO ARGUMENT IN SUPPORT OF QUESTION NO. 4

Personal injury attorneys are using the phony promise of insurance reform to repeal laws that helped keep doctors from leaving Nevada because of frivolous lawsuits.

Consumers ultimately pay the cost of unnecessary lawsuits and exorbitant legal fees when we pay our health insurance premiums. As those premiums increase, employers are forced to increase out-of-pocket costs, cut wages or drop coverage for their employees.

When the cost of medical malpractice insurance becomes intolerable, physicians move where they can afford to practice. OB-GYN and emergency room doctors are especially vulnerable to frivolous lawsuits, so women and trauma victims are the first to suffer from a doctor shortage.

That's what happened before, and that's what we can expect again if Question 4 passes. If personal injury lawyers really want to help doctors and small business, why would the Nevada State Medical Association, the Las Vegas Chamber of Commerce and other groups oppose Question 4?

Question 4 is a cynical attempt to deceive voters into repealing sensible medical malpractice reforms. This proposal would add nearly 2,000 words to the Nevada Constitution and bypass public debate and scrutiny by Nevada's citizen legislature. Vote NO on Question 4!

ARGUMENT AGAINST QUESTION NO. 4

Question 4 will not lower insurance rates. Federal courts declared a similar insurance rollback in Nevada unconstitutional.

Even though insurance rates would not be reduced, one part of this amendment would negatively impact the availability of healthcare. Buried deep inside Question 4 is language intended to wipe out reforms that were enacted to keep doctors in Nevada and protect our access to health care.

The purpose of Question 4 is clearly spelled out in a Nevada Trial Lawyers Association letter dated March 8, 2004, which states they wrote this Initiative, "...building a constitutional wall against (Question 3's medical malpractice reforms for) this election..."

This is a deceptive trick by personal injury lawyers. They know voters would not knowingly prohibit reforms to limit frivolous lawsuits, so the lawyers stuck that provision into this "insurance" question.

It wasn't that long ago when trauma centers closed and doctors were leaving Nevada. Emergency services were cut. Women's health was compromised by an exodus of OB-GYN specialists.

High malpractice insurance costs mean higher healthcare costs for everyone. Employers are forced to increase out-of-pocket costs that their employees pay, while some drop coverage altogether. Insurance for those who pay for it themselves becomes unaffordable.

That's what we can expect if the reforms passed by the Legislature in 2002 are repealed by Question 4.

Question 4 also creates a huge new state bureaucracy. Insurance companies are supposed to pay fees to support the new bureaucrats, but nothing in Question 4 prevents them from passing on those costs to consumers. California passed a similar regulatory scheme and the size of its Department of Insurance grew over 500 percent. The last thing Nevada needs is more bureaucrats!

It is wrong to clutter Nevada's Constitution with a hodge-podge of provisions such as these. With approximately 2,000 words, Question 4 is the longest constitutional amendment in Nevada history. It has not been subject to thorough public debate and scrutiny in the way that most laws are.

Any mistakes or unintended consequences of Question 4 will be locked into our constitution where not even the governor or legislature can fix them.

Insurance reform is not the real objective of the personal injury lawyers backing Question 4. Killing common sense legal reform is their objective. Stop personal injury lawyers from using the Nevada Constitution to line their own pockets at the expense of Nevada consumers. Vote NO on Question 4.

REBUTTAL TO ARGUMENT AGAINST QUESTION NO. 4

The greedy insurance companies don't want you to vote for Question 4. The reason is simple: Question 4 will force these East Coast corporations to lower your insurance rates by 20%.

Question 4 is based on reforms passed by California voters sixteen years ago and upheld by the courts as constitutional – reforms that have saved every Californian thousands of dollars.

Question 4 will lower the cost of health care in Nevada. The California law forced insurers to refund over \$75 million to doctors. It blocked \$45.6 million in rate increases for physicians and hospitals last year alone.

Question 4 also reinforces the malpractice caps passed by our legislature. It will force the insurance companies to return money that belongs to doctors or patients.

No new government bureaucracy will be necessary – *none*. Just a new set of rules that create a competitive marketplace and prohibit insurance companies from charging excessive rates. Question 4 won't cost taxpayers *anything*.

Question 4 was put on the ballot by Nevadans fed up with excessive insurance rates. Don't buy the insurance industry's lies – they're designed to protect the insurance industry's excessive profits that cost us all.

Please vote YES on Question 4.

FISCAL NOTE

Financial Impact – Yes.

If the proposal is approved, holders of casualty insurance policies could see their premiums reduced by 20 percent beginning December 1, 2006. Holders of automobile insurance policies who qualify for a good driver discount may also see their premiums reduced by an additional 20 percent beginning December 1, 2006. Because approval of the proposal could result in a decrease in insurance premiums, the proposal could result in a significant loss of revenues received by the State from the Insurance Premium Tax. If the proposal has the intended impact on insurance premiums, revenues from the Insurance Premium Tax could be reduced by approximately \$40 million in the first full fiscal year after the mandatory reductions in premiums go into effect (Fiscal Year 2007-2008). This compares to Insurance Premium Tax collections of approximately \$194 million in Fiscal Year 2003-2004.

The proposal would also place additional duties on the Division of Insurance of the Department of Business and Industry. The increased duties of the Division would include: reviewing and approving rate filings for casualty insurance; levying and collecting an assessment on insurers to cover the costs of the proposal; and determining whether recently imposed medical malpractice damage limitations have reduced medical malpractice claims and medical malpractice premiums. Additionally, the proposal would require the Legislature to provide by law for the appointment of one or more persons to represent the interests of the public related to insurance. The new duties set forth in the proposal would result in significant increases in personnel and operating expenses for the Division and in increased state expenses for the new positions representing the interest of the public related to insurance. Although the proposal provides that these increased expenses would be funded through a fee upon each insurer that conducts business in this State, the cost of the fee could possibly be passed on to policy holders through increased premiums once the rates are allowed to increase under the terms of the proposal.

FULL TEXT OF THE MEASURE

Initiative Petition

State of Nevada

The Insurance Rate Reduction and Reform Act

Explanation – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section 1. Title. This act shall be known and may be cited as “The Insurance Rate Reduction and Reform Act.”

Section 2. Findings and declarations.

1. The People of the State of Nevada find and declare that:
 - (a) The cost of insurance continues to increase and places an unfair burden on the People and families of Nevada.
 - (b) It is the public policy of the State of Nevada that drivers of motor vehicles bear legal responsibility for their driving behavior. However, the cost of automobile liability insurance that motorists are required by law to buy is often excessive and unfair.
 - (c) Instability in the malpractice insurance marketplace has imposed burdens upon doctors and other health care providers and diminished access to safe health care.
 - (d) The existing laws provide the Legislature and the Governor with certain authority over the industry of insurance. However, the existing laws are inadequate to protect consumers and there by allow insurance companies to charge excessive, unjustified and arbitrary rates.
2. The People of the State of Nevada further find and declare that it is the intent of this act to address the concerns set forth in subsection 1 by reforming the insurance industry so that:
 - (a) The premiums charged by an insurer for motor vehicle, homeowner, medical malpractice and other casualty insurance shall be rolled back to the amount that was charged on December 1, 2005, and reduced at least and additional 20 percent;
 - (b) In addition to reducing the premiums charged for casualty insurance, insurers shall be required to justify future increases in rates to ensure that those rates are maintained at fair levels;
 - (c) Insurers shall be subject to all laws that are generally applicable to other businesses in the State of Nevada, including consumer protection and antitrust laws;
 - (d) Motor vehicle insurers shall provide an additional 20 percent discount for good drivers;

- (e) Limitations placed on the compensation provided by juries to victims of medical negligence shall be void unless insurance companies lower medical malpractice premiums as a result of such limitations; and
- (f) A fee shall be charged to insurers to cover the cost of administering these reforms so that these reforms will cost taxpayers nothing.

Sec. 3. The Constitution of the State of Nevada is hereby amended by adding thereto a new article to be designated article 20, to read as follows:

Section 1. Definition of casualty insurance.

As used in this article, unless the context otherwise requires, "casualty insurance" means insurance against any kind of loss, damage or liability, except that the term does not include life, health, workers' compensation or disability insurance.

Sec. 2. Insurance premium rollbacks.

1. An insurer that issues or renews any policy of casualty insurance in this state on or after December 1, 2006, and before December 1, 2007, shall reduce the rates charged so that the premium for each such policy of casualty insurance is reduced to an amount equal to at least 20 percent less than the premium that was in effect on December 1, 2005.

2. An affiliate of an insurer that is established on or after December 1, 2006, and before December 1, 2007, is subject to the provisions of this section and shall set the rates charged so that the premiums for policies of casualty insurance are reduced to an amount equal to at least 20 percent less than the premiums that were in effect on December 1, 2005, for an insurer of similarly situated risks.

3. If, on or after December 1, 2006, and before December 1, 2007, a person applies to an insurer for the first time for a policy of casualty insurance, the insurer shall set the rates charged so that the premium for such insurance is reduced to an amount equal to at least 20 percent less than the premiums that were in effect on December 1, 2005, for similarly situated risks.

4. An insurer that is first authorized to conduct business in this State on or after December 1, 2006, and before December 1, 2007, is subject to the provisions of this section and the Insurance Commissioner shall insure that the rates set by the insurer provide a premium that is reduced to the level required by this section.

5. During the period beginning December 1, 2006, and ending December 1, 2007, the premiums set pursuant to subsection 1, 2, 3 or 4, as applicable, must not be increased.

6. During the period beginning December 1, 2006, and ending December 1, 2007:

(a) An insurer may apply to the Insurance Commissioner to increase the rates set pursuant to subsection 1, 2, 3 or 4, as applicable, if those rates fail to provide a fair and reasonable return to the insurer or are otherwise confiscatory.

(b) An application submitted by an insurer pursuant to paragraph (a):

(1) Must contain a detailed analysis of the reasons the rates fail to provide a fair and reasonable return to the insurer or are otherwise confiscatory, including, without limitation, relevant facts and provisions of law; and

(2) Must contain proposed rates which the insurer believes are the minimum rates that provide a fair and reasonable return to the insurer and are otherwise not confiscatory; and

(c) After a hearing, the Insurance Commissioner may approve the application of an insurer pursuant to this subsection, if the Insurance Commissioner finds that the rates fail to provide a fair and reasonable return to the insurer or are otherwise confiscatory. Upon granting such approval, the Insurance Commissioner shall determine the minimum rates that provide a fair and reasonable return to the insurer and are otherwise not confiscatory.

(d) An insurer who submits an application pursuant to this subsection may charge the rates proposed in the application until the Insurance Commissioner approves or disapproves the application. If the Insurance Commissioner:

(1) Approves the application, the insurer shall immediately begin to charge the rates determined by the Insurance Commissioner pursuant to paragraph (c) and refund any excess portion of previously paid premiums, with interest.

(2) Disapproves the application, the insurer shall immediately begin to charge the rates set pursuant to subsection 1, 2, 3 or 4, as applicable and refund the excess portion of the previously paid premiums, with interest.

(e) If an insurer submits an application pursuant to this subsection, the insurer may not submit another application pursuant to this subsection regarding the same rate or rates sooner than 90 days after the date of the decision of approval or disapproval with regard to the first application.

7. An insurer that has issued a policy of casualty insurance that is in effect on December 1, 2006, shall not cancel or refuse to renew the policy to avoid the reduction in rates required by this section.

Sec. 3. 20% Good Driver Discount.

1. Drivers of motor vehicles shall bear legal responsibility for their driving conduct.

2. An insurer shall provide for a reduction of the premium charged to an insured in the amount of 20 percent for a motor vehicle insurance policy if the insured:

(a) Has been licensed to operate a motor vehicle in any state or the District of Columbia during the immediately preceding 3 years;

(b) Has not accumulated more than one conviction for a moving traffic violation during the immediately preceding 3 years;

(c) Has not been involved in an accident involving a motor vehicle that resulted in bodily injury or death for which the insured was at fault during the immediately preceding 3 years; and

(d) Has not been convicted of or entered a plea to a moving traffic violation or an offense involving the operation of a motor vehicle while under the influence of intoxicating liquor or a controlled substance in any state or the District of Columbia during the immediately preceding 7 years.

3. An insurer authorized to issue a motor vehicle insurance policy in the State of Nevada shall not refuse to issue or renew a motor vehicle insurance policy to any person who qualifies for the reduction in premiums provided by this section.

4. An insurer shall not consider if a person previously purchased a motor vehicle insurance policy in determining whether or not the person is eligible for the reduction in premiums provided by this section, or for determining the premium to be charged to, or the insurability of, the person.

5. As used in this section, "motor vehicle insurance policy" means a policy of insurance against liability arising out of the ownership, maintenance or use of a motor vehicle, delivered or issued for delivery in this State.

Sec. 4. Insurers subject to laws that apply generally to other businesses in the State of Nevada.

An insurer that conducts business in the State of Nevada shall be subject to all laws that apply to other businesses generally, including, without limitation, laws governing consumer protection and antitrust. This provision does not apply to laws that are specifically intended to affect only a particular class or type of business unrelated to insurance.

Sec. 5. Appointment of Insurance Commissioner to oversee the insurance industry; fee to cover expenses related to this article; hearings; additional penalties for violation of article.

1. The Legislature shall provide by law for the regulation of the industry of insurance in the State of Nevada, including, without limitation, providing for the appointment by the Governor of the Insurance Commissioner, who shall be responsible for the oversight and regulation of the industry of insurance.

2. The Insurance Commissioner shall impose a fee upon each insurer that conducts business in this State to cover all expenses related to carrying out the provisions of this article.

3. Any hearing or other regulatory action taken by the Insurance Commissioner is subject to all laws concerning administrative procedures generally.

4. If an insurer violates any provision of this article, the Insurance Commissioner may, in addition to any other action, suspend or revoke, in whole or in part, the authority of the insurer to conduct business in the State of Nevada.

Sec. 6. Appointment of persons to represent the interests of the public related to insurance.

1. The Legislature shall provide by law for the appointment of one or more persons to represent the interests of the public in this State related to insurance.

2. Each time that an insurer submits a rate for policies of casualty insurance for approval to the Insurance Commissioner, each person appointed pursuant to this section must receive notice. Each person appointed pursuant to this section shall be provided the opportunity to participate in any hearings concerning the rate submitted for approval and shall have the same authority to review the books and records of the insurer that submitted the rate as the Insurance Commissioner.

Sec. 7. Approval of rates for casualty insurance required.

1. Beginning on December 1, 2007, each insurer that conducts business in the State of Nevada shall submit for approval to the Insurance Commissioner each proposed rate to be charged for casualty insurance. An insurer shall not charge any rate for casualty insurance until the Insurance Commissioner has approved the proposed rate.

2. A proposed rate submitted pursuant to subsection 1 must not be approved if it is excessive, inadequate, unfairly discriminatory or otherwise in violation of law.

3. The Insurance Commissioner shall adopt regulations setting forth the procedures for reviewing applications for the approval of proposed rates for casualty insurance. Such regulations shall:

- (a) Require the insurer to provide that the proposed rates are justified and comply with all requirements imposed by law;**
- (b) Prohibit unreasonable or imprudently incurred expenses and reserves;**
- (c) Provide an insurer with an opportunity to earn a fair return on its capital used and useful for the provision of insurance in this state; and**
- (d) Specify such other factors as are necessary to establish fair rates, except that no consideration may be given to the degree of competition in the industry of insurance in this State and the rates must reflect mathematically the investment income of the insurer.**

4. The Insurance Commissioner shall provide public notice when an insurer submits an application for approval of a proposed rate for casualty insurance. The Insurance Commissioner shall hold a hearing to determine whether or not to approve the proposed rate if:

(a) A member of the public or his representative requests a hearing not later than 45 days after the notice is provided, unless the Insurance Commissioner provides written findings to support denying such hearing;

(b) The Insurance Commissioner determines that it is in the best interest of the public to hold a hearing; or

(c) The proposed rate reflects a change in the rate which is greater than 7 percent for a personal line of casualty insurance or greater than 15 percent for a commercial line of casualty insurance.

5. The Insurance Commissioner shall make all information provided by an insurer concerning premiums for casualty insurance available for public inspection, except to the extent prohibited by federal law or the federal constitution.

Sec. 8. Medical malpractice insurance – requirement that limitations on compensation reduce claims and premiums.

1. Any statute that is in effect on December 1, 2006, which limits the amount of the recovery that a jury may provide to a person who has been injured by the wrongful or negligent conduct of a doctor, hospital or other health care provider, shall be void unless the Insurance Commissioner determines, not later than February 1,

2007, upon substantial evidence provided at hearings, that any such limitation has reduced:

(a) The average amount paid annually by insurers for claims of a breach of duty by providers of health care by at least ten percent since the limitation became effective; and

(b) The premiums charged to providers of health care for insurance covering the professional liability of providers of health care by an annual average of ten percent since the limitation became effective.

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

(a) A limitation on the liability of a governmental entity or a person acting in the capacity of an officer or employee of a governmental entity.

(b) A limitation on the liability of a provider of health care who provides services to a person free of charge.

Sec. 9. Liberal construction; severability.

1. This article shall be construed liberally and applied in a manner that fully promotes the purposes for the enactment of this article.

2. If any provision of this article or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect any other provision or application of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

QUESTION NO. 5

Amendment to the Nevada Constitution

CONDENSATION (ballot question)

Shall the Nevada Constitution be amended to penalize lawyers willfully involved in vexatious and frivolous litigation, and to prohibit certain changes to limits on recovery of monetary damages?

Yes..... 294,415
No..... 497,406

EXPLANATION

The proposed amendment, if passed, would create a new section of the Nevada Constitution. The amendment provides that a lawyer willfully involved in vexatious and frivolous litigation is personally responsible for attorney’s fees, court costs, and expenses of an aggrieved party, in addition to any other sanction that may be imposed. “Vexatious and frivolous” means filing or defending a lawsuit solely to harass the opposing party or to seek economic gain unrelated to the merits of the lawsuit. The amendment also voids any changes made to Nevada law between January 1, 2004, and December 1, 2006, that decrease the dollar amount of damages persons may recover for losses and harm caused to them as a result of the negligent or wrongful conduct of another person. The amendment does not prohibit the Legislature from: (1) increasing the amount of monetary damages a person may recover caused by the negligent or wrongful conduct of another; or (2) repealing laws which limit damages. Any other changes to such laws are deemed void.

The following arguments for and against and rebuttals for Question No. 5 were prepared by a committee as required by Nevada Revised Statutes (NRS) 293.252.

ARGUMENT IN SUPPORT OF QUESTION NO. 5

For years, insurance companies have said that “frivolous lawsuits” cost consumers astronomical increases in their insurance premiums. Solution? Stop frivolous lawsuits. A “YES” vote on Question 5 will do just that. Vote “YES” on Question 5 and the Nevada Constitution will be amended to hold the lawyers and corporations who file frivolous lawsuits directly responsible for the financial cost of their unfounded lawsuits.

By directly punishing the lawyer or corporation responsible for actually filing the lawsuit, two things are accomplished: (1) the real cost burden is placed on the party truly responsible for the frivolous lawsuit – the lawyer or corporation, and (2) imposing these financial burdens on the responsible parties will publicly discourage other lawyers and corporations from pursuing other frivolous lawsuits.

As a result of passing Question 5, the insurance companies will not have to pay for frivolous suits against them and their clients and the savings will be realized in reduced premiums for consumers.

Question 5 provides that any lawyer who knowingly participates in perpetuating a frivolous lawsuit or defending a lawsuit for frivolous reasons will be held personally liable for the attorney fees, court costs and expenses incurred by the other side in defending against that vexatious or frivolous lawsuit.

Question 5 also makes it clear that every citizen will continue to have the right to pursue real, legitimate claims. Individuals should not be restricted or curtailed in any way to pursue their legitimate claims.

Just as an insurance company has a right to file legitimate claims, so should individuals. Just as an insurance company has a right to hire any attorney they want to hire, so should any citizen have that same right in order to seek justice under the law, without government interference.

These are the rights of every Nevadan and Question 5 recognizes these rights.

Question 5 is a pro-consumer measure designed to protect an individual's right to pursue legitimate claims while placing the financial responsibility for frivolous lawsuits directly and exclusively on those who pursue frivolous lawsuits.

Question 5 protects your rights – and the rights of all Nevadans. Vote YES on Question

REBUTTAL TO ARGUMENT IN SUPPORT OF QUESTION NO. 5

Nevada's personal injury attorneys say they qualified Question 5 to put an end to frivolous lawsuits.

Who do they think they're kidding? They're the ones who **FILE** frivolous lawsuits!

Lawyers collect nearly one-half of all the money awarded in lawsuits, which explains why there are so many frivolous suits. Question 5 would prevent the legislature from ever correcting this injustice. Question 5 also prohibits judges from reducing outrageous jury awards or cutting attorneys' fees to make sure the victim's lawyer doesn't walk off with more money than an injured party.

Existing law already allows judges to punish attorneys for bringing frivolous lawsuits. This proposal would actually make it easier for attorneys to file these lawsuits because it makes it harder for a judge to declare them frivolous.

Nevada has been plagued with a host of problems related to unnecessary lawsuits against contractors, cities, counties, schools, non-profit organizations, nursing homes, hospitals

and doctors. Question 5 was put on the ballot to stop lawmakers from doing their job of preventing consumers and taxpayers from being gouged by frivolous lawsuits.

Don't use our constitution to give lawyers a blank check. Vote NO on Question 5.

ARGUMENT AGAINST QUESTION NO. 5

Nearly one-half of the money awarded in lawsuits goes to pay lawyers and legal expenses. Question 5 locks this unfair practice into the Nevada constitution, preventing the legislature from ever limiting excessive attorneys' fees or court awards. Personal injury lawyers win. Consumers lose.

Do personal injury attorneys really expect voters to believe they paid to put Question 5 on the ballot because it will limit frivolous lawsuits?

Question 5 does exactly the opposite. It encourages frivolous lawsuits because it adds a provision to the constitution that only cases determined to be 100% frivolous are subject to sanctions. A lawyer cannot be sanctioned for filing a lawsuit that is only 95% frivolous.

Isn't it just like the personal injury lawyers to write something that does the opposite of what they claim?

Here are the facts about Question 5:

Legal fees and jury awards have driven the cost of malpractice insurance in Nevada to among the highest in the nation. As a result, doctors have left the state, and Nevada ranks near the bottom nationally in number of doctors per resident. This shortage will grow as our population grows. With fewer healthcare providers, people cannot get medical treatment they need.

Higher medical malpractice costs mean higher healthcare costs for everyone. Fewer employers will be able to provide healthcare coverage to their employees; out-of-pocket costs for employees increase; fewer people will be able to afford coverage for themselves.

What's the real reason personal injury attorneys put Question 5 on the ballot? In 2002, the state legislature capped the fees that attorneys can collect in medical malpractice cases. To make certain their hefty fees are never limited, personal injury lawyers qualified Question 5 for the ballot.

Question 5 also prohibits judges from reducing grossly inflated jury awards or attorneys' fees. Remember the woman who sued McDonalds after spilling coffee in her lap? If Question 5 becomes part of our constitution, there would be nothing a judge could do to reduce outrageous awards or excessive attorneys' fees. If Question 5 becomes part of our

constitution, lawyers can walk away with more money than the person for whom the award was intended.

Lawsuits already cost each and every Nevadan \$809 per year. Question 5 will result in fewer doctors, higher healthcare costs, less access to healthcare, more lawsuits and higher attorney fees. It has no place in the Nevada Constitution. Vote NO on Question 5.

REBUTTAL TO ARGUMENT AGAINST QUESTION NO. 5

Why are the big East Coast insurance companies and other special interests lying about Question 5?

Because they don't want a fair and impartial system of justice.

They want to take away your right to protect yourself when they rip you off.

Example: If you have fire damage to your home, and your insurance company "low-balls" you by refusing to pay in full, you can take your insurer to court and a jury can order the company to pay. But insurance companies say that such lawsuits are "frivolous." They are lobbying the politicians to eliminate your legal rights -- even your right to hire a lawyer!

Question 5 improves Nevada's legal system by punishing bad lawyers and truly frivolous lawsuits. But it also preserves your right to bring a legitimate case before a jury – a right that's been in the State Constitution since 1864.

Question 5 safeguards your right to:

Hire an attorney without interference from the government;

A fair trial before a jury of your fellow citizens;

Full compensation for injuries caused by negligent corporations and individuals.

Defend Nevada's Constitution against the greedy special interests. Please vote YES on Question 5.

FISCAL NOTE

Financial Impact – Cannot be determined.

Although the proposal to amend the *Nevada Constitution* would provide that a lawyer willfully involved in vexatious and frivolous litigation is personally responsible for attorney's fees, court costs and expenses of the aggrieved party, the financial impacts, if

any, of this proposal on a particular individual or business willfully involved in vexatious and frivolous litigation cannot be determined.

FULL TEXT OF THE MEASURE

Initiative Petition

State of Nevada

Stop Frivolous Lawsuits and Protect Your Legal Rights Act

Explanation – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section 1. Title.

This measure shall be known and may be cited as “The Stop Frivolous Lawsuits and Protect Your Legal Rights Act.”

Section 2. Findings and declarations.

The People of the State of Nevada find and declare that:

- (a) Preservation of an individual’s legal rights is a vital part of our democratic society.
- (b) Cost effective access to the judicial system will allow all Nevadans the right to recovery for all harm and losses as a result of the negligent or wrongful conduct of another person.
- (c) Preventing vexatious and frivolous litigation will preserve the rights of individuals to utilize the judicial system to receive compensation and will make the system work better.
- (d) This Act will guarantee that a person’s right to recovery for all harm and losses as a result of the negligent or wrongful conduct of another person will not be limited in any way.
- (e) This Act will guarantee that there will be no interference with a person’s right to a fair trial and any judgment that is awarded by a jury.
- (f) This Act will guarantee a person’s right to hire an attorney and determine the manner and amount of compensation that the attorney should receive for protecting the individual’s legal rights.

Section 3. Article 6 of the Constitution of the State of Nevada is hereby amended by adding thereto a new section to be designated section 14A, to read as follows:

Sec. 14A. 1. Whenever the evidence shows that a lawyer has willfully encouraged, initiated or pursued litigation or defended litigation in a manner which is vexatious and frivolous, that lawyer shall be held personally responsible for the attorney's fees, court costs and expenses of the aggrieved party. The personal responsibility imposed by this subsection is in addition to, and not in lieu of, any disciplinary action or other sanction that may be imposed by a court as a result of the same litigation. As used in this subsection, "vexatious and frivolous" means filing or defending a lawsuit solely to harass the opposing party or to seek economic gain unrelated to the merits of the lawsuit.

2. All persons are entitled to complete recovery for all harm and losses caused to them as a result of the negligent or wrongful conduct of another person, and no law shall be enacted which limits a person's right to recovery for all harm and losses caused to them as a result of the negligent or wrongful conduct of another person. The provisions of this subsection do not:

(a) Amend, nullify or change any limitation on damages which exists in statute on January 1, 2004, except that, any changes to such a limitation enacted after January 1, 2004, but before December 1, 2006, are void unless the changes increase the dollar amount in the limitation on damages or repeal the limitation on damages.

(b) Prohibit the Legislature from:

(1) Amending any limitation on damages which exists in statute on January 1, 2004, to increase the dollar amount in the limitation on damages; or

(2) Repealing any limitation on damages which exists in statute on January 1, 2004.

(c) Apply to a statute which limits the liability of a governmental entity or a person acting in the capacity of an officer or employee of a governmental entity.

3. There shall be no interference with a person's right to a fair trial and the judgment that is awarded by a jury.

4. There shall be no interference with the right of a person to employ an attorney for representation in court and to determine the manner and amount of compensation to pay the attorney for providing such representation for any and all matters including representation at a specific trial.

5. If any provision of this section or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect any other provision or application of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

QUESTION NO. 6

Amendment to the Nevada Constitution

CONDENSATION (ballot question)

Shall the Nevada Constitution be amended to raise the minimum wage paid to employees?

Yes..... 545,490
No..... 252,162

EXPLANATION (ballot question)

The proposed amendment, if passed, would create a new section to Article 15 of the Nevada Constitution. The amendment would require employers to pay Nevada employees \$5.15 per hour worked if the employer provides health benefits, or \$6.15 per hour worked if the employer does not provide health benefits. The rates shall be adjusted by the amount of increases in the federal minimum wage over \$5.15 per hour, or, if greater, by the cumulative increase in the cost of living measured by the Consumer Price Index (CPI), with no CPI adjustment for any one-year period greater than 3%.

The following arguments for and against and rebuttals for Question No. 6 were prepared by a committee as required by Nevada Revised Statutes (NRS) 293.252.

ARGUMENT IN SUPPORT OF QUESTION NO. 6

All Nevadans will benefit from a long-overdue increase in the state’s minimum wage through a more robust economy, a decreased taxpayer burden and stronger families.

Low-income workers who do not currently earn enough to cover the basic costs of living for their families – housing, health care, food and child care – will clearly benefit. Many low-income Nevada families live in poverty even though they have full-time jobs. A Nevada worker at the current minimum wage for 40 hours per-week — every week, all year – makes only \$10,712. If the minimum wage had been increased to keep up with rising prices over the last 25 years, it would now bring in \$15,431 per-year – not \$10,712. At the current \$5.15 an hour, many minimum wage workers in Nevada have incomes below the federal poverty line. We want to encourage people to work and be productive members of society. It’s economic common sense.

Taxpayers will benefit as an increased minimum wage allows low-income working families to become more financially able to free themselves from costly taxpayer-provided services such as welfare, childcare and public health services.

Our state’s economy will benefit as we develop a workforce that will earn more spendable income and put dollars directly into local stores and businesses.

Raising the minimum wage one dollar affirms Nevada's beliefs that we value work, especially the difficult jobs performed by nursing home employees, childcare workers, and restaurant employees.

Minimum wage workers are not just teenagers working part-time to pay for movies, CDs and fast food. The vast majority of minimum wage workers in Nevada are adults (79% are 20 and older). Most work full-time. Six out of 10 minimum wage earners are women. Twenty-five percent are single mothers. And altogether they are the parents of 25,000 children. The paycheck these workers bring home accounts for about half of their families' earnings.

No matter what special interests and big corporations who oppose a fair minimum wage tell you, virtually *every* reputable economic study has found that workers don't get fired when minimum wages are passed or increased. In fact, employment increases. Eight of the eleven states that had a minimum wage above the federal level in 2003 are producing more jobs than the United States as a whole.

Raising the minimum wage makes sense for *all* of Nevada. Cast a vote for Nevada working people, Nevada taxpayers, Nevada values and a stronger Nevada economy.

REBUTTAL TO ARGUMENT IN SUPPORT OF QUESTION NO. 6

Contrary to claims by those eager to change Nevada's constitution, the most credible economic research for over 30 years has shown that minimum wage hikes hurt, rather than help, low-wage workers.

A recent example is the study, *The Effects of Minimum Wages Throughout the Wage Distribution*, by David Neumark, National Bureau of Economic Research; Mark Schweitzer, Federal Reserve Bank of Cleveland; and William Wascher, Board of Governors of the Federal Reserve - Division of Research and Statistics: "The evidence indicates that workers initially earning near the minimum wage are adversely affected by minimum wage increases.... Although wages of low-wage workers increase, their hours and employment decline, and the combined effect of these changes is a decline in earned income." *National Bureau of Economic Research, Working Paper 7519, 5/8/2000.*

The same year, Stanford University's Thomas MaCurdy & Frank McIntyre showed that the effect of a minimum wage increase is very similar to a "sales tax levied only on selective commodities" and conclude: "... three in four of the poorest workers *lose* from shouldering the costs of higher prices resulting from the wage increase. When these benefits and costs are considered, the minimum wage is *ineffective* as an anti-poverty policy."

ARGUMENT AGAINST QUESTION NO. 6

This constitutional amendment would actually *increase* poverty in Nevada, rather than fight it.

Suffering the most would be single mothers with little education, and other unskilled workers who are just entering the job market.

Today, such entry-level employees are paid not just with wages, but also the chance to learn new job skills. With those new skills—and the work habits they learn—they are able to climb the job ladder and make better lives for themselves and their families.

But if government forces entry-level wages artificially higher, fewer businesses will be able to hire these unskilled workers. That's because their *total* cost to the company—their pay, plus their training costs—will often be greater than these workers contribute to the company. So some workers will be let go, and others will never be hired.

Nevada has long been known as a state where businesses enjoy economic opportunities they cannot find elsewhere. But this constitutional amendment would end all that.

It would suddenly place Nevada at a big economic disadvantage to many other states—states without these high wage requirements. Under this amendment, wages paid in Nevada must, from now on, exceed the federal minimum wage by about \$1 an hour. This would seriously damage Nevada businesses—especially small mom and pop businesses, which usually have fewer resources to work with.

This proposal also would discriminate against non-union companies—which means against the great majority of small businesses in Nevada. It would give labor union officials the power, under the law, to permit *union* companies to hire new employees at rates *below* the new minimum wage. This is unfair to both companies and union members. It is also a virtual invitation to union corruption.

The key to fighting poverty—and to achieving higher wages for *all* workers—is long-term economic growth. Artificially higher wages imposed by government will only obstruct such growth.

This proposed constitutional amendment should be rejected.

Fiscal impact: Negative.

Environmental impact: Neutral.

Public health, safety and welfare impact: Negative.

REBUTTAL TO ARGUMENT AGAINST QUESTION NO. 6

Raising the minimum wage in Nevada will decrease poverty as it increases people's participation in the State's economy. If increased wages actually made people poorer – as the special interests opposed to this amendment ridiculously claim – *nobody* in Nevada would ever ask for a raise.

Single mothers, as well as anyone else working a minimum wage job, will see an increase in their wages that will actually allow them to pay for housing, healthcare, food and childcare.

All available economic studies show that *everyone* wins when the minimum wage is increased. Low-income workers earn more, become less dependent on welfare and other public programs which eases the burden on taxpayers, and have more money to spend on local goods and services -- which strengthens the economy and generates more jobs.

There is *nothing* in the amendment to raise the minimum wage that would exempt union companies – it's a federal minimum that all companies must follow.

Raise low-income workers' wage. Spur Nevada's economic growth. Generate more buying power to support Nevada businesses. Create jobs. Move low-wage workers away from dependence on public programs and ease taxpayers' burden.

You can achieve *all* of these goals by voting YES on the minimum wage amendment.

FISCAL NOTE

Financial Impact – Cannot be determined.

Although the proposal to amend the *Nevada Constitution* to increase the minimum wage in Nevada could result in additional costs to Nevada's businesses, the impact on a particular business would depend on the number of employees working at a wage below the new requirement, the amount by which the wages would need to be increased and any actions taken by the business to offset any increased costs associated with the increased wage requirement.

The proposal would, however, result in beneficial financial impacts for employees who receive a wage increase as a result of the proposal and who are not impacted adversely by any actions taken by the business to offset the increased costs associated with the increased wage requirement.

In addition, if the proposal results in an increase in annual wages paid by Nevada's employers, revenues received by the State from the imposition of the Modified Business Tax would also increase.

FULL TEXT OF THE MEASURE

RAISE THE MINIMUM WAGE FOR WORKING NEVADANS

Explanation – Matter in ***bolded italics*** is new; matter between brackets [deleted material] is material being deleted.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section 1. Title.

This Measure shall be know and may be cited as “**The Raise the Minimum Wage for Working Nevadans Act.**”

Section 2. Findings and Purpose

The people of the State of Nevada hereby make the following findings and declare their purpose in enacting this Act is as follows:

1. No full-time worker should live in poverty in our state.
2. Raising the minimum wage is the best way to fight poverty. By raising the minimum wage form \$5.15 an hour to \$6.15 an hour, a full-time worker will earn an additional \$2,000 in wages. That’s enough to make a big difference in the lives of low-income workers to move many families out of poverty.
3. For low –wage workers, a disproportionate amount of their income goes toward cost of living expenses. Living expenses such as housing, healthcare, and food have far outpaced wage levels for Nevada’s working families.
4. In our state, 6 out of 10 minimum wage earners are women. Moreover 25 percent of all minimum wage earners are single mothers, many of whom work full-time.
5. At \$5.15 an hour, minimum wage workers in Nevada make less money than they would on welfare. When people choose work over welfare, they become productive members of society and the burden on Nevada taxpayers is reduced.
6. Raising the minimum wage from \$5.15 an hour to \$6.15 an hour affirms Nevadan’s beliefs that we value work, especially the difficult jobs performed by hotel maids, childcare workers, and nursing home employees. We need to make sure the workers who are the backbone of our economy receive fair paychecks that allow them and their families to live above the poverty line.

Section 3.

Article 15 of the Constitution of the State of Nevada is hereby amended by adding thereto a new section to read as follows:

Sec. 16. Payment of minimum compensation to employees.

- A. Each employer shall pay a wage to each employee of not less than the hourly rates set forth in this section. The rate shall be five dollars and fifteen cents (\$5.15) per hour worked, if the employer provides health benefits as described herein, or six dollars and fifteen cents (\$6.15) per hour if the employer does not provide such benefits. Offering health benefits within the meaning of this section shall consist of making health insurance available to the employee for the employee and the employee's dependents at a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer. These rates of wages shall be adjusted by the amount of increases in the federal minimum wage over \$5.15 per hour, or, if greater, by the cumulative increase in the cost of living. The cost of living increase shall be measured by the percentage increase as of December 31 in any year over the level as of December 31, 2004 of the Consumer Price Index (All Urban Consumers, U.S. City Average) as published by the Bureau of Labor Statistics, U.S. Department of Labor or the successor index or federal agency. No CPI adjustment for any one-year period may be greater than 3%. The Governor or the State agency designated by the Governor shall publish a bulletin by April 1 of each year announcing the adjusted rates, which shall take effect the following July 1. Such bulletin will be made available to all employers and to any other person who has filed with the Governor or the designated agency a request to receive such notice but lack of notice shall not excuse noncompliance with this section. An employer shall provide written notification of the rate adjustments to each of its employees and make the necessary payroll adjustments by July 1 following the publication of the bulletin. Tips or gratuities received by employees shall not be credited as being any part of or offset against the wage rates required by this section.*
- B. The provisions of this section may not be waived by agreement between an individual employee and an employer. All of the provisions of this section, or any part hereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of all or any part of the provisions of this section. An employer shall not discharge, reduce the compensation of or otherwise discriminate against any employee for using any civil remedies to enforce this section or otherwise asserting his or her rights under this section. An employee claiming violation of this section may bring an action against his or her employer in the courts of this State to*

enforce the provisions of this section and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this section, including but not limited to back pay, damages, reinstatement or injunctive relief. An employee who prevails in any action to enforce this section shall be awarded his or her reasonable attorney's fees and costs.

- C. As used in this section, "employee" means any person who is employed by an employer as defined herein but does not include an employee who is under eighteen (18) years of age, employed by a nonprofit organization for after school or summer employment or as a trainee for a period not longer than ninety (90) days. "Employer" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts of employment.*

- D. If any provision of this section is declared illegal, invalid or inoperative, in whole or in part, by the final decision of any court of competent jurisdiction, the remaining provisions and all portions not declared illegal, invalid or inoperative shall remain in full force or effect, and no such determination shall invalidate the remaining sections or portions of the sections of this section.*

QUESTION NO. 7

Amendment to the *Nevada Constitution*
Assembly Joint Resolution No. 3 of the 71st Session

CONDENSATION (ballot question)

Shall the *Nevada Constitution* be amended to change the provision that prohibits an “idiot or insane person” from voting to refer instead to “a person who has been adjudicated mentally incompetent, unless restored to legal capacity” and to repeal a provision relating to the election of United States Senators by the Legislature that was made obsolete by the adoption of the 17th Amendment to the *United States Constitution*?

Yes..... 418,857
No..... 351,982

EXPLANATION

Currently, the *Nevada Constitution* provides that no “idiot or insane person” shall be entitled to vote in Nevada. The proposed amendment would change this language to provide that no person “who has been adjudicated mentally incompetent, unless restored to legal capacity,” shall be entitled to vote in Nevada. A “Yes” vote is a vote to remove language from Section 1, Article 2 of the *Nevada Constitution* referring to an idiot or insane person and replace it with language referring to persons who have been adjudicated mentally incompetent and not restored to legal capacity. A “No” vote is a vote to allow the language of this provision to remain unchanged.

Section 34, Article 4 of the *Nevada Constitution* provides that the Legislature shall elect Nevada’s United States Senators in joint convention of both Houses of the Legislature. This section also states that a vacancy in the office of United States Senator must be filled by the Legislature in a joint convention. The provision was nullified in 1913 with the adoption of the 17th Amendment to the *United States Constitution*, which provides for the direct, popular election of United States Senators and the filling of vacancies in the office of United States Senator through a vote of the people. A “Yes” vote is a vote to repeal this provision. A “No” vote is a vote to allow the language of this provision to remain unchanged.

ARGUMENTS FOR PASSAGE

The use of the terms “idiot” and “insane” is inaccurate and archaic and may be offensive to those individuals suffering from a brain disorder or mental illness. This terminology is no longer recognized in modern legal and medical contexts. Other States have removed this language from their Constitutions.

The second part of the question concerns the election of United States Senators through joint convention of the Legislature. This provision in the *Nevada Constitution* is obsolete

because the election and replacement of United States Senators by direct, popular election is provided for in the 17th Amendment to the *United States Constitution*. This provision in the *Nevada Constitution* should be removed because it is erroneous and confusing.

ARGUMENTS AGAINST PASSAGE

Amendment of the *Nevada Constitution* should be a rare undertaking and constitutional language should not be changed simply to respond to uses of terminology which may be outdated or go in and out of favor over time. Although the use of the terms “idiot” and “insane” could be seen as objectionable by modern standards, the use of this language was nevertheless acceptable at the time the provision was written, and the meaning of these terms is still clear. A change to this provision may also result in the State creating a legal classification of “mentally incompetent” for the purpose of voting. This legal classification could apply to persons whose mental conditions do not affect their ability to vote.

Although the *Nevada Constitution* provides for a different method of electing United States Senators, the direct, popular vote of United States Senators pursuant to the 17th Amendment to the *United States Constitution* has occurred since 1913. There is no need to repeal Section 34, Article 4 of the *Nevada Constitution* because that provision is obviously superseded by the 17th Amendment to the *United States Constitution*.

FISCAL NOTE

Financial Impact – No.

The proposal to amend the *Nevada Constitution* would revise the terminology of certain provisions governing the right to vote and repeal provisions concerning the election of United States Senators by the Legislature. Approval of this proposal would have no adverse fiscal impact.

FULL TEXT OF THE MEASURE

Assembly Joint Resolution No. 3—Committee on Constitutional Amendments

ASSEMBLY JOINT RESOLUTION—Proposing to amend the Constitution of the State of Nevada to revise provisions governing the right to vote and to repeal an obsolete provision relating to the election of United States Senators.

RESOLVED BY THE ASSEMBLY AND SENATE OF THE STATE OF NEVADA,

JOINTLY, That section 1 of article 2 of the Constitution of the State of Nevada be amended to read as follows:

Section 1. All citizens of the United States (not laboring under the disabilities named in this constitution) of the age of eighteen years and upwards, who shall have actually, and not constructively, resided in the state six months, and in the district or county thirty days next preceding any election, shall be entitled to vote for all officers that now or hereafter may be elected by the people, and upon all questions submitted to the electors at such election; *provided*, that no person who has been or may be convicted of treason or felony in any state or territory of the United States, unless restored to civil rights, and no ~~idiot or insane~~ person *who has been adjudicated mentally incompetent, unless restored to legal capacity*, shall be entitled to the privilege of an elector. There shall be no denial of the elective franchise at any election on account of sex. The legislature may provide by law the conditions under which a citizen of the United States who does not have the status of an elector in another state and who does not meet the residence requirements of this section may vote in this state for President and Vice President of the United States.

And be it further

RESOLVED, That section 34 of article 4 of the Constitution of the State of Nevada is hereby repealed.

QUESTION NO. 8

Amendment to the Sales and Use Tax Act of 1955
Assembly Bill No. 514 of the 72nd Session

CONDENSATION (ballot question)

Shall the Sales and Use Tax Act of 1955 be amended to revise the exemption from the tax for the sale or use of used vehicles; to provide exemptions from the tax for the sale or use of prescription ophthalmic and ocular devices and appliances, farm machinery and other agricultural equipment, works of fine art for public display, and professional racing vehicles and parts; and to revise the exemption from the tax on the sale or use of aircraft and parts of aircraft used by commercial air carriers?

Yes..... 285,501
No..... 469,268

EXPLANATION

The proposed amendment to the Sales and Use Tax Act of 1955 would exempt from the tax: (1) the value of any used vehicle taken in trade on the purchase of another vehicle and remove the exemption from the tax for occasional sales of vehicles except where such sales are between certain family members; (2) the sale or use of ophthalmic or ocular devices or appliances prescribed by a physician or optometrist; (3) the sale or use of farm machinery and equipment employed for the agricultural use of real property; (4) the sale or use of works of fine art for public display; and (5) the sale or use of engines and chassis, including replacement parts and components for the engines and chassis, of professional racing vehicles that are owned, leased or operated by professional racing teams.

The proposed amendment would also revise and clarify the criteria used to determine which aircraft and parts of aircraft are exempt from the tax, including removing the requirement that an air carrier must be based in Nevada to be eligible for the exemption, and providing an exemption for certain machinery and equipment used on eligible aircraft and parts of aircraft.

The proposals set forth in the question may not be voted upon individually. The exemptions and other provisions listed in the above explanation apply to the portion of the Sales and Use Tax that is distributed at the local level (currently between 4.5 percent and 5.5 percent), but do not apply to the portion that is distributed at the State level (2

percent). (See **NOTE TO VOTERS** on page 2 regarding the Streamlined Sales Tax Project and Nevada’s sales tax.)

A “Yes” vote approves all of the proposals set forth in the question. The exemptions and other provisions will apply to both the local portion and the State portion of the Sales and Use Tax.

A “No” vote disapproves all of the proposals set forth in the question. The exemptions and other provisions will not apply to the local portion of the Sales and Use Tax and will be deleted from the State portion of the Sales and Use Tax.

ARGUMENTS FOR PASSAGE

If this proposal is approved, all of the exemptions and other provisions listed above will be added to the State portion of the Sales and Use Tax Act provisions. The Legislature has previously enacted laws to include the exemptions and other provisions listed above in the portion of the Sales and Use Tax that is distributed at the local level. In providing these exemptions and other provisions at the local level, the Legislature determined that those exemptions and provisions served an important social and economic purpose. Therefore, these provisions should be extended to apply to the portion of the Sales and Use Tax that is distributed at the State level.

In addition, only through the passage of this proposal will those who are currently receiving the exemptions from the local portion of the Sales and Use Tax continue to receive them.

ARGUMENTS AGAINST PASSAGE

If this proposal is not approved, the exemptions and other provisions will be deleted from the portion of the Sales and Use Tax that is distributed at the local level. The revenue available for distribution at the local level, including revenue distributed for the support of local schools, may be increased.

Although the Legislature has already granted these exemptions from the portion of the Sales and Use Tax that is distributed at the local level, legislation that enacted those provisions either did not require the submission of a question to the voters regarding including the identical provision in the state portion of the Sales and Use Tax, or the legislation required the submission of a question to the voters and the question was not approved.

In addition, passage of this proposal will reduce sales and tax revenues available to State government. Although State law already contains several exemptions from the Sales and Use Tax, if the reduction in revenues from exemptions becomes significant, the need to collect those revenues from other sources may result in an increased tax burden for those who are not eligible for an exemption.

FISCAL NOTE

Financial Impact – Yes.

Regardless of the outcome of this proposal, government revenues will be impacted in some manner. According to data provided by the Department of Taxation from Fiscal Year 2003, State government revenues will likely decrease by more than \$8.5 million if the proposal is approved. Conversely, if the proposal is not approved, revenues received by local governments will likely increase by more than \$22.1 million.

The table below indicates the increase or decrease in revenue that could result from each of the proposals described in the above explanation:

Subject	State Revenue Loss if Question is Approved	Local Revenue Gain if Question is Not Approved
Motor Vehicle Trade-Ins and Occasional Sales	-\$6,636,000	\$17,440,000
Ophthalmic or Ocular Devices	-\$1,338,000	\$3,485,000
Farm Machinery and Equipment	-\$440,000	\$1,013,000
Works of Fine Art for Public Display	Indeterminate	Indeterminate
Aircraft and Aircraft Parts and Machinery	-\$69,000	\$171,000
Professional Racing Vehicles and Parts	-\$4,000	\$12,000
Total	-\$8,487,000	\$22,121,000

The impact of the question on the average voter would depend on the extent to which the voter participates in transactions affected by the proposal. An explanation of the manner in which each proposal could impact voters is set forth below:

Motor Vehicle Trade-Ins and Occasional Sales

Currently, a person who applies the trade-in value of his vehicle to the purchase of a new vehicle is required to pay the portion of the Sales and Use Tax that is distributed at the State level (2 percent) on the entire sales price of the new car without a deduction for the trade-in allowance. However, that person is authorized to deduct from the sales price the trade-in allowance for the purposes of the portion of the Sales and Use Tax that is distributed at the local level (currently between 4.5 percent and 5.5 percent). If the question is approved, the purchaser of a new car will be able to deduct a trade-in allowance from the sales price of the new car for the purposes of the portion of the Sales and Use Tax that is distributed at the State level and the portion that is distributed at the local level. If the question is not approved, the purchaser of a new car will be required to

pay the portion of the Sales and Use Tax that is distributed at the State level and the portion that is distributed at the local level on the entire sales price of the new car without a deduction for the trade-in allowance.

Currently, the purchaser of a motor vehicle that is sold by someone who is not in the business of selling such vehicles may be exempt from the requirement to pay the portion of the Sales and Use Tax that is distributed at the State level (2 percent); however, such a purchaser would be required to pay the portion of the Sales and Use Tax that is distributed at the local level (currently between 4.5 percent and 5.5 percent) unless the vehicle is a used vehicle and the sale is between certain family members. If the question is approved, occasional sales of vehicles would be exempt from the State and local portions of the Sales and Use Tax only if the vehicle is a used vehicle and the sale is between certain family members. If the question is not approved, occasional sales of vehicles would be exempt from both the State and local portions of the Sales and Use Tax regardless of whether the vehicle was used or whether the sale is between family members.

Aircraft and Aircraft Parts and Machinery

Currently, gross receipts from the sale or use of aircraft, aircraft engines or component parts of aircraft or aircraft engines and machinery, tools and other equipment and parts used to repair or remodel aircraft are exempt from the portion of the Sales and Use Tax that is distributed at the local level (currently between 4.5 percent and 5.5 percent). In comparison, only the gross receipts from the sale or use of aircraft and major components of aircraft are exempt from the portion of the Sales and Use Tax that is distributed at the State level (2 percent). If the question is approved, the aircraft exemption would be expanded to ensure that the component parts of aircraft engines and machinery, tools and other equipment and parts used to repair or remodel aircraft are exempt from both the State and local portions of the Sales and Use Tax.

Other Proposals Set Forth in the Question

Currently, the gross receipts from the sale or the use of the following items are exempt from the portion of the Sales and Use Tax that is distributed at the local level (currently between 4.5 percent and 5.5 percent), but are not exempt from the portion of the Sales and Use Tax that is distributed at the State level (2 percent):

- Ophthalmic or ocular devices or appliances prescribed by a physician or optometrist;
- Farm machinery and equipment employed for the agricultural use of real property;
- Works of fine art for public display; and
- Engines and chassis of professional racing vehicles that are owned, leased or operated by professional racing teams.

If this question is approved, the exemption would be expanded to include the portion of the tax that is distributed at the State level and would decrease the cost of those items by 2 percent. If the question is not approved, the exemption would be eliminated from the portion of the tax that is distributed at the local level and the cost for these items would increase by between 4.5 percent and 5.5 percent.

FULL TEXT OF THE MEASURE

Assembly Bill No. 514-Committee on Taxation

AN ACT relating to taxation; providing for the enactment of certain provisions that are necessary to carry out the Streamlined Sales and Use Tax Agreement; providing for the electronic registration of sellers; establishing requirements for determining the place of sales for the purposes of sales and use taxes; establishing requirements for claiming an exemption from such taxes; providing for the electronic payment of such taxes; providing for the submission to the voters of a question relating to whether the Sales and Use Tax Act of 1955 should be amended to conform to the Agreement; 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. NRS 360.300 is hereby amended to read as follows:

360.300 1. If a person fails to file a return or the Department is not satisfied with the return or returns of any tax, contribution or premium or amount of tax, contribution or premium required to be paid to the State by any person, in accordance with the applicable provisions of this chapter, chapter **360B**, 362, 364A, 369, 370, 372, 372A, 374, 377, 377A or 444A of NRS, NRS 482.313, or chapter 585 or 680B of NRS as administered or audited by the Department, it may compute and determine the amount required to be paid upon the basis of:

- (a) The facts contained in the return;
- (b) Any information within its possession or that may come into its possession; or
- (c) Reasonable estimates of the amount.

2. One or more deficiency determinations may be made with respect to the amount due for one or for more than one period.

3. In making its determination of the amount required to be paid, the Department shall impose interest on the amount of tax determined to be due, calculated at the rate and in the manner set forth in NRS 360.417, unless a different rate of interest is specifically provided by statute.

4. The Department shall impose a penalty of 10 percent in addition to the amount of a determination that is made in the case of the failure of a person to file a return with the Department.

5. When a business is discontinued, a determination may be made at any time thereafter within the time prescribed in NRS 360.355 as to liability arising out of that business, irrespective of

whether the determination is issued before the due date of the liability.

Sec. 2. NRS 360.489 is hereby amended to read as follows: 360.489 1. In determining the amount of ~~of sales~~ :

(a) *Sales* tax due on a sale at retail, the rate of tax used must be the sum of the rates of all taxes imposed upon sales at retail in :

(1) *The county determined pursuant to the provisions of sections 13 to 18, inclusive, of this act; or*

(2) *If those provisions do not apply to the sale,* the county in which the property is or will be delivered to the purchaser or his agent or designee.

~~{2. In determining the amount of use}~~

(b) *Use* tax due on the purchase of tangible personal property for use, storage or other consumption in this state, the rate of tax used must be the sum of the rates of all taxes imposed upon the use, storage or other consumption of property in :

(1) *The county determined pursuant to the provisions of sections 13 to 18, inclusive, of this act; or*

(2) *If those provisions do not apply to the purchase,* the county in which the property is first used, stored or consumed.

2. In determining the amount of taxes due pursuant to subsection 1:

(a) *The amount due must be computed to the third decimal place and rounded to a whole cent using a method that rounds up to the next cent if the numeral in the third decimal place is greater than 4.*

(b) *A retailer may compute the amount due on a transaction on the basis of each item involved in the transaction or a single invoice for the entire transaction.*

3. On or before January 1 of each year the Department shall transmit to each retailer to whom a permit has been issued a notice which contains the provisions of subsections 1 and 2 and NRS 372.365.

Sec. 3. NRS 360.510 is hereby amended to read as follows:

360.510 1. If any person is delinquent in the payment of any tax or fee administered by the Department or if a determination has been made against him which remains unpaid, the Department may:

(a) Not later than 3 years after the payment became delinquent or the determination became final; or

(b) Not later than 6 years after the last recording of an abstract of judgment or of a certificate constituting a lien for tax owed, give a notice of the delinquency and a demand to transmit personally or by registered or certified mail to any person, including, without limitation, any officer or department of this state or any political subdivision or agency of this state, who has in his possession or under his control any credits or other personal property belonging to the delinquent, or owing any debts to the delinquent or person against whom a determination has been made which remains unpaid, or owing any debts to the delinquent or that person. In the case of any state officer, department or agency, the notice must be given to the officer, department or agency before the Department presents the claim of the delinquent taxpayer to the State Controller.

2. A state officer, department or agency which receives such a notice may satisfy any debt owed to it by that person before it honors the notice of the Department.

3. After receiving the demand to transmit, the person notified by the demand may not

transfer or otherwise dispose of the credits, other personal property, or debts in his possession or under his control at the time he received the notice until the Department consents to a transfer or other disposition.

4. Every person notified by a demand to transmit shall, within 10 days after receipt of the demand to transmit, inform the Department of, and transmit to the Department all such credits, other personal property, or debts in his possession, under his control or owing by him within the time and in the manner requested by the Department. Except as otherwise provided in subsection 5, no further notice is required to be served to that person.

5. If the property of the delinquent taxpayer consists of a series of payments owed to him, the person who owes or controls the payments shall transmit the payments to the Department until otherwise notified by the Department. If the debt of the delinquent taxpayer is not paid within 1 year after the Department issued the original demand to transmit, the Department shall issue another demand to transmit to the person responsible for making the payments informing him to continue to transmit payments to the Department or that his duty to transmit the payments to the Department has ceased.

6. If the notice of the delinquency seeks to prevent the transfer or other disposition of a deposit in a bank or credit union or other credits or personal property in the possession or under the control of a bank, credit union or other depository institution, the notice must be delivered or mailed to any branch or office of the bank, credit union or other depository institution at which the deposit is carried or at which the credits or personal property is held.

7. If any person notified by the notice of the delinquency makes any transfer or other disposition of the property or debts required to be withheld or transmitted, to the extent of the value of the property or the amount of the debts thus transferred or paid, he is liable to the State for any indebtedness due pursuant to this chapter, or chapter **360B**, 362, 364A, 369, 370, 372, 372A, 374, 377, 377A or 444A of NRS, NRS 482.313, or chapter 585 or 680B of NRS from the person with respect to whose obligation the notice was given if solely by reason of the transfer or other disposition the State is unable to recover the indebtedness of the person with respect to whose obligation the notice was given.

Sec. 4. Chapter 360B of NRS is hereby amended by adding thereto the provisions set forth as sections 5 to 24, inclusive, of this act.

Sec. 5. *“Purchaser” means a person to whom a sale of tangible personal property is made.*

Sec. 6. *“Registered seller” means a seller registered pursuant to section 9 of this act.*

Sec. 7. *“Retail sale” means any sale, lease or rental for any purpose other than for resale, sublease or subrent.*

Sec. 8. *“Tangible personal property” means personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses.*

Sec. 9. 1. *The Department shall, in cooperation with any other states that are members of the Agreement, establish and maintain a central, electronic registration system that allows a seller to register to collect and remit the sales and use taxes imposed in this state and in the other states that are members of the Agreement.*

2. *A seller who registers pursuant to this section agrees to collect and remit sales and use taxes in accordance with the provisions of this chapter, the regulations of the*

Department and the applicable law of each state that is a member of the Agreement, including any state that becomes a member of the Agreement after the registration of the seller pursuant to this section. The cancellation or revocation of the registration of a seller pursuant to this section, the withdrawal of a state from the Agreement or the revocation of the Agreement does not relieve a seller from liability pursuant to this subsection to remit any taxes previously or subsequently collected on behalf of a state.

3. When registering pursuant to this section, a seller may:

(a) Elect to use a certified service provider as its agent to perform all the functions of the seller relating to sales and use taxes, other than the obligation of the seller to remit the taxes on its own purchases;

(b) Elect to use a certified automated system to calculate the amount of sales or use taxes due on its sales transactions;

(c) Under such conditions as the Department deems appropriate, elect to use its own proprietary automated system to calculate the amount of sales or use taxes due on its sales transactions; or

(d) Elect to use any other method authorized by the Department for performing the functions of the seller relating to sales and use taxes.

4. A seller who registers pursuant to this section agrees to submit its sales and use tax returns, and to remit any sales and use taxes due, to the Department at such times and in such a manner and format as the Department prescribes by regulation.

5. The registration of a seller and the collection and remission of sales and use taxes pursuant to this section may not be considered as a factor in determining whether a seller has a nexus with this state for the purposes of determining his liability to pay any tax imposed by this state.

Sec. 10. 1. *The Department shall post on a website or other Internet site that is operated or administered by or on behalf of the Department:*

(a) The rates of sales and use taxes for this state and for each local government in this state that imposes such taxes. The Department shall identify this state and each local government using the Federal Information Processing Standards developed by the National Institute of Standards and Technology.

(b) Any change in those rates.

(c) Any amendments to the statutory provisions and administrative regulations of this state governing the registration of sellers and the collection of sales and use taxes.

(d) Any change in the boundaries of local governments in this state that impose sales and use taxes.

(e) The list maintained pursuant to section 11 of this act.

(f) Any other information the Department deems appropriate.

2. The Department shall make a reasonable effort to provide sellers with as much advance notice as possible of any changes or amendments required to be posted pursuant to subsection 1 and of any other changes in the information posted pursuant to subsection 1. Except as otherwise provided in section 12 of this act, the failure of the Department to provide such notice and the failure of a seller to receive such notice does not affect the obligation of the seller to collect and remit any applicable sales and use taxes.

Sec. 11. 1. *The Department shall maintain a list that denotes for each five-digit and nine-digit zip code in this state the combined rates of sales taxes and the combined*

rates of use taxes imposed in the area of that zip code, and the applicable taxing jurisdictions. If the combined rate of all the sales taxes or use taxes respectively imposed within the area of a zip code is not the same for the entire area of the zip code, the Department shall denote in the list the lowest combined tax rates for the entire zip code.

2. If a street address does not have a nine-digit zip code or if a registered seller is unable to determine the nine-digit zip code of a purchaser after exercising due diligence to determine that information, that seller may, except as otherwise provided in subsection 3, apply the rate denoted for the five-digit zip code in the list maintained pursuant to this section. For the purposes of this subsection, there is a rebuttable presumption that a registered seller has exercised due diligence if the seller has attempted to determine the nine-digit zip code of a purchaser by using software approved by the Department which makes that determination from the street address and five-digit zip code of the purchaser.

3. The list maintained pursuant to this section does not apply to and must not be used for any transaction regarding which a purchased product is received by the purchaser at the business location of the seller.

Sec. 12. *The Department shall waive any liability of a registered seller and a certified service provider acting on behalf of a registered seller who, as a result of his reasonable reliance on the information posted pursuant to section 10 of this act or his compliance with subsection 2 of section 11 of this act, collects the incorrect amount of any sales or use tax imposed in this state, for:*

1. The amount of the sales or use tax which the registered seller and certified service provider fail to collect as a result of that reliance; and

2. Any penalties and interest on that amount.

Sec. 13. *As used in sections 13 to 18, inclusive, of this act:*

1. "Receive" means taking possession of or making the first use of tangible personal property, whichever occurs first. The term does not include possession by a shipping company on behalf of a purchaser.

2. "Transportation equipment" means:

(a) Locomotives and railcars used for the carriage of persons or property in interstate commerce.

(b) Trucks and truck-tractors having a manufacturer's gross vehicle weight rating of more than 10,000 pounds, and trailers, semi trailers and passenger buses that are:

(1) Registered pursuant to the International Registration Plan, as adopted by the Department of Motor Vehicles pursuant to NRS 706.826; or

(2) Operated under the authority of a carrier who is authorized by the Federal Government to engage in the carriage of persons or property in interstate commerce.

(c) Aircraft operated by an air carrier who is authorized by the Federal Government or a foreign government to engage in the carriage of persons or property in interstate or foreign commerce.

(d) Containers designed for use on and component parts attached or secured to any of the items described in paragraph (a), (b) or (c).

Sec. 14. *1. Except as otherwise provided in this section, for the purpose of determining the liability of a seller for sales and use taxes, a retail sale shall be deemed to take place at the location determined pursuant to sections 13 to 18, inclusive, of this*

act.

2. Sections 13 to 18, inclusive, of this act do not:

(a) Affect any liability of a purchaser or lessee for a use tax.

(b) Apply to:

(1) The retail sale or transfer of watercraft, modular homes, manufactured homes or mobile homes.

(2) The retail sale, other than the lease or rental, of motor vehicles, trailers, semi trailers or aircraft that do not constitute transportation equipment.

Sec. 15. Except as otherwise provided in sections 13 to 18, inclusive, of this act, the retail sale, excluding the lease or rental, of tangible personal property shall be deemed to take place:

1. If the property is received by the purchaser at a place of business of the seller, at that place of business.

2. If the property is not received by the purchaser at a place of business of the seller:

(a) At the location indicated to the seller pursuant to any instructions provided for the delivery of the property to the purchaser or to another recipient who is designated by the purchaser as his donee; or

(b) If no such instructions are provided and if known by the seller, at the location where the purchaser or another recipient who is designated by the purchaser as his donee, receives the property.

3. If subsections 1 and 2 do not apply, at the address of the purchaser indicated in the business records of the seller that are maintained in the ordinary course of the seller's business, unless the use of that address would constitute bad faith.

4. If subsections 1, 2 and 3 do not apply, at the address of the purchaser obtained during the consummation of the sale, including, if no other address is available, the address of the purchaser's instrument of payment, unless the use of an address pursuant to this subsection would constitute bad faith.

5. In all other circumstances, at the address from which the property was shipped or, if it was delivered electronically, at the address from which it was first available for transmission by the seller.

Sec. 16. 1. Except as otherwise provided in this section and sections 14, 17 and 18 of this act, the lease or rental of tangible personal property shall be deemed to take place as follows:

(a) If the lease or rental requires recurring periodic payments, for the purposes of:

(1) The first periodic payment, the location of the lease or rental shall be deemed to take place at the location determined pursuant to section 15 of this act; and

(2) Subsequent periodic payments, the location of the lease or rental shall be deemed to take place at the primary location of the property. For the purposes of this subparagraph, the primary location of the property shall be deemed to be the address for the property provided by the lessee and set forth in the records maintained by the lessor in the ordinary course of business, regardless of the intermittent use of the property at different locations, unless the use of that address would constitute bad faith.

(b) If the lease or rental does not require recurring periodic payments, the location of the lease or rental shall be deemed to take place at the location determined pursuant to section 15 of this act.

2. This section does not apply to the determination of any liability of a seller for any sales or use taxes imposed on:

- (a) The acquisition of tangible personal property for lease; or*
- (b) Any accelerated or lump-sum payments made pursuant to a lease or rental of tangible personal property.*

Sec. 17. 1. Except as otherwise provided in this section and section 14 of this act, the lease or rental of motor vehicles, trailers, semitrailers or aircraft that do not constitute transportation equipment shall be deemed to take place:

(a) If the lease or rental requires recurring periodic payments, at the primary location of the property. For the purposes of this paragraph, the primary location of the property shall be deemed to be the address for the property provided by the lessee and set forth in the records maintained by the lessor in the ordinary course of business, regardless of the intermittent use of the property at different locations, unless the use of that address would constitute bad faith.

(b) If the lease or rental does not require recurring periodic payments, at the location determined pursuant to section 15 of this act.

2. This section does not apply to the determination of any liability of a seller for any sales or use taxes imposed on:

- (a) The acquisition of tangible personal property for lease; or*
- (b) Any accelerated or lump-sum payments made pursuant to a lease or rental of tangible personal property.*

Sec. 18. Except as otherwise provided in section 14 of this act, the lease or rental of transportation equipment shall be deemed to take place at the location determined pursuant to section 15 of this act.

Sec. 19. 1. A purchaser may purchase tangible personal property without paying to the seller at the time of purchase the sales and use taxes that are due thereon if:

- (a) The seller does not maintain a place of business in this state; and*
- (b) The purchaser has obtained a direct pay permit pursuant to the provisions of this section.*

2. A purchaser who wishes to obtain a direct pay permit must file with the Department an application for such a permit that:

- (a) Is on a form prescribed by the Department; and*
- (b) Sets forth such information as is required by the Department.*

3. The application must be signed by:

- (a) The owner if he is a natural person;*
- (b) A member or partner if the seller is an association or partnership; or*
- (c) An executive officer or some other person specifically authorized to sign the application if the seller is a corporation. Written evidence of the signer's authority must be attached to the application.*

4. Any purchaser who obtains a direct pay permit pursuant to this section shall:

- (a) Determine the amount of sales and use taxes that are due and payable to this state or a local government of this state upon the purchase of tangible personal property from such a seller; and*
- (b) Report and pay those taxes to the appropriate authority.*

5. If a purchaser who has obtained a direct pay permit purchases tangible personal property that will be available for use digitally or electronically in more than one

jurisdiction, he may, to determine the amount of tax that is due to this state or to a local government of this state, use any reasonable, consistent and uniform method to apportion the use of the property among the various jurisdictions in which it will be used that is supported by the purchaser's business records as they exist at the time of the consummation of the sale.

Sec. 20. 1. A purchaser who:

*(a) Has not obtained a direct pay permit pursuant to section 19 of this act;
(b) Purchases tangible personal property that is subject to sales and use taxes; and
(c) Has knowledge at the time of purchase that the purchased property will be available for use digitally or electronically in more than one jurisdiction, shall give written notice of that fact to the seller at the time of purchase. The notice must be given in a form required by the Department.*

2. Notwithstanding the provisions of sections 13 to 18, inclusive, of this act:

(a) Upon receipt of such a notice by a seller who does not maintain a place of business in this state, the seller is relieved of any liability to collect, pay or remit any use tax that is due and the purchaser thereafter assumes the liability to pay that tax directly to the appropriate authority.

(b) To determine the tax due to this state or to a local government of this state:

(1) A purchaser who delivers a notice pursuant to subsection 1 to a seller who does not maintain a place of business in this state; and

(2) A seller who maintains a place of business in this state and receives a notice pursuant to subsection 1, may use any reasonable, consistent and uniform method to apportion the use of the property among the various jurisdictions in which it will be used that is supported by the business records of the purchaser or seller as they exist at the time of the consummation of the sale.

3. Any notice given pursuant to subsection 1 applies to all future sales of property made by the seller to the purchaser, except for the sale of property that is specifically apportioned pursuant to subsection 2 or to property that will not be used in multiple jurisdictions, until the purchaser delivers a written notice of revocation to the seller.

Sec. 21. 1. A purchaser of direct mail must provide to the seller at the time of the purchase:

(a) If the seller does not maintain a place of business in this state:

(1) A form for direct mail approved by the Department;

(2) An informational statement of the jurisdictions to which the direct mail will be delivered to recipients; or

(3) The direct pay permit of the purchaser issued pursuant to section 19 of this act; or

(b) If the seller maintains a place of business in this state, an informational statement of the jurisdictions to which the direct mail will be delivered to recipients.

2. Notwithstanding the provisions of sections 13 to 18, inclusive, of this act:

(a) Upon the receipt pursuant to subsection 1 of:

(1) A form for direct mail by a seller who does not maintain a place of business in this state:

(I) The seller is relieved of any liability for the collection, payment or remission of any sales or use taxes applicable to the purchase of direct mail by that purchaser from that seller; and

(II) The purchaser is liable for any sales or use taxes applicable to the purchase of direct mail by that purchaser from that seller. Any form for direct mail provided to a seller pursuant to this subparagraph applies to all future sales of direct mail made by that seller to that purchaser until the purchaser delivers a written notice of revocation to the seller.

(2) An informational statement by any seller, the seller shall collect, pay or remit any applicable sales and use taxes in accordance with the information contained in that statement. In the absence of bad faith, the seller is relieved of any liability to collect, pay or remit any sales and use taxes other than in accordance with that information received.

(b) If a purchaser of direct mail does not comply with subsection 1, the seller shall determine the location of the sale pursuant to subsection 5 of section 15 of this act and collect, pay or remit any applicable sales and use taxes. This paragraph does not limit the liability of the purchaser for the payment of any of those taxes.

3. As used in this section, "direct mail" means printed material delivered or distributed by the United States Postal Service or another delivery service to a mass audience or to addresses contained on a mailing list provided by a purchaser or at the direction of a purchaser when the cost of the items purchased is not billed directly to the recipients. The term includes tangible personal property supplied directly or indirectly by the purchaser to the seller of the direct mail for inclusion in the package containing the printed material. The term does not include multiple items of printed material delivered to a single address.

Sec. 22. Notwithstanding the provisions of any other specific statute, if the boundary of a local government that has imposed a sales or use tax is changed, any change in the rate of that tax which results therefrom becomes effective on the first day of the first calendar quarter that begins at least 60 days after the effective date of the change in the boundary.

Sec. 23. Notwithstanding the provisions of any other specific statute, if any sales or use tax is due and payable on a Saturday, Sunday or legal holiday, the tax may be paid on the next succeeding business day.

Sec. 24. Any invoice, billing or other document given to a purchaser that indicates the sales price for which tangible personal property is sold must state separately any amount received by the seller for:

1. Services that are necessary to complete the sale, including delivery and installation charges;

2. The value of exempt property given to the purchaser if taxable and exempt property are sold as a single product or piece of merchandise; and

3. Credit given to the purchaser.

Sec. 25. NRS 360B.030 is hereby amended to read as follows:

360B.030 As used in NRS 360B.010 to 360B.170, inclusive, and sections 5 to 24, inclusive, of this act, unless the context otherwise requires, the words and terms defined in NRS 360B.040 to 360B.100, inclusive, and sections 5 to 8, inclusive, of this act have the meanings ascribed to them in those sections.

Sec. 26. NRS 360B.070 is hereby amended to read as follows:

360B.070 "Sales tax" means the tax levied by section 19 of chapter 397, Statutes of Nevada 1955, at page 766, and any similar tax authorized by or pursuant to a specific

statute [.] *or special legislative act of this state or the laws of another state that is a member of the Agreement.*

Sec. 27. NRS 360B.080 is hereby amended to read as follows:

360B.080 “Seller” means any person making sales, leases or rentals of *tangible* personal property . [or services.]

Sec. 28. NRS 360B.100 is hereby amended to read as follows:

360B.100 “Use tax” means the tax levied by section 34 of chapter 397, Statutes of Nevada 1955, at page 769, as amended by section 3 of chapter 513, Statutes of Nevada 1985, at page 1562, and any similar tax authorized by *or pursuant to a* specific statute [.] *or special legislative act of this state or the laws of another state that is a member of the Agreement.*

Sec. 29. NRS 360B.110 is hereby amended to read as follows:

360B.110 The Nevada Tax Commission shall:

1. Except as otherwise provided in NRS 360B.120, enter into the Agreement.
2. Act jointly with other states that are members of the Agreement to establish standards for:
 - (a) Certification of a certified service provider;
 - (b) A certified automated system; [and]
 - (c) Performance of multistate sellers [.] ; *and*
 - (d) *An address-based system for determining the applicable sales and use taxes.*
3. Take all other actions reasonably required to implement the provisions of NRS 360B.010 to 360B.170, inclusive, *and sections 5 to 24, inclusive, of this act, and the provisions of the Agreement,* including, without limitation [.] , *the:*

(a) Adoption of regulations to carry out the provisions of NRS 360B.010 to 360B.170, inclusive [.] , *and sections 5 to 24, inclusive, of this act, and the provisions of the Agreement;* and

(b) Procurement, jointly with other member states, of goods and services.

4. Represent, or have its designee represent, the State *of Nevada* before the other states that are signatories to the Agreement.

5. Designate not more than four delegates, who may be members of the Commission, to represent the State *of Nevada* for the purposes of reviewing or amending the Agreement.

Sec. 30. NRS 361.186 is hereby amended to read as follows:

361.186 1. A taxpayer may collect an admission fee for the exhibition of fine art otherwise exempt from taxation pursuant to NRS 361.068 if the taxpayer offers to residents of the State of Nevada a discount of 50 percent from any admission fee charged to nonresidents. The discounted admission fee for residents must be offered at any time the exhibition is open to the public and admission fees are being charged.

2. Except as otherwise provided in subsection 5, if a taxpayer collects a fee for the exhibition of fine art otherwise exempt from taxation pursuant to NRS 361.068, the exemption pertaining to that fine art for the fiscal year must be reduced by the net revenue derived by the taxpayer for that fiscal year. The exemption pertaining to fine art for a particular fiscal year must not be reduced below zero, regardless of the amount of the net revenue derived by the taxpayer for that fiscal year.

3. A tax resulting from the operation of this section is due with the tax otherwise due

under the taxpayer's first statement filed pursuant to NRS 361.265 after the 15th day of the fourth month after the end of the fiscal year in which the net revenue was received or, if no such statement is required to be filed, under a statement of the net revenue filed on or before the last day of the fourth month after the end of that fiscal year.

4. A taxpayer who is required to pay a tax resulting from the operation of this section may receive a credit against the tax for any donations made by the taxpayer to the State Arts Council, the Division of Museums and History Dedicated Trust Fund established pursuant to NRS 381.0031, a museum that provides exhibits specifically related to nature or a museum that provides exhibits specifically related to children, if the taxpayer:

(a) Made the donation before the date that either statement required pursuant to subsection 3 is due; and

(b) Provides to the county assessor documentation of the donation at the time that he files the statement required pursuant to subsection 3.

5. If a taxpayer qualifies for and avails himself of **[both of]** the exemptions from taxation provided by NRS 361.068 and 374.291 **[.] and section 57.1 of chapter 397, Statutes of Nevada 1955,** the reduction of the exemptions by the net revenue derived by the taxpayer, as required pursuant to subsection 2 of this section, **[and]** subsection 2 of NRS 374.291 **[.] and subsection 2 of section 57.2 of chapter 397, Statutes of Nevada 1955,** must be carried out in such a manner that the total net revenue derived by the taxpayer is first applied to reduce the **[exemption]-exemptions** provided pursuant to NRS 374.291 **[.] and section 57.1 of chapter 397, Statutes of Nevada 1955.** If the net revenue exceeds the amount of the **[exemption] exemptions** provided pursuant to NRS 374.291 **[.] and section 57.1 of chapter 397, Statutes of Nevada 1955,** the remaining net revenue must be applied to reduce the exemption provided pursuant to NRS 361.068. If the net revenue is less than or equal to the **[exemption] exemptions** provided pursuant to NRS 374.291 **and section 57.1 of chapter 397, Statutes of Nevada 1955,** for that fiscal year, the exemption provided pursuant to NRS 361.068 must not be reduced.

6. For the purposes of this section:

(a) "Direct costs of owning and exhibiting the fine art" does not include any allocation of the general and administrative expense of a business or organization that conducts activities in addition to the operation of the facility in which the fine art is displayed, including, without limitation, an allocation of the salary and benefits of a senior executive who is responsible for the oversight of the facility in which the fine art is displayed and who has substantial responsibilities related to the other activities of the business or organization.

(b) "Net revenue" means the amount of the fees collected for exhibiting the fine art during that fiscal year less the following paid or made during that fiscal year:

(1) The direct costs of owning and exhibiting the fine art; and

(2) The cost of educational programs associated with the taxpayer's public display of fine art, including the cost of meeting the requirements of sub-subparagraph (IV) of subparagraph (1) of paragraph (b) of subsection 5 of NRS 361.068.

Sec. 31. NRS 361.186 is hereby amended to read as follows:

361.186 1. A taxpayer may collect an admission fee for the exhibition of fine art otherwise exempt from taxation pursuant to NRS 361.068 if the taxpayer offers to residents of the State of Nevada a discount of 50 percent from any admission fee charged to nonresidents. The discounted admission fee for residents must be offered at any time

the exhibition is open to the public and admission fees are being charged.

2. Except as otherwise provided in subsection 5, if a taxpayer collects a fee for the exhibition of fine art otherwise exempt from taxation pursuant to NRS 361.068, the exemption pertaining to that fine art for the fiscal year must be reduced by the net revenue derived by the taxpayer for that fiscal year. The exemption pertaining to fine art for a particular fiscal year must not be reduced below zero, regardless of the amount of the net revenue derived by the taxpayer for that fiscal year.

3. A tax resulting from the operation of this section is due with the tax otherwise due under the taxpayer's first statement filed pursuant to NRS 361.265 after the 15th day of the fourth month after the end of the fiscal year in which the net revenue was received or, if no such statement is required to be filed, under a statement of the net revenue filed on or before the last day of the fourth month after the end of that fiscal year.

4. A taxpayer who is required to pay a tax resulting from the operation of this section may receive a credit against the tax for any donations made by the taxpayer to the State Arts Council, the Division of Museums and History Dedicated Trust Fund established pursuant to NRS 381.0031, a museum that provides exhibits specifically related to nature or a museum that provides exhibits specifically related to children, if the taxpayer:

(a) Made the donation before the date that either statement required pursuant to subsection 3 is due; and

(b) Provides to the county assessor documentation of the donation at the time that he files the statement required pursuant to subsection 3.

~~5. If a taxpayer qualifies for and avails himself of both of the exemptions from taxation provided by NRS 361.068 and 374.291, the reduction of the exemptions by the net revenue derived by the taxpayer, as required pursuant to subsection 2 of this section and subsection 2 of NRS 374.291, must be carried out in such a manner that the total net revenue derived by the taxpayer is first applied to reduce the exemption provided pursuant to NRS 374.291. If the net revenue exceeds the amount of the exemption provided pursuant to NRS 374.291, the remaining net revenue must be applied to reduce the exemption provided pursuant to NRS 361.068. If the net revenue is less than or equal to the exemption provided pursuant to NRS 374.291 for that fiscal year, the exemption provided pursuant to NRS 361.068 must not be reduced.~~

6.] For the purposes of this section:

(a) "Direct costs of owning and exhibiting the fine art" does not include any allocation of the general and administrative expense of a business or organization that conducts activities in addition to the operation of the facility in which the fine art is displayed, including, without limitation, an allocation of the salary and benefits of a senior executive who is responsible for the oversight of the facility in which the fine art is displayed and who has substantial responsibilities related to the other activities of the business or organization.

(b) "Net revenue" means the amount of the fees collected for exhibiting the fine art during that fiscal year less the following paid or made during that fiscal year:

(1) The direct costs of owning and exhibiting the fine art; and

(2) The cost of educational programs associated with the taxpayer's public display of fine art, including the cost of meeting the requirements of sub-subparagraph (IV) of subparagraph (1) of paragraph (b) of subsection 5 of NRS 361.068.

Sec. 32. Chapter 372 of NRS is hereby amended by adding thereto the provisions set

forth as sections 33 to 36, inclusive, of this act.

Sec. 33. *This chapter must be administered in accordance with the provisions of chapter 360B of NRS.*

Sec. 34. *In determining the amount of taxes due pursuant to this chapter:*

1. The amount due must be computed to the third decimal place and rounded to a whole cent using a method that rounds up to the next cent if the numeral in the third decimal place is greater than 4.

2. A retailer may compute the amount due on a transaction on the basis of each item involved in the transaction or a single invoice for the entire transaction.

Sec. 35. *1. If a purchaser wishes to claim an exemption from the taxes imposed by this chapter, the retailer shall obtain such identifying information from the purchaser at the time of sale as is required by the Department.*

2. The Department shall, to the extent feasible, establish an electronic system for submitting a request for an exemption. A purchaser is not required to provide a signature to claim an exemption if the request is submitted electronically.

3. The Department may establish a system whereby a purchaser who is exempt from the payment of the taxes imposed by this chapter is issued an identification number that can be presented to the retailer at the time of sale.

4. A retailer shall maintain such records of exempt transactions as are required by the Department.

5. Except as otherwise provided in this subsection, a retailer who complies with the provisions of this section is not liable for the payment of any tax imposed by this chapter if the purchaser improperly claims an exemption. If the purchaser improperly claims an exemption, the purchaser is liable for the payment of the tax. The provisions of this subsection do not apply if the retailer fraudulently fails to collect the tax or solicits a purchaser to participate in an unlawful claim of an exemption.

Sec. 36. *1. If a retailer is unable to collect all or part of the sales price of a sale, he is entitled to receive a deduction from his taxable sales for that bad debt.*

2. Any deduction that is claimed pursuant to this section may not include interest.

3. The amount of any deduction claimed must equal the amount of a deduction that may be claimed pursuant to 26 U.S.C. § 166 for that sale minus:

(a) Any finance charge or interest charged as part of the sale;

(b) Any sales or use tax charged on the sales price;

(c) Any amount not paid on the sales price because the tangible personal property that was sold has remained in the possession of the retailer until the full sales price is paid;

(d) Any expense incurred in attempting to collect the bad debt; and

(e) The value of any property sold that has been repossessed by the retailer.

4. A bad debt may be claimed as a deduction on the return that covers the period during which the bad debt is written off in the business records of the retailer that are maintained in the ordinary course of the retailer's business and is eligible to be claimed as a deduction pursuant to 26 U.S.C. § 166 or, if the retailer is not required to file a federal income tax return, would be eligible to be claimed as a deduction pursuant to 26 U.S.C. § 166.

5. If a bad debt for which a deduction has been claimed is subsequently collected in whole or in part, the tax on the amount so collected must be reported on the return that

covers the period in which the collection is made.

6. If the amount of the bad debt is greater than the amount of the taxable sales reported for the period during which the bad debt is claimed as a deduction, a claim for a refund may be filed pursuant to NRS 372.630 to 372.720, inclusive, except that the time within which the claim may be filed begins on the date on which the return that included the deduction was filed.

7. If the retailer has contracted with a certified service provider for the remittance of the tax due under this chapter, the service provider may, on behalf of the retailer, claim any deduction to which the retailer is entitled pursuant to this section. The service provider shall credit or refund the full amount of any deduction or refund received pursuant to this section to the retailer.

8. For the purposes of reporting a payment received on a bad debt for which a deduction has been claimed, the payment must first be applied to the sales price of the property sold and the tax due thereon, and then to any interest, service charge or other charge that was charged as part of the sale.

9. If the records of a retailer indicate that a bad debt may be allocated among other states that are members of the Streamlined Sales and Use Tax Agreement, the retailer may allocate the bad debt among those states.

10. Except as otherwise provided in subsection 11, upon determining that a retailer has filed a return which contains one or more violations of the provisions of this section, the Department shall:

(a) For the first return of any retailer which contains one or more violations, issue a letter of warning to the retailer which provides an explanation of the violation or violations contained in the return.

(b) For the first or second return, other than a return described in paragraph (a), in any calendar year which contains one or more violations, assess a penalty equal to the amount of the deduction claimed or \$1,000, whichever is less.

(c) For the third and each subsequent return in any calendar year which contains one or more violations, assess a penalty of three times the amount of the deduction claimed or \$3,000, whichever is less.

11. For the purposes of subsection 10, if the first violation of this section by any retailer was determined by the Department through an audit which covered more than one return of the retailer, the Department shall treat all returns which were determined through the same audit to contain a violation or violations in the manner provided in paragraph (a) of subsection 10.

12. As used in this section:

(a) "Bad debt" means a debt that may be deducted pursuant to 26 U.S.C. § 166.

(b) "Certified service provider" has the meaning ascribed to it in NRS 360B.060.

Sec. 37. NRS 372.123 is hereby amended to read as follows:

372.123 1. If the State or a political subdivision of the State enters into a contract pursuant to chapter 332 or 333 of NRS on or after June 5, 2001, with a person who:

(a) Sells tangible personal property in this state; and

(b) Has not obtained a permit pursuant to NRS 372.125 ~~[because he does not maintain a place of business within this state,]~~ *or registered pursuant to section 9 of this act,*

the contract must include a provision requiring the person to obtain a permit pursuant to NRS 372.125 *or to register pursuant to section 9 of this act,* and to ~~[agree to]~~ collect and

pay the taxes imposed pursuant to this chapter on the sale of tangible personal property in this state. For the purposes of ~~[the]~~ a permit obtained pursuant to NRS 372.125, the person shall be deemed to have a single place of business in this state.

2. The Department may require a state agency or local government to submit such documentation as is necessary to ensure compliance with this section.

Sec. 38. NRS 372.125 is hereby amended to read as follows:

372.125 1. Every person desiring to engage in or conduct business as a seller within this state must *register with the Department pursuant to section 9 of this act or* file with the Department an application for a permit for each place of business.

2. Every application for a permit must:

(a) Be made upon a form prescribed by the Department.

(b) Set forth the name under which the applicant transacts or intends to transact business and the location of his place or places of business.

(c) Set forth other information which the Department may require.

3. The application must be signed by ~~[the]~~ :

(a) The owner if he is a natural person; ~~[in the case of an association or partnership, by a]~~

(b) A member or partner ~~;~~ ~~in the case of a corporation, by an]~~ if the seller is an association or partnership; or

(c) An executive officer or some person specifically authorized ~~[by the corporation]~~ to sign the application ~~[, to which must be attached the written evidence of his authority.]~~ if the seller is a corporation. Written evidence of the signer's authority must be attached to the application.

Sec. 39. NRS 372.125 is hereby amended to read as follows:

372.125 1. Every person desiring to engage in or conduct business as a seller within this state must register with the Department pursuant to section 9 of this act or file with the Department an application for a permit for each place of business ~~[.]~~ , *unless he intends to sell vehicles and will make fewer than three retail sales of vehicles during any 12-month period.*

2. Every application for a permit must:

(a) Be made upon a form prescribed by the Department.

(b) Set forth the name under which the applicant transacts or intends to transact business and the location of his place or places of business.

(c) Set forth other information which the Department may require.

3. The application must be signed by:

(a) The owner if he is a natural person;

(b) A member or partner if the seller is an association or partnership; or

(c) An executive officer or some person specifically authorized to sign the application if the seller is a corporation. Written evidence of the signer's authority must be attached to the application.

Sec. 40. NRS 372.160 is hereby amended to read as follows: 372.160 A resale certificate relieves the seller from the burden of proof only if taken in good faith from a person who ~~[is]~~ :

1. Is engaged in the business of selling tangible personal property ~~[and who holds the permit provided for in NRS 372.125 to 372.180, inclusive, and who, at];~~

2. Is registered pursuant to section 9 of this act or holds a permit issued pursuant to

NRS 372.135; and

3. At the time of purchasing the tangible personal property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose.

Sec. 41. NRS 372.165 is hereby amended to read as follows: 372.165 1. **[The] A resale** certificate must:

(a) Be signed by and bear the name and address of the purchaser.

(b) Indicate ***that the purchaser is registered pursuant to section 9 of this act or contain*** the number of the permit issued to the purchaser ***[.] pursuant to NRS 372.135.***

(c) Indicate the general character of the tangible personal property sold by the purchaser in the regular course of business.

2. The certificate must be substantially in such form as the Department may prescribe.

Sec. 42. NRS 372.230 is hereby amended to read as follows: 372.230 A resale certificate relieves the person selling the

property from the burden of proof only if taken in good faith from a person who **[is] :**

1. Is engaged in the business of selling tangible personal property **[and who holds the permit provided for by NRS 372.125 to 372.180, inclusive, and who, at];**

2. Is registered pursuant to section 9 of this act or holds a permit issued pursuant to NRS 372.135; and

3. At the time of purchasing the tangible personal property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose.

Sec. 43. NRS 372.235 is hereby amended to read as follows: 372.235 1. **[The] A resale** certificate must:

(a) Be signed and bear the name and address of the purchaser.

(b) Indicate ***that the purchaser is registered pursuant to section 9 of this act or contain*** the number of the permit issued to the purchaser ***[.] pursuant to NRS 372.135.***

(c) Indicate the general character of the tangible personal property sold by the purchaser in the regular course of business.

2. The certificate must be substantially in such form as the Department may prescribe.

Sec. 44. NRS 372.355 is hereby amended to read as follows: 372.355 Except as ***otherwise*** provided in NRS 372.380 ***[.] or***

required by the Department pursuant to section 9 of this act, the taxes imposed by this chapter are payable to the Department monthly on or before the last day of the month next succeeding each month.

Sec. 45. NRS 372.360 is hereby amended to read as follows: 372.360 ***Except as otherwise required by the Department pursuant to section 9 of this act:***

1. On or before the last day of the month following each reporting period, a return for the preceding period must be filed with the Department in such form as the Department may prescribe. ***Any return required to be filed by this section must be combined with any return required to be filed pursuant to the provisions of chapter 374 of NRS.***

2. For purposes of **[the] :**

(a) The sales tax a return must be filed by each seller. **[For purposes of the]**

(b) The use tax a return must be filed by each retailer maintaining a place of business

in the state and by each person purchasing tangible personal property, the storage, use or other consumption of which is subject to the use tax, who has not paid the use tax due .
~~[to a retailer required to collect the tax.]~~

3. Returns must be signed by the person required to file the return or by his authorized agent but need not be verified by oath.

Sec. 46. NRS 372.365 is hereby amended to read as follows: 372.365 1. *Except as otherwise required by the Department pursuant to section 9 of this act or provided in sections 13 to 18, inclusive, of this act:*

~~[(a)]~~ *(1)* The return must show the gross receipts of the seller during the preceding reporting period.

~~[(b)]~~ *(2)* The gross receipts must be segregated and reported separately for each county to which a sale of tangible personal property pertains.

~~[(c)]~~ *(3)* A sale pertains to the county in this state in which the tangible personal property is or will be delivered to the purchaser or his agent or designee.

~~[2.]~~ *(b)* For purposes of the use tax:

~~[(a)]~~ *(1)* In the case of a return filed by a retailer, the return must show the total sales price of the property purchased by him, the storage, use or consumption of which property became subject to the use tax during the preceding reporting period.

~~[(b)]~~ *(2)* The sales price must be segregated and reported separately for each county to which a purchase of tangible personal property pertains.

~~[(c)]~~ *(3)* If the property was ~~[brought]~~ :

(I) Brought into this state by the purchaser or his agent or designee, the sale pertains to the county in this state in which the property is or will be first used, stored or otherwise consumed.

~~{Otherwise,}~~

(II) Not brought into this state by the purchaser or his agent or designee, the sale pertains to the county in this state in which the property was delivered to the purchaser or his agent or designee.

~~[3.]~~ *2.* In case of a return filed by a purchaser, the return must show the total sales price of the property purchased by him, the storage, use or consumption of which became subject to the use tax during the preceding reporting period and indicate the county in this state in which the property was first used, stored or consumed.

~~[4.]~~ *3.* The return must also show the amount of the taxes for the period covered by the return and such other information as the Department deems necessary for the proper administration of this chapter.

~~[5. If a retailer:~~

~~(a) Is unable to collect all or part of the sales price of a sale, the amount of which was included in the gross receipts reported for a previous reporting period; and~~

~~(b) Has taken a deduction on his federal income tax return pursuant to 26 U.S.C. § 166(a) for the amount which he is unable to collect, he is entitled to receive a credit for the amount of sales tax paid on account of that uncollected sales price. The credit may be used against the amount of sales tax that the retailer is subsequently required to pay pursuant to this chapter.~~

~~6. If the Internal Revenue Service of the Department of the Treasury disallows a deduction described in paragraph (b) of subsection 5 and the retailer claimed a credit on a return for a previous reporting period pursuant to subsection 5, the retailer shall include~~

~~the amount of that credit in the amount of taxes reported pursuant to subsection 4 in the first return filed with the Department after the deduction is disallowed.~~

~~7. If a retailer collects all or part of the sales price for which he claimed a credit on a return for a previous reporting period pursuant to subsection 5, he shall include:~~

~~(a) The amount collected in the gross receipts reported pursuant to paragraph (a) of subsection 1; and~~

~~(b) The sales tax payable on the amount collected in the amount of taxes reported pursuant to subsection 4, in the first return filed with the Department after that collection.~~

~~8.] 4. Except as otherwise provided in subsection [9.] 5, upon determining that a retailer has filed a return which contains one or more violations of the provisions of this section, the Department shall:~~

~~(a) For the first return of any retailer which contains one or more violations, issue a letter of warning to the retailer which provides an explanation of the violation or violations contained in the return.~~

~~(b) For the first or second return, other than a return described in paragraph (a), in any calendar year which contains one or more violations, assess a penalty equal to the amount of the tax which was not reported or was reported for the wrong county or \$1,000, whichever is less.~~

~~(c) For the third and each subsequent return in any calendar year which contains one or more violations, assess a penalty of three times the amount of the tax which was not reported or was reported for the wrong county or \$3,000, whichever is less.~~

~~[9.] 5. For the purposes of subsection [8.] 4, if the first violation of this section by any retailer was determined by the Department through an audit which covered more than one return of the retailer, the Department shall treat all returns which were determined through the same audit to contain a violation or violations in the manner provided in paragraph (a) of subsection [8.] 4.~~

Sec. 47. NRS 372.370 is hereby amended to read as follows: 372.370 ~~[The]~~

1. Except as otherwise provided in subsection 2, a taxpayer shall deduct and withhold from the taxes otherwise due from him 1.25 percent of it to reimburse himself for the cost of collecting the tax.

2. The regulations adopted by the Department pursuant to NRS 360B.110 may authorize the deduction and withholding from the taxes otherwise due from a taxpayer such other amounts as are required to carry out the Streamlined Sales and Use Tax Agreement.

Sec. 48. NRS 372.375 is hereby amended to read as follows:

372.375 ~~[The]~~

1. Except as otherwise required by the Department pursuant to section 9 of this act, the person required to file [the] a return shall deliver the return together with a remittance of the amount of the tax due to the Department.

2. The Department shall provide for the acceptance of credit cards, debit cards or electronic transfers of money for the payment of the tax due in the manner prescribed in NRS 353.1465.

Sec. 49. NRS 372.380 is hereby amended to read as follows:

372.380 1. ~~[The]~~ *Except as otherwise provided in subsection 2 or required by the Department pursuant to section 9 of this act, the reporting and payment period of a taxpayer whose taxable sales do not exceed \$10,000 per month is a calendar quarter.*

2. The Department, if it deems this action necessary in order to insure payment to or facilitate the collection by the State of the amount of taxes, may require returns and payment of the amount of taxes for periods other than calendar months or quarters, depending upon the principal place of business of the seller, retailer or purchaser, as the case may be, or for other than monthly or quarterly periods.

Sec. 50. NRS 372.635 is hereby amended to read as follows: 372.635 Except as otherwise provided in NRS 360.235 and 360.395 [:] **and section 36 of this act:**

1. No refund may be allowed unless a claim for it is filed with the Department within 3 years after the last day of the month following the close of the period for which the overpayment was made.

2. No credit may be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the Department within that period, or unless the credit relates to a period for which a waiver is given pursuant to NRS 360.355.

Sec. 51. NRS 372.7263 is hereby amended to read as follows:

372.7263 **1.** In administering the provisions of NRS 372.335, the Department shall apply the exemption for the sale of tangible personal property delivered by the vendor to a forwarding agent for shipment out of state to include:

[1.] (a) The sale of a vehicle to a nonresident to whom a special movement permit has been issued by the Department of Motor Vehicles pursuant to subsection 1 of NRS 482.3955; and

[2.] (b) The sale of farm machinery and equipment [, as defined in NRS 374.286,] to a nonresident who submits proof to the vendor that the farm machinery and equipment will be delivered out of state not later than 15 days after the sale.

2. As used in this section:

(a) “Agricultural use” has the meaning ascribed to it in NRS 361A.030.

(b) “Farm machinery and equipment” means a farm tractor, implement of husbandry, piece of equipment used for irrigation, or a part used in the repair or maintenance of farm machinery and equipment. The term does not include:

(1) A vehicle required to be registered pursuant to the provisions of chapter 482 or 706 of NRS; or

(2) Machinery or equipment only incidentally employed for the agricultural use of real property.

(c) “Farm tractor” means a motor vehicle designed and used primarily for drawing an implement of husbandry.

(d) “Implement of husbandry” means a vehicle that is designed, adapted or used for agricultural purposes, including, without limitation, a plow, machine for mowing, hay baler, combine, piece of equipment used to stack hay, till, harvest, handle agricultural commodities or apply fertilizers, or other heavy, movable equipment designed, adapted or used for agricultural purposes.

Sec. 52. NRS 372.740 is hereby amended to read as follows:

372.740 **1.** The Department, or any person authorized in writing by it, may examine the books, papers, records and equipment of any person selling tangible personal property and any person liable for the use tax and may investigate the character of the business of the person to verify the accuracy of any return made, or, if no return is made by the

person, to ascertain and determine the amount required to be paid.

2. Any person selling or purchasing tangible personal property in this state who [is] :

(a) *Is* required to [obtain] :

(1) *Obtain* a permit pursuant to NRS 372.125 *or register pursuant to section 9 of this act*; or [to file]

(2) *File* a return pursuant to subsection 2 of NRS 372.360 [, and who keeps] ; and

(b) *Keeps* outside of this state his records, receipts, invoices and other documents relating to sales he has made or the use tax due this state, shall pay to the Department an amount equal to the allowance provided for state officers and employees generally while traveling outside of the state for each day or fraction thereof during which an employee of the Department is engaged in examining those documents, plus any other actual expenses incurred by the employee while he is absent from his regular place of employment to examine those documents.

Sec. 53. Chapter 374 of NRS is hereby amended by adding thereto the provisions set forth as sections 54 to 57, inclusive, of this act.

Sec. 54. *This chapter must be administered in accordance with the provisions of chapter 360B of NRS.*

Sec. 55. *In determining the amount of taxes due pursuant to this chapter:*

1. *The amount due must be computed to the third decimal place and rounded to a whole cent using a method that rounds up to the next cent if the numeral in the third decimal place is greater than 4.*

2. *A retailer may compute the amount due on a transaction on the basis of each item involved in the transaction or a single invoice for the entire transaction.*

Sec. 56. 1. *If a purchaser wishes to claim an exemption from the taxes imposed by this chapter, the retailer shall obtain such identifying information from the purchaser at the time of sale as is required by the Department.*

2. *The Department shall, to the extent feasible, establish an electronic system for submitting a request for an exemption. A purchaser is not required to provide a signature to claim an exemption if the request is submitted electronically.*

3. *The Department may establish a system whereby a purchaser who is exempt from the payment of the taxes imposed by this chapter is issued an identification number that can be presented to the retailer at the time of sale.*

4. *A retailer shall maintain such records of exempt transactions as are required by the Department.*

5. *Except as otherwise provided in this subsection, a retailer who complies with the provisions of this section is not liable for the payment of any tax imposed by this chapter if the purchaser improperly claims an exemption. If the purchaser improperly claims an exemption, the purchaser is liable for the payment of the tax. The provisions of this subsection do not apply if the retailer fraudulently fails to collect the tax or solicits a purchaser to participate in an unlawful claim of an exemption.*

Sec. 57. 1. *If a retailer is unable to collect all or part of the sales price of a sale, he is entitled to receive a deduction from his taxable sales for that bad debt.*

2. *Any deduction that is claimed pursuant to this section may not include interest.*

3. *The amount of any deduction claimed must equal the amount of a deduction that may be claimed pursuant to 26 U.S.C. § 166 for that sale minus:*

(a) *Any finance charge or interest charged as part of the sale;*

(b) Any sales or use tax charged on the sales price;
(c) Any amount not paid on the sales price because the tangible personal property that was sold has remained in the possession of the retailer until the full sales price is paid;

(d) Any expense incurred in attempting to collect the bad debt; and

(e) The value of any property sold that has been repossessed by the retailer.

4. A bad debt may be claimed as a deduction on the return that covers the period during which the bad debt is written off in the business records of the retailer that are maintained in the ordinary course of the retailer's business and is eligible to be claimed as a deduction pursuant to 26 U.S.C. § 166 or, if the retailer is not required to file a federal income tax return, would be eligible to be claimed as a deduction pursuant to 26 U.S.C. § 166.

5. If a bad debt for which a deduction has been claimed is subsequently collected in whole or in part, the tax on the amount so collected must be reported on the return that covers the period in which the collection is made.

6. If the amount of the bad debt is greater than the amount of the taxable sales reported for the period during which the bad debt is claimed as a deduction, a claim for a refund may be filed pursuant to NRS 374.635 to 374.720, inclusive, except that the time within which the claim may be filed begins on the date on which the return that included the deduction was filed.

7. If the retailer has contracted with a certified service provider for the remittance of the tax due under this chapter, the service provider may, on behalf of the retailer, claim any deduction to which the retailer is entitled pursuant to this section. The service provider shall credit or refund the full amount of any deduction or refund received pursuant to this section to the retailer.

8. For the purposes of reporting a payment received on a bad debt for which a deduction has been claimed, the payment must first be applied to the sales price of the property sold and the tax due thereon, and then to any interest, service charge or other charge that was charged as part of the sale.

9. If the records of a retailer indicate that a bad debt may be allocated among other states that are members of the Streamlined Sales and Use Tax Agreement, the retailer may allocate the bad debt among those states.

10. Except as otherwise provided in subsection 11, upon determining that a retailer has filed a return which contains one or more violations of the provisions of this section, the Department shall:

(a) For the first return of any retailer which contains one or more violations, issue a letter of warning to the retailer which provides an explanation of the violation or violations contained in the return.

(b) For the first or second return, other than a return described in paragraph (a), in any calendar year which contains one or more violations, assess a penalty equal to the amount of the deduction claimed or \$1,000, whichever is less.

(c) For the third and each subsequent return in any calendar year which contains one or more violations, assess a penalty of three times the amount of the deduction claimed or \$3,000, whichever is less.

11. For the purposes of subsection 10, if the first violation of this section by any retailer was determined by the Department through an audit which covered more than

one return of the retailer, the Department shall treat all returns which were determined through the same audit to contain a violation or violations in the manner provided in paragraph (a) of subsection 10.

12. As used in this section:

(a) "Bad debt" means a debt that may be deducted pursuant to 26 U.S.C. § 166.

(b) "Certified service provider" has the meaning ascribed to it in NRS 360B.060.

Sec. 58. NRS 374.020 is hereby amended to read as follows:

374.020 Except where the context otherwise requires, the definitions given in NRS 374.025 to ~~[374.107,]~~ **374.100**, inclusive, govern the construction of this chapter.

Sec. 59. NRS 374.030 is hereby amended to read as follows:

374.030 1. "Gross receipts" means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(a) The cost of the property sold. However, in accordance with such rules and regulations as the Department may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his vendor for tax which the vendor is required to pay to the county or has paid the use tax with respect to the property, and has resold the property before making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.

(b) The cost of the materials used, labor or service cost, interest paid, losses or any other expense.

(c) The cost of transportation of the property before its sale to the purchaser.

2. The total amount of the sale or lease or rental price includes all of the following:

(a) Any services that are a part of the sale.

(b) All receipts, cash, credits and property of any kind.

(c) Any amount for which credit is allowed by the seller to the purchaser.

3. "Gross receipts" does not include any of the following:

(a) Cash discounts allowed and taken on sales.

(b) The sale price of property returned by customers when the full sale price is refunded either in cash or credit, but this exclusion does not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.

(c) The price received for labor or services used in installing or applying the property sold.

(d) The amount of any tax, not including any manufacturers' or importers' excise tax, imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

~~[(e) The amount of any allowance against the selling price given by a retailer for the value of a used vehicle which is taken in trade on the purchase of another vehicle.]~~

4. For purposes of the sales tax, if the retailers establish to the satisfaction of the Department that the sales tax has been added to the total amount of the sale price and has not been absorbed by them, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed.

Sec. 60. NRS 374.040 is hereby amended to read as follows: 374.040 1. "Occasional

sale ” ~~“~~ ~~except as otherwise provided in subsection 2,~~] includes:

(a) A sale of property not held or used by a seller in the course of an activity for which he is required to hold a seller’s permit, provided such sale is not one of a series of sales sufficient in number, scope and character to constitute an activity requiring the holding of a seller’s permit.

(b) Any transfer of all or substantially all the property held or used by a person in the course of such an activity when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer.

2. ~~[The term does not include the sale of a vehicle other than the sale or transfer of a used vehicle to the seller’s spouse, child, grandchild, parent, grandparent, brother or sister. For the purposes of this section, the relation of parent and child includes adoptive and illegitimate children and stepchildren.~~

3.] For the purposes of this section, stockholders, bondholders, partners or other persons holding an interest in a corporation or other entity are regarded as having the “real or ultimate ownership” of the property of such corporation or other entity.

Sec. 61. NRS 374.055 is hereby amended to read as follows:

374.055 1. “Retail sale” or “sale at retail” means a sale for any purpose other than resale in the regular course of business of tangible personal property. ~~[The terms do not include a sale of property that:~~

~~(a) Meets the requirements of subparagraphs (1) and (2) of paragraph (a) of subsection 4 of NRS 374.291;~~

~~(b) Is made available for sale within 2 years after it is acquired; and~~

~~(c) Is made available for viewing by the public or prospective purchasers, or both, within 2 years after it is acquired, whether or not a fee is charged for viewing it and whether or not it is also used for purposes other than viewing.]~~

2. The delivery in a county of tangible personal property by an owner or former owner thereof or by a factor, or agent of such owner, former owner or factor, if the delivery is to a consumer or person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in the county, is a retail sale in the county by the person making the delivery. He shall include the retail selling price of the property in his gross receipts.

Sec. 62. NRS 374.060 is hereby amended to read as follows: 374.060 1. “Retailer” includes:

(a) Every seller who makes any retail sale or sales of tangible personal property, and every person engaged in the business of making retail sales at auction of tangible personal property owned by the person or others.

(b) Every person engaged in the business of making sales for storage, use or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use or other consumption.

(c) Every person making any retail sale of a vehicle or more than two retail sales of other tangible personal property during any 12-month period, including sales made in the capacity of assignee for the benefit of creditors, or receiver or trustee in bankruptcy.

2. When the Department determines that it is necessary for the efficient administration of this chapter to regard any salesmen, representatives, peddlers or canvassers as the agents of the dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of

whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors or employers, the Department may so regard them and may regard the dealers, distributors, supervisors or employers as retailers for purposes of this chapter.

3. A licensed optometrist or physician is a consumer of, and shall not be considered, a retailer within the provisions of this chapter, with respect to the ophthalmic materials used or furnished by him in the performance of his professional services in the diagnosis, treatment or correction of conditions of the human eye, including the adaptation of lenses or frames for the aid thereof.

Sec. 63. NRS 374.060 is hereby amended to read as follows:

374.060 1. "Retailer" includes:

(a) Every seller who makes any retail sale or sales of tangible personal property, and every person engaged in the business of making retail sales at auction of tangible personal property owned by the person or others.

(b) Every person engaged in the business of making sales for storage, use or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use or other consumption.

(c) Every person making ~~[any retail sale of a vehicle or]~~ more than two retail sales of other tangible personal property during any 12-month period, including sales made in the capacity of assignee for the benefit of creditors, or receiver or trustee in bankruptcy.

2. When the Department determines that it is necessary for the efficient administration of this chapter to regard any salesmen, representatives, peddlers or canvassers as the agents of the dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors or employers, the Department may so regard them and may regard the dealers, distributors, supervisors or employers as retailers for purposes of this chapter.

Sec. 64. NRS 374.070 is hereby amended to read as follows:

374.070 1. "Sales price" means the total amount for which tangible property is sold, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

(a) The cost of the property sold.

(b) The cost of the materials used, labor or service cost, interest charged, losses, or any other expenses.

(c) The cost of transportation of the property before its purchase.

2. The total amount for which property is sold includes all of the following:

(a) Any services that are a part of the sale.

(b) Any amount for which credit is given to the purchaser by the seller.

3. "Sales price" does not include any of the following:

(a) Cash discounts allowed and taken on sales.

(b) The amount charged for property returned by customers when the entire amount charged therefor is refunded either in cash or credit; but this exclusion does not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.

(c) The amount charged for labor or services rendered in installing or applying the property sold.

(d) The amount of any tax, ~~[(I] not including [, however,]~~ any manufacturers' or importers' excise tax, ~~]~~ imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

(e) The amount of any tax imposed by the State of Nevada upon or with respect to the storage, use or other consumption of tangible personal property purchased from any retailer.

~~[(f) The amount of any allowance against the selling price given by a retailer for the value of a used vehicle which is taken in trade on the purchase of another vehicle.]~~

~~4. For the purpose of a sale of a vehicle by a seller who is not required to be registered with the Department of Taxation, the sales price is the value established in the manner set forth in NRS 374.112.]~~

Sec. 65. NRS 374.085 is hereby amended to read as follows: 374.085 "Storage, use or other consumption" does not include

†

1. The] *the* keeping, retaining or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the State for use thereafter solely outside the State, or for the purpose of being processed, fabricated or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the State and thereafter used solely outside the State . [; or

2. The keeping, retaining or exercising any right or power over ~~tangible property that:~~

(a) Meets the requirements of subparagraphs (1) and (2) of ~~paragraph (a) of subsection 4 of NRS 374.291;~~

(b) Is made available for sale within 2 years after it is acquired; ~~and~~

(c) Is made available for viewing by the public or prospective purchasers, ~~or both, within 2 years after it is acquired, whether or not a fee is charged for viewing it and whether or not it is also used for purposes other than viewing.]~~

Sec. 66. NRS 374.128 is hereby amended to read as follows:

374.128 1. If the State or a political subdivision of the State enters into a contract pursuant to chapter 332 or 333 of NRS on or after June 5, 2001, with a person who:

(a) Sells tangible personal property in this state; and

(b) Has not obtained a permit pursuant to NRS 374.130 ~~[because he does not maintain a place of business within this state;]~~ *or registered pursuant to section 9 of this act,*

the contract must include a provision requiring the person to obtain a permit pursuant to NRS 374.130 *or to register pursuant to section 9 of this act,* and to [agree to] collect and pay the taxes imposed pursuant to this chapter on the sale of tangible personal property in any county in this state. For the purposes of [the] *a* permit obtained pursuant to NRS 374.130, the person shall be deemed to have a place of business in each county in this state, but shall pay the fee for a single permit.

2. The Department may require a state agency or local government to submit such documentation as is necessary to ensure compliance with this section.

Sec. 67. NRS 374.130 is hereby amended to read as follows:

374.130 1. Every person desiring to engage in or conduct business as a seller within a county shall *register with the Department pursuant to section 9 of this act or* file with the Department an application for a permit for each place of business, unless he intends to sell vehicles and will make fewer than three retail sales of vehicles during any 12-month period.

2. Every application for a permit must:

(a) Be made upon a form prescribed by the Department.

(b) Set forth the name under which the applicant transacts or intends to transact business and the location of his place or places of business.

(c) Set forth such other information as the Department may require.

3. The application must be signed by [the] :

(a) The owner if he is a natural person; [in the case of an association or partnership, by a]

(b) A member or partner [; in the case of a corporation, by an] if the seller is an association or partnership; or

(c) An executive officer or some person specifically authorized [by the corporation] to sign the application [, to which must be attached the written evidence of his authority.] if the seller is a corporation. Written evidence of the signer's authority must be attached to the application.

Sec. 68. NRS 374.130 is hereby amended to read as follows:

374.130 1. Every person desiring to engage in or conduct business as a seller within a county shall register with the Department pursuant to section 9 of this act or file with the Department an application for a permit for each place of business . [, unless he intends to sell vehicles and will

~~make fewer than three retail sales of vehicles during any 12-month period.]~~

2. Every application for a permit must:

(a) Be made upon a form prescribed by the Department.

(b) Set forth the name under which the applicant transacts or intends to transact business and the location of his place or places of business.

(c) Set forth such other information as the Department may require.

3. The application must be signed by:

(a) The owner if he is a natural person;

(b) A member or partner if the seller is an association or partnership; or

(c) An executive officer or some person specifically authorized to sign the application if the seller is a corporation. Written evidence of the signer's authority must be attached to the application.

Sec. 69. NRS 374.165 is hereby amended to read as follows: 374.165 **[The] A resale certificate** relieves the seller from the burden of proof only if taken in good faith from a person who **[is] :**

1. Is engaged in the business of selling tangible personal property **[and who holds the permit provided for in NRS 374.130 to 374.185, inclusive, and who, at];**

2. Is registered pursuant to section 9 of this act or holds a permit issued pursuant to NRS 374.140; and

3. At the time of purchasing the tangible personal property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose.

Sec. 70. NRS 374.170 is hereby amended to read as follows: 374.170 1. **[The certificate shall:] A resale certificate must:**

(a) Be signed by and bear the name and address of the purchaser.

(b) Indicate **that the purchaser is registered pursuant to section 9 of this act or contain** the number of the permit issued to the purchaser **[.] pursuant to NRS 374.140.**

(c) Indicate the general character of the tangible personal property sold by the purchaser in the regular course of business.

2. The certificate **[shall] must** be substantially in such form as the Department may prescribe.

Sec. 71. NRS 374.235 is hereby amended to read as follows:

374.235 **[The] A resale certificate** relieves the person selling the property from the burden of proof only if taken in good faith from a person who **[is] :**

1. Is engaged in the business of selling tangible personal property **[and who holds the permit provided for by NRS 374.130 to 374.185, inclusive, and who, at];**

2. Is registered pursuant to section 9 of this act or holds a permit issued pursuant to NRS 374.140; and

3. At the time of purchasing the tangible personal property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose.

Sec. 72. NRS 374.240 is hereby amended to read as follows: 374.240 1. **[The certificate shall:] A resale certificate must:**

(a) Be signed and bear the name and address of the purchaser.

(b) Indicate **that the purchaser is registered pursuant to section 9 of this act or contain** the number of the permit issued to the purchaser **[.] pursuant to NRS 374.140.**

(c) Indicate the general character of the tangible personal property sold by the purchaser in the regular course of business.

2. The certificate **[shall] must** be substantially in such form as

the Department may prescribe.

Sec. 73. NRS 374.287 is hereby amended to read as follows: 374.287 1. There are exempted from the taxes imposed by this chapter the gross receipts from sales and the storage, use or other consumption of:

(a) Prosthetic devices, orthotic appliances and ambulatory casts for human use, and other supports and casts if prescribed or applied by a licensed provider of health care, within his scope of practice, for human use.

(b) Appliances and supplies relating to an ostomy.

(c) Products for hemodialysis.

(d) ~~[Any ophthalmic or ocular device or appliance prescribed by a physician or optometrist-~~

~~-(e)] Medicines:~~

(1) Prescribed for the treatment of a human being by a person authorized to prescribe medicines, and dispensed on a prescription filled by a registered pharmacist in accordance with law;

(2) Furnished by a licensed physician, dentist or podiatric physician to his own patient for the treatment of the patient;

(3) Furnished by a hospital for treatment of any person pursuant to the order of a licensed physician, dentist or podiatric physician; or

(4) Sold to a licensed physician, dentist, podiatric physician or hospital for the treatment of a human being.

2. As used in this section:

(a) "Medicine" means any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease or affliction of the human body and which is commonly recognized as a substance or preparation intended for such use. The term includes splints, bandages, pads, compresses and dressings.

(b) "Medicine" does not include:

(1) Any auditory , *ophthalmic or ocular* device or appliance.

(2) Articles which are in the nature of instruments, crutches, canes, devices or other mechanical, electronic, optical or physical equipment.

(3) Any alcoholic beverage, except where the alcohol merely provides a solution in the ordinary preparation of a medicine.

(4) Braces or supports, other than those prescribed or applied by a licensed provider of health care, within his scope of practice, for human use.

3. Insulin furnished by a registered pharmacist to a person for treatment of diabetes as directed by a physician shall be deemed to be dispensed on a prescription within the meaning of this section.

Sec. 74. NRS 374.360 is hereby amended to read as follows:

374.360 Except as *otherwise* provided in NRS 374.385 ~~[.]~~ *or required by the Department pursuant to section 9 of this act*, the taxes imposed by this chapter are due and payable to the Department monthly on or before the last day of the month next succeeding each month.

Sec. 75. NRS 374.365 is hereby amended to read as follows: 374.365 *Except as otherwise required by the Department pursuant to section 9 of this act:*

1. On or before the last day of the month following each reporting period, a return for the preceding period must be filed with the Department in such form as the Department may prescribe. *Any return required to be filed by this section must be combined with any return required to be filed pursuant to the provisions of chapter 372 of NRS.*

2. For purposes of ~~[the]~~ :

~~(a) The sales tax a return must be filed by every seller. [For purposes of the]~~

~~(b) The use tax a return must be filed by every retailer maintaining a place of business in the county and by every person purchasing tangible personal property, the storage, use or other consumption of which is subject to the use tax, who has not paid the use tax due . [to a retailer required to collect the tax.]~~

3. Returns must be signed by the person required to file the return or by his authorized agent but need not be verified by oath.

Sec. 76. NRS 374.370 is hereby amended to read as follows:

374.370 1. *Except as otherwise required by the Department pursuant to section 9 of this act or provided in sections 13 to 18, inclusive, of this act:*

~~[(a)] (1)~~ For the purposes of the sales tax: ~~[(a)] (1)~~ The return must show the gross receipts of the seller during the preceding reporting period.

~~[(b)] (2)~~ The gross receipts must be segregated and reported separately for each county to which a sale of tangible personal property pertains.

~~[(c)] (3)~~ A sale pertains to the county in this state in which the tangible personal property is or will be delivered to the purchaser or his agent or designee.

~~[2.] (b)~~ For purposes of the use tax:

~~[(a)] (1)~~ In the case of a return filed by a retailer, the return must show the total sales price of the property purchased by him, the storage, use or consumption of which property became subject to the use tax during the preceding reporting period.

~~[(b)] (2)~~ The sales price must be segregated and reported separately for each county to which a purchase of tangible personal property pertains.

~~[(c)] (3)~~ If the property was ~~[brought]~~ :

~~(I) Brought~~ into this state by the purchaser or his agent or designee, the sale pertains to the county in this state in which the property is or will be first used, stored or otherwise consumed.

~~{Otherwise.}~~

~~(II) Not brought into this state by the purchaser or his agent or designee,~~ the sale pertains to the county in this state in which the property was delivered to the purchaser or his agent or designee.

~~[3.] 2.~~ In case of a return filed by a purchaser, the return must show the total sales price of the property purchased by him, the storage, use or consumption of which became subject to the use tax during the preceding reporting period and indicate the county in this state in which the property was first used, stored or consumed.

~~[4.] 3.~~ The return must also show the amount of the taxes for the period covered by the return and such other information as the Department deems necessary for the proper administration of this chapter.

~~[5. If a retailer:~~

~~(a) Is unable to collect all or part of the sales price of a sale, the amount of which was included in the gross receipts reported for a previous reporting period; and~~

~~(b) Has taken a deduction on his federal income tax return pursuant to 26 U.S.C. § 166(a) for the amount which he is unable to collect, he is entitled to receive a credit for the amount of sales tax paid on account of that uncollected sales price. The credit may be used against the amount of sales tax that the retailer is subsequently required to pay pursuant to this chapter.~~

~~6. If the Internal Revenue Service of the Department of the Treasury disallows a deduction described in paragraph (b) of subsection 5 and the retailer claimed a credit on a return for a~~

~~previous reporting period pursuant to subsection 5, the retailer shall include the amount of that credit in the amount of taxes reported pursuant to subsection 4 in the first return filed with the Department after the deduction is disallowed.~~

~~7. If a retailer collects all or part of the sales price for which he claimed a credit on a return for a previous reporting period pursuant to subsection 5, he shall include:~~

~~(a) The amount collected in the gross receipts reported pursuant to paragraph (a) of subsection 1; and~~

~~(b) The sales tax payable on the amount collected in the amount of taxes reported pursuant to subsection 4, in the first return filed with the Department after that collection.~~

~~8.] 4. Except as otherwise provided in subsection [9,] 5, upon determining that a retailer has filed a return which contains one or more violations of the provisions of this section, the Department shall:~~

~~(a) For the first return of any retailer which contains one or more violations, issue a letter of warning to the retailer which provides an explanation of the violation or violations contained in the return.~~

~~(b) For the first or second return, other than a return described in paragraph (a), in any calendar year which contains one or more violations, assess a penalty equal to the amount of the tax which was not reported or was reported for the wrong county or \$1,000, whichever is less.~~

~~(c) For the third and each subsequent return in any calendar year which contains one or more violations, assess a penalty of three times the amount of the tax which was not reported or was reported for the wrong county or \$3,000, whichever is less.~~

~~[9.] 5. For the purposes of subsection [8,] 4, if the first violation of this section by any retailer was determined by the Department through an audit which covered more than one return of the retailer, the Department shall treat all returns which were determined through the same audit to contain a violation or violations in the manner provided in paragraph (a) of subsection [8.] 4.~~

~~Sec. 77. NRS 374.375 is hereby amended to read as follows: 374.375 [The]~~

~~1. Except as otherwise provided in subsection 2, a taxpayer shall deduct and withhold from the taxes otherwise due from him 1.25 percent thereof to reimburse himself for the cost of collecting the tax.~~

~~2. The regulations adopted by the Department pursuant to NRS 360B.110 may authorize the deduction and withholding from the taxes otherwise due from a taxpayer such other amounts as are required to carry out the Streamlined Sales and Use Tax Agreement.~~

~~Sec. 78. NRS 374.380 is hereby amended to read as follows:~~

~~374.380 [The]~~

~~1. Except as otherwise required by the Department pursuant to section 9 of this act, the person required to file [the] a return shall deliver the return together with a remittance of the amount of the tax due to the Department.~~

~~2. The Department shall provide for the acceptance of credit cards, debit cards or electronic transfers of money for the payment of the tax due in the manner prescribed in NRS 353.1465.~~

~~Sec. 79. NRS 374.385 is hereby amended to read as follows:~~

~~374.385 1. [The] Except as otherwise provided in subsection 2 or required by the Department pursuant to section 9 of this act, the reporting and payment period of a taxpayer whose taxable sales do not exceed \$10,000 per month is a calendar quarter.~~

~~2. The Department, if it deems this action necessary in order to insure payment to or facilitate the collection by the county of the amount of taxes, may require returns and payment of the amount of taxes for periods other than calendar months or quarters, depending upon the principal place of business of the seller, retailer or purchaser as the case may be, or for other than monthly or quarterly periods.~~

Sec. 80. NRS 374.640 is hereby amended to read as follows: 374.640 Except as otherwise provided in NRS 360.235 and 360.395 [:] *and section 57 of this act:*

1. No refund may be allowed unless a claim for it is filed with the Department within 3 years after the last day of the month following the close of the period for which the overpayment was made.

2. No credit may be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the Department within that period, or unless the credit relates to a period for which a waiver is given pursuant to NRS 360.355.

Sec. 81. NRS 374.7273 is hereby amended to read as follows:

374.7273 *1.* In administering the provisions of NRS 374.340, the Department shall apply the exemption for the sale of tangible personal property delivered by the vendor to a forwarding agent for shipment out of state to include:

[1.] *(a)* The sale of a vehicle to a nonresident to whom a special movement permit has been issued by the Department of Motor Vehicles pursuant to subsection 1 of NRS 482.3955; and

[2.] *(b)* The sale of farm machinery and equipment [, as defined in NRS 374.286,] to a nonresident who submits proof to the vendor that the farm machinery and equipment will be delivered out of state not later than 15 days after the sale.

2. As used in this section:

(a) "Agricultural use" has the meaning ascribed to it in NRS 361A.030.

(b) "Farm machinery and equipment" means a farm tractor, implement of husbandry, piece of equipment used for irrigation, or a part used in the repair or maintenance of farm machinery and equipment. The term does not include:

(1) A vehicle required to be registered pursuant to the provisions of chapter 482 or 706 of NRS; or

(2) Machinery or equipment only incidentally employed for the agricultural use of real property.

(c) "Farm tractor" means a motor vehicle designed and used primarily for drawing an implement of husbandry.

(d) "Implement of husbandry" means a vehicle that is designed, adapted or used for agricultural purposes, including, without limitation, a plow, machine for mowing, hay baler, combine, piece of equipment used to stack hay, till, harvest, handle agricultural commodities or apply fertilizers, or other heavy, movable equipment designed, adapted or used for agricultural purposes.

Sec. 82. NRS 374.785 is hereby amended to read as follows:

374.785 *1.* All fees, taxes, interest and penalties imposed and all amounts of tax required to be paid to counties under this chapter must be paid to the Department in the form of remittances payable to the Department.

2. The Department shall deposit the payments in the State Treasury to the credit of the Sales and Use Tax Account in the State General Fund.

3. The State Controller, acting upon the collection data furnished by the Department, shall, each month, from the Sales and Use Tax Account in the State General Fund:

(a) Transfer .75 percent of all fees, taxes, interest and penalties collected in each county during the preceding month to the appropriate account in the State General Fund as compensation to the State for the costs of collecting the tax.

(b) Transfer .75 percent of all fees, taxes, interest and penalties collected during the preceding month from out-of-state businesses not maintaining a fixed place of business within this state to the appropriate account in the State General Fund as compensation to the State for the costs of collecting the tax.

(c) Determine for each county the amount of money equal to the fees, taxes, interest and penalties collected in the county pursuant to this chapter during the preceding month less the amount transferred pursuant to paragraph (a).

(d) Transfer the total amount of taxes collected pursuant to this chapter during the preceding month from out-of-state businesses not maintaining a fixed place of business within this state, less the amount transferred pursuant to paragraph (b), to the State Distributive School Account in the State General Fund.

(e) Except as otherwise provided in NRS 387.528, transfer the amount owed to each county to the Intergovernmental Fund and remit the money to the credit of the county school district fund.

~~4. For the purpose of the distribution required by this section, the occasional sale of a vehicle shall be deemed to take place in the county to which the governmental services tax payable by the buyer upon that vehicle is distributed.~~

Sec. 83. NRS 374A.020 is hereby amended to read as follows:

374A.020 1. The collection of the tax imposed by NRS 374A.010 must be commenced on the first day of the first calendar quarter that begins at least ~~30~~ **120** days after the last condition in subsection 1 of NRS 374A.010 is met.

2. The tax must be administered, collected and distributed in the manner set forth in chapter 374 of NRS.

3. The board of trustees of the school district shall transfer the proceeds of the tax imposed by NRS 374A.010 from the county school district fund to the fund described in NRS 354.6105 which must be established by the board of trustees. The money deposited in the fund described in NRS 354.6105 pursuant to this subsection must be accounted for separately in that fund and must only be expended by the board of trustees for the cost of the extraordinary maintenance, extraordinary repair and extraordinary improvement of school facilities within the county.

Sec. 84. NRS 376A.060 is hereby amended to read as follows: 376A.060 Any ordinance enacted pursuant to NRS 376A.040 or 376A.050 must include:

1. Provisions substantially identical to those contained in chapter 374 of NRS, insofar as applicable.

2. A provision that all amendments to chapter 374 of NRS after the date of enactment of the ordinance, not inconsistent with the chapter, automatically become a part of the ordinance imposing the tax.

3. A provision that specifies the date on which the tax is first imposed or on which any change in the rate of the tax becomes effective, which must be the first day of the first calendar quarter

Sec. 85. NRS 377.030 is hereby amended to read as follows: 377.030 1. The board of county commissioners shall enact an ordinance imposing a city-county relief tax.

2. The ordinance enacted pursuant to this section must provide that the city-county relief tax be imposed on the first day of the first

~~month following~~ **calendar quarter that begins at least 120 days after** the effective date of the ordinance.

Sec. 86. NRS 377.055 is hereby amended to read as follows: 377.055 ~~1.~~ The Department shall monthly determine for each county an amount of money equal to the sum of:

[(a)] 1. Any fees and any taxes, interest and penalties which derive from the basic city-county relief tax collected in that county pursuant to this chapter during the preceding month, less the corresponding amount transferred to the State General Fund pursuant to subsection 3 of NRS 377.050; and

[(b)] 2. That proportion of the total amount of taxes which derive from that portion of the tax levied at the rate of one-half of 1 percent collected pursuant to this chapter during the preceding

month from out-of-state businesses not maintaining a fixed place of business within this state, less the corresponding amount transferred to the State General Fund pursuant to subsection 3 of NRS 377.050, which the population of that county bears to the total population of all counties which have in effect a city-county relief tax ordinance, and deposit the money in the Local Government Tax Distribution Account created by NRS 360.660 for credit to the respective subaccounts of each county.

~~{2. For the purpose of the distribution required by this section, the occasional sale of a vehicle shall be deemed to take place in the county to which the governmental services tax payable by the buyer upon that vehicle is distributed.}~~

Sec. 87. NRS 377A.020 is hereby amended to read as follows:

377A.020 1. The board of county commissioners of any county may enact an ordinance imposing a tax for a public transit system or for the construction, maintenance and repair of public roads, or both, pursuant to NRS 377A.030. The board of county commissioners of any county whose population is less than 400,000 may enact an ordinance imposing a tax to promote tourism pursuant to NRS 377A.030.

2. An ordinance enacted pursuant to this chapter may not become effective before a question concerning the imposition of the tax is approved by a majority of the registered voters of the county voting upon the question which the board may submit to the voters at any general election. A county may combine the questions for a public transit system and for the construction, maintenance and repair of public roads with questions submitted pursuant to NRS 244.3351, 278.710 or 371.045, or any combination thereof. The board shall also submit to the voters at a general election any proposal to increase the rate of the tax or change the previously approved uses for the proceeds of the tax.

3. Any ordinance enacted pursuant to this section must specify the date on which the tax must first be imposed or on which an increase in the rate of the tax becomes effective, which must ~~not be earlier than~~ *be* the first day of the ~~[second calendar month following]~~ *first calendar quarter that begins at least 120 days after* the approval of the question by the voters.

Sec. 88. NRS 377A.030 is hereby amended to read as follows:

377A.030 Except as otherwise provided in NRS 377A.110, any ordinance enacted under this chapter must include provisions in substance as follows:

1. A provision imposing a tax upon retailers at the rate of not more than:

(a) For a tax to promote tourism, one-quarter of 1 percent; or
(b) For a tax to establish and maintain a public transit system or for the construction, maintenance and repair of public roads, or both, one-half of 1 percent, of the gross receipts of any retailer from the sale of all tangible personal property sold at retail, or stored, used or otherwise consumed, in a county.

2. Provisions substantially identical to those contained in chapter 374 of NRS, insofar as applicable.

3. A provision that all amendments to chapter 374 of NRS after the date of enactment of the ordinance, not inconsistent with this chapter, automatically become a part of an ordinance imposing the tax for public mass transportation and construction of public roads or the tax to promote tourism in the county.

4. A provision that the county shall contract before the effective date of the ordinance with the Department to perform all functions incident to the administration or operation of the tax in the county.

5. A provision that ~~[exempts from the tax or any increase in the tax the gross receipts from]~~ *a purchaser is entitled to a refund, in accordance with the provisions of NRS 374.635 to 374.720, inclusive, of the amount of the tax required to be paid that is attributable to the tax imposed upon*

the sale of, and the storage, use or other consumption in a county of, tangible personal property used for the performance of a written contract for the construction of an improvement to real property, entered into on or before the effective date of the tax or the increase in the tax, or for which a binding bid was submitted before that date if the bid was afterward accepted, if under the terms of the contract or bid the contract price or bid amount cannot be adjusted to reflect the imposition of the tax or the increase in the tax.

Sec. 89. NRS 377A.110 is hereby amended to read as follows:

377A.110 1. Subject to the provisions of subsection 2, the board may gradually reduce the amount of tax imposed pursuant to this chapter for a public transit system or for the construction, maintenance and repair of public roads, or both, as revenue from the operation of the public transit system permits. *The date on which any reduction in the tax becomes effective must be the first day of the first calendar quarter that begins at least 120 days after the effective date of the ordinance reducing the amount of tax imposed.*

2. No such taxing ordinance may be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair any outstanding bonds issued under this chapter, or other obligations incurred under this chapter, until all obligations, for which revenues from the ordinance have been pledged or otherwise made payable from such revenues pursuant to this chapter, have been discharged in full, but the board may at any time dissolve the regional transportation commission and provide that no further obligations be incurred thereafter.

Sec. 90. NRS 377B.100 is hereby amended to read as follows:

377B.100 1. The board of county commissioners of any county may by ordinance, but not as in a case of emergency, impose a tax for infrastructure pursuant to this section and NRS 377B.110.

2. An ordinance enacted pursuant to this chapter may not become effective before a question concerning the imposition of the tax is approved by a two-thirds majority of the members of the board of county commissioners. Any proposal to increase the rate of the tax or change the previously approved uses for the proceeds of the tax must be approved by a two-thirds majority of the members of the board of county commissioners. The board of county commissioners shall not change a previously approved use for the proceeds of the tax to a use that is not authorized for that county pursuant to NRS 377B.160.

3. An ordinance enacted pursuant to this section must:

(a) Specify the date on which the tax must first be imposed or on which an increase in the rate of the tax becomes effective, which must occur on the first day of the first month of the next calendar quarter that is at least ~~60~~ 120 days after the date on which a two-thirds majority of the board of county commissioners approved the question.

(b) In a county whose population is 400,000 or more, provide for the cessation of the tax not later than:

(1) The last day of the month in which the Department determines that the total sum collected since the tax was first imposed, exclusive of any penalties and interest, exceeds \$2.3 billion; or

(2) June 30, 2025, whichever occurs earlier.

4. The board of county commissioners in a county whose population is 400,000 or more and in which a water authority exists shall review the necessity for the continued imposition of the tax authorized pursuant to this chapter at least once every 10 years.

5. Before enacting an ordinance pursuant to this chapter, the board of county commissioners shall hold a public hearing regarding the imposition of a tax for infrastructure. In a county whose population is 400,000 or more and in which a water authority exists, the water authority shall also hold a public hearing regarding the tax for infrastructure. Notice of the time and place of each hearing must be:

(a) Published in a newspaper of general circulation in the county at least once a week for the 2 consecutive weeks immediately preceding the date of the hearing. Such notice must be a display advertisement of not less than 3 inches by 5 inches.

(b) Posted at the building in which the meeting is to be held and at not less than three other separate, prominent places within the county at least 2 weeks before the date of the hearing.

6. Before enacting an ordinance pursuant to this chapter, the board of county commissioners of a county whose population is less than 400,000 or a county whose population is 400,000 or more and in which no water authority exists, shall develop a plan for the expenditure of the proceeds of a tax imposed pursuant to this chapter for the purposes set forth in NRS 377B.160. The plan may include a regional project for which two or more such counties have entered into an interlocal agreement to expend jointly all or a portion of the proceeds of a tax imposed in each county pursuant to this chapter. Such a plan must include, without limitation, the date on which the plan expires, a description of each proposed project, the method of financing each project and the costs related to each project. Before adopting a plan pursuant to this subsection, the board of county commissioners of a county in which a regional planning commission has been established pursuant to NRS 278.0262 shall transmit to the regional planning commission a list of the proposed projects for which a tax for infrastructure may be imposed. The regional planning commission shall hold a public hearing at which it shall rank each project in relative priority. The regional planning commission shall transmit its rankings to the board of county commissioners. The recommendations of the regional planning commission regarding the priority of the proposed

projects are not binding on the board of county commissioners. The board of county commissioners shall hold at least one public hearing on the plan. Notice of the time and place of the hearing must be provided in the manner set forth in subsection 5. The plan must be approved by the board of county commissioners at a public hearing. Subject to the provisions of subsection 7, on or before the date on which a plan expires, the board of county commissioners shall determine whether a necessity exists for the continued imposition of the tax. If the board determines that such a necessity does not exist, the board shall repeal the ordinance that enacted the tax. If the board of county commissioners determines that the tax must be continued for a purpose set forth in NRS 377B.160, the board shall adopt, in the manner prescribed in this subsection, a new plan for the expenditure of the proceeds of the tax for such a purpose.

7. No ordinance imposing a tax which is enacted pursuant to this chapter may be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair any outstanding bonds or other obligations which are payable from or secured by a pledge of a tax enacted pursuant to this chapter until those bonds or other obligations have been discharged in full.

Sec. 91. NRS 377B.110 is hereby amended to read as follows: 377B.110 An ordinance enacted pursuant to this chapter must include provisions in substance as follows:

1. A provision imposing a tax upon retailers at the rate of not more than:

(a) In a county whose population is 100,000 or more but less than 400,000, one-eighth of 1 percent; or

(b) In all other counties, one-quarter of 1 percent, of the gross receipts of any retailer from the sale of all tangible personal property sold at retail, or stored, used or otherwise consumed, in the county.

2. Provisions substantially identical to those contained in chapter 374 of NRS, insofar as applicable.

3. A provision that all amendments to chapter 374 of NRS after the date of enactment of the

ordinance, not inconsistent with this chapter, automatically become a part of an ordinance enacted pursuant to this chapter.

4. A provision stating the specific purpose for which the proceeds of the tax must be expended.

5. A provision that the county shall contract before the effective date of the ordinance with the Department to perform all functions incident to the administration or operation of the tax in the county.

6. A provision that **[exempts from the tax or any increase in the tax the gross receipts from] a purchaser is entitled to a refund, in accordance with the provisions of NRS 374.635 to 374.720, inclusive, of the amount of the tax required to be paid that is attributable to the tax imposed upon** the sale of, and the storage, use or other consumption in a county of, tangible personal property used for the performance of a written contract:

(a) Entered into on or before the effective date of the tax or the increase in the tax; or

(b) For the construction of an improvement to real property for which a binding bid was submitted before the effective date of the tax or the increase in the tax if the bid was afterward accepted, if, under the terms of the contract or bid, the contract price or bid amount cannot be adjusted to reflect the imposition of the tax or the increase in the tax.

Sec. 92. NRS 354.705 is hereby amended to read as follows:

354.705 1. As soon as practicable after the Department takes over the management of a local government, the Executive Director shall:

(a) Determine the total amount of expenditures necessary to allow the local government to perform the basic functions for which it was created;

(b) Determine the amount of revenue reasonably expected to be available to the local government; and

(c) Consider any alternative sources of revenue available to the local government.

2. If the Executive Director determines that the available revenue is not sufficient to provide for the payment of required debt service and operating expenses, he may submit his findings to the Committee who shall review the determinations made by the Executive Director. If the Committee determines that additional revenue is needed, it shall prepare a recommendation to the Nevada Tax Commission as to which one or more of the following additional taxes or charges should be imposed by the local government:

(a) The levy of a property tax up to a rate which when combined with all other overlapping rates levied in the State does not exceed \$4.50 on each \$100 of assessed valuation.

(b) An additional tax on transient lodging at a rate not to exceed 1 percent of the gross receipts from the rental of transient lodging within the boundaries of the local government upon all persons in the business of providing lodging. Any such tax must be collected and administered in the same manner as all other taxes on transient lodging are collected by or for the local government.

(c) Additional service charges appropriate to the local government.

(d) If the local government is a county or has boundaries that are conterminous with the boundaries of the county:

(1) An additional tax on the gross receipts from the sale or use of tangible personal property not to exceed one quarter of 1 percent throughout the county. The ordinance imposing any such tax must **[include]** :

(I) Include provisions in substance which comply with the requirements of subsections 2 to 5, inclusive, of NRS 377A.030.

(II) Specify the date on which the tax must first be imposed or on which a change in the

rate of the tax becomes effective, which must be the first day of the first calendar quarter that begins at least 120 days after the effective date of the ordinance.

(2) An additional governmental services tax of not more than 1 cent on each \$1 of valuation of the vehicle for the privilege of operating upon the public streets, roads and highways of the county on each vehicle based in the county except those vehicles exempt from the governmental services tax imposed pursuant to chapter 371 of NRS or a vehicle subject to NRS 706.011 to 706.861, inclusive, which is engaged in interstate or intercounty operations. As used in this subparagraph, “based” has the meaning ascribed to it in NRS 482.011.

3. Upon receipt of the plan from the Committee, a panel consisting of three members of the Nevada Tax Commission appointed by the Nevada Tax Commission and three members of the Committee appointed by the Committee shall hold a public hearing at a location within the boundaries of the local government in which the severe financial emergency exists after giving public notice of the hearing at least 10 days before the date on which the hearing will be held. In addition to the public notice, the panel shall give notice to the governing body of each local government whose jurisdiction overlaps with the jurisdiction of the local government in which the severe financial emergency exists.

4. After the public hearing conducted pursuant to subsection 3, the Nevada Tax Commission may adopt the plan as submitted or adopt a revised plan. Any plan adopted pursuant to this section must include the duration for which any new or increased taxes or charges may be collected which must not exceed 5 years.

5. Upon adoption of the plan by the Nevada Tax Commission, the local government in which the severe financial emergency exists shall impose or cause to be imposed the additional taxes and charges included in the plan for the duration stated in the plan or until the severe financial emergency has been determined by the Nevada Tax Commission to have ceased to exist.

6. The allowed revenue from taxes ad valorem determined pursuant to NRS 354.59811 does not apply to any additional property tax levied pursuant to this section.

7. If a plan fails to satisfy the expenses of the local government to the extent expected, the Committee shall report such failure to:

- (a) The county for consideration of absorption of services; or
- (b) If the local government is a county, to the next regular session of the Legislature.

Sec. 93. NRS 482.225 is hereby amended to read as follows:

482.225 1. When application is made to the Department for registration of a vehicle purchased ~~[in this state from a person other than a retailer required to be registered with the Department of Taxation or of a vehicle purchased]~~ outside this state and not previously registered within this state where the registrant or owner at the time of purchase was not a resident of or employed in this state, the Department or its agent shall determine and collect any sales or use tax due and shall remit the tax to the Department of Taxation except as otherwise provided in NRS 482.260.

2. If the registrant or owner of the vehicle was a resident of the State, or employed within the State, at the time of the purchase of that vehicle, it is presumed that the vehicle was purchased for use within the State and the representative or agent of the Department of Taxation shall collect the tax and remit it to the Department of Taxation.

3. Until all applicable taxes and fees are collected, the Department shall refuse to register the vehicle.

4. In any county whose population is less than 50,000, the Department shall designate the county assessor as the agent of the Department for the collection of any sales or use tax.

5. If the registrant or owner desires to refute the presumption stated in subsection 2 that he purchased the vehicle for use in this state, he must pay the tax to the Department and then

may submit his claim for exemption in writing, signed by him or his authorized representative, to the Department together with his claim for refund of tax erroneously or illegally collected.

6. If the Department finds that the tax has been erroneously or illegally collected, the tax must be refunded.

Sec. 94. Section 29 of the Local Government Tax Act of 1991, being chapter 491, Statutes of Nevada 1991, as amended by chapter 426, Statutes of Nevada 1993, at page 1370, is hereby amended to read as follows:

Sec. 29. 1. Except as otherwise provided in this section and in section 34 of this Act and in addition to all other sales and use taxes, the Board of County Commissioners of Churchill, Elko, Humboldt, Washoe and Lander Counties and the Board of Supervisors of Carson City may by ordinance, but not as in a case of emergency, impose a tax at the rate of up to 1/4 of 1 percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail, or stored, used or otherwise consumed in the county.

2. The tax imposed pursuant to this section applies throughout the county, including incorporated cities in the county.

3. The ordinance enacted pursuant to this section must include provisions in substance as follows:

(a) Provisions substantially identical to those of the Local School Support Tax Law, insofar as applicable.

(b) A provision that all amendments to the provisions of the Local School Support Tax Law subsequent to the date of enactment of the ordinance, not inconsistent with this section, automatically become a part of the ordinance enacted pursuant to subsection 1.

(c) A provision that the county shall contract before the effective date of the ordinance enacted pursuant to subsection 1 with the Department to perform all functions incident to the administration or operation of the tax imposed pursuant to subsection 1.

(d) A provision that ~~exempts from the additional one quarter of one percent tax increase authorized pursuant to this section, the gross receipts from~~ *a purchaser is entitled to a refund, in accordance with the provisions of NRS 374.635 to 374.720, inclusive, of the amount of the tax required to be paid that is attributable to the tax imposed upon* the sale of, and the storage, use or other consumption in a county of, tangible personal property used for the performance of a written contract for the construction of an improvement to real property which was executed before July 30, 1991, or for which a binding bid was submitted before that date if the bid was afterward accepted, if under the terms of the contract or bid the contract price or bid amount cannot be adjusted to reflect the imposition of the additional tax pursuant to this section.

(e) A provision that specifies the date on which the tax is first imposed or on which any change in the rate of the tax becomes effective, which must be the first day of the first calendar quarter that begins at least 120 days after the effective date of the ordinance.

4. All fees, taxes, interest and penalties imposed and all amounts of tax required to be paid to the county under this section must be paid to the Department of Taxation in the form of remittances made payable to the Department of Taxation.

5. The Department of Taxation shall deposit the payments with the State Treasurer for credit to the tax distribution fund for the county in which it was collected.

6. Any ordinance enacted pursuant to this section is deemed to include the provisions set forth in paragraph (d) of subsection 3.

Sec. 95. Section 9 of chapter 566, Statutes of Nevada 1993, at page 2329, is hereby amended to read as follows:

Sec. 9. 1. The Commission shall adopt a budget for its operation and for each project it proposes for presentation to the governing bodies. Each budget must be accompanied by a

proposed allocation of the net cost of the budget among the governing bodies which must be based upon the benefit of the commission or project to the jurisdiction of the governing body or another equally appropriate indicator.

2. Upon final determination and allocation of the costs by agreement of the governing bodies, each governing body shall include its portion of the costs in its budget for the purposes of chapter 354 of NRS and shall fund its share of the cost by:

(a) Issuing bonds pursuant to chapter 350 of NRS;

(b) Imposing an additional tax on the rental of transient lodging;

(c) Upon approval by the voters, imposing an additional tax upon retailers at a rate not exceeding one-half of 1 percent of the gross receipts of any retailer from the sale of tangible personal property sold at retail, or stored, used or otherwise consumed in the county;

(d) Upon approval of the voters, levying a property tax not exceeding 2 cents per \$100 of assessed valuation on all taxable property in the county; or

(e) Any combination of the options provided in paragraphs (a) to (d), inclusive, including the issuance of bonds which will be repaid from the revenue of one or more of the taxes authorized in this section which may be treated as pledged revenues for the purposes of NRS 350.020.

3. If the county imposes a tax pursuant to paragraph (c) of subsection 2 it shall include in the ordinance imposing the tax:

(a) Provisions substantially identical to those contained in chapter 374 of NRS;

(b) A provision stating that all amendments to chapter 374 of NRS after the date of enactment of the ordinance, not inconsistent with the provisions of the ordinance, automatically become a part of the ordinance;

(c) A provision that the county shall contract before the effective date of the ordinance with the Department to perform all functions incident to the administration or operation of the tax in the county; and

(d) The date on which the tax must first be imposed, which must **[not be earlier than] be** the first day of the **[second calendar month following] first calendar quarter that begins at least 120 days after** the adoption of the ordinance by the governing body.

4. The Commission is not entitled to a distribution of revenue from the supplemental city-county relief tax.

Sec. 96. Section 3 of the Elko County Hospital Tax Act, being chapter 14, Statutes of Nevada 1997, at page 29, is hereby amended to read as follows:

Sec. 3. 1. The Board may enact an ordinance imposing a tax for the construction of a hospital pursuant to section 4 of this Act.

2. A tax so imposed may be collected for not more than 4 years after the date upon which it is first imposed. The ending date of the tax must be specified in the ordinance.

3. An ordinance enacted pursuant to this act may not become effective before a question concerning the imposition of the tax is approved by a majority of the registered voters of Elko County voting upon the question. The Board may submit the question to the voters at a special election held at the same time and places as a municipal election or at a general election. The Board shall also submit to the voters at such a special or general election any proposal to increase the rate of the tax or change the previously approved uses for the proceeds of the tax.

4. Any ordinance enacted pursuant to this section must specify the date on which the tax must first be imposed or on which an increase in the rate of the tax becomes effective, which must **[not be earlier than] be** the first day of the **[second calendar month following] first calendar quarter that begins at least 120 days after** the approval of the question by the voters.

Sec. 97. Section 4 of the Elko County Hospital Tax Act, being chapter 14, Statutes of Nevada 1997, at page 30, is hereby amended to read as follows:

Sec. 4. Except as otherwise provided in section 12 of this Act, any ordinance adopted pursuant to this Act, except an ordinance authorizing the issuance of bonds or other securities, must include provisions in substance as follows:

1. A provision imposing a tax upon retailers at the rate of not more than 1 percent of the gross receipts of any retailer

from the sale of all tangible personal property sold at retail, or stored, used or otherwise consumed, in Elko County.

2. Provisions substantially identical to those contained in chapter 374 of NRS, insofar as applicable.

3. A provision that all amendments to chapter 374 of NRS after the date of enactment of the ordinance, not inconsistent with this act, automatically become a part of an ordinance imposing the taxes.

4. A provision that the Board shall contract before the effective date of the taxing ordinance with the Department to perform all functions incident to the administration or operation of the tax in the County.

5. A provision that ~~exempts from the tax or any increase in the tax the gross receipts from~~ *a purchaser is entitled to a refund, in accordance with the provisions of NRS 374.635 to 374.720, inclusive, of the amount of the tax required to be paid that is attributable to the tax imposed upon* the sale of, and the storage, use or other consumption in a county of, tangible personal property used for the performance of a written contract for the construction of an improvement to real property, entered into on or before the effective date of the tax or the increase in the tax, or for which a binding bid was submitted before that date if the bid was afterward accepted, if under the terms of the contract or bid the contract price or bid amount cannot be adjusted to reflect the imposition of the tax or the increase in the tax.

Sec. 98. Section 13 of the Elko County Hospital Tax Act, being chapter 14, Statutes of Nevada 1997, at page 32, is hereby amended to read as follows:

Sec. 13. 1. Subject to the provisions of subsection 2, the Board may gradually reduce the amount of the tax imposed pursuant to this Act. *The date on which any reduction in the tax becomes effective must be the first day of the first calendar quarter that begins at least 120 days after the effective date of the ordinance reducing the amount of the tax imposed.*

2. No such taxing ordinance may be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair any outstanding bonds issued pursuant to this Act, or other obligations incurred pursuant to this Act, until all obligations, for which revenues from the ordinance have been pledged or otherwise made payable from such revenues pursuant to this act, have been discharged in full.

Sec. 99. Section 8A.080 of the Charter of Carson City, being chapter 16, Statutes of Nevada 1997, at page 43, is hereby amended to read as follows:

Sec. 8A.080 Required provisions of ordinance. An ordinance enacted pursuant to this article, except an ordinance authorizing the issuance of bonds or other securities, must include provisions in substance as follows:

1. A provision imposing a tax of not more than one-quarter of 1 percent of the gross receipts of any retailer from the sale of all personal property sold at retail, or stored, used or otherwise consumed in Carson City.

2. Provisions substantially identical to those contained in chapter 374 of NRS, insofar as applicable.

3. A provision that an amendment to chapter 374 of NRS after the date of enactment of the ordinance, not inconsistent with this article, automatically becomes a part of the ordinance imposing the tax.

4. A provision that the Board shall contract before the effective date of the ordinance with the Department to perform all the functions incident to the administration or operation of the tax in Carson City.

5. A provision that **[exempts from the tax the gross receipts from] a purchaser is entitled to a refund, in accordance with the provisions of NRS 374.635 to 374.720, inclusive, of the amount of the tax required to be paid that is attributable to the tax imposed upon** the sale of tangible personal property used for the performance of a written contract for the construction of an improvement to real property:

(a) That was entered into on or before the effective date of the tax; or

(b) For which a binding bid was submitted before that date if the bid was afterward accepted, and pursuant to the terms of the contract or bid, the contract price or bid amount may not be adjusted to reflect the imposition of the tax.

6. A provision that specifies the date on which the tax is first imposed or on which any changes in the rate of the tax becomes effective, which must be the first day of the first calendar quarter that begins at least 120 days after the effective date of the ordinance.

Sec. 100. Section 24 of the Railroad Grade Separation Projects Act, being chapter 506, Statutes of Nevada 1997, as last amended by chapter 28, Statutes of Nevada 1999, at page 64, is hereby amended to read as follows:

Sec. 24. 1. The Board of County Commissioners of Washoe County may by ordinance, but not as in a case of emergency, impose a tax upon the retailers at the rate of not more than one-eighth of 1 percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail, or stored, used or otherwise consumed in the county if:

(a) The City of Reno imposes a tax on the rental of transient lodging pursuant to NRS 268.7845 in the maximum amount allowed by that section; and

(b) The Board receives a written commitment from one or more sources for the expenditure of not less than one-half of the total cost of a project for the acquisition, establishment, construction or expansion of railroad grade separation projects in Washoe County, including the estimated proceeds of the tax described in paragraph (a).

2. An ordinance enacted pursuant to subsection 1 may not become effective before a question concerning the imposition of the tax is approved by a two-thirds majority of the members of the Board of County Commissioners.

3. An ordinance enacted pursuant to subsection 1 must specify the date on which the tax must first be imposed which must occur on the first day of the first month of the next calendar quarter that is at least **[60] 120** days after the date on which a two-thirds majority of the Board of County Commissioners approved the question.

4. An ordinance enacted pursuant to subsection 1 must include provisions in substance as follows:

(a) Provisions substantially identical to those contained in chapter 374 of NRS, insofar as applicable.

(b) A provision that all amendments to chapter 374 of NRS after the date of enactment of the ordinance, not inconsistent with this section, automatically become a part of an ordinance enacted pursuant to subsection 1.

(c) A provision stating the specific purpose for which the proceeds of the tax must be expended.

(d) A provision that **[exempts from the tax the gross receipts from] a purchaser is entitled to a refund, in accordance with the provisions of NRS 374.635 to 374.720, inclusive, of the amount of the tax required to be paid that is attributable to the tax imposed upon** the sale of, and the

storage, use or other consumption in a county of, tangible personal property used for the performance of a written contract:

(1) Entered into on or before the effective date of the tax; or

(2) For the construction of an improvement to real property for which a binding bid was submitted before the effective date of the tax if the bid was afterward accepted, if under the terms of the contract or bid the contract price or bid amount cannot be adjusted to reflect the imposition of the tax.

5. No ordinance imposing a tax which is enacted pursuant to subsection 1 may be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair any outstanding bonds or other obligations which are payable from or secured by a pledge of a tax enacted pursuant to subsection 1 until those bonds or other obligations have been discharged in full.

6. All fees, taxes, interest and penalties imposed and all amounts of tax required to be paid to the County pursuant to this section must be paid to the Department of Taxation in the form of remittances payable to the Department of Taxation.

7. The Department of Taxation shall deposit the payments with the State Treasurer for credit to the Sales and Use Tax Account in the State General Fund.

8. The State Controller, acting upon the collection data furnished by the Department of Taxation, shall monthly:

(a) Transfer from the Sales and Use Tax Account to the appropriate account in the State General Fund a percentage of all fees, taxes, interest and penalties collected pursuant to this section during the preceding month as compensation to the state for the cost of collecting the taxes. The percentage to be transferred pursuant to this paragraph must be the same percentage as the percentage of proceeds transferred pursuant to paragraph (a) of subsection 3 of NRS 374.785 but the percentage must be applied to the proceeds collected pursuant to this section only.

(b) Determine for the County an amount of money equal to any fees, taxes, interest and penalties collected in or for the county pursuant to this section during the preceding month, less the amount transferred to the State General Fund pursuant to paragraph (a).

(c) Transfer the amount determined for the County to the intergovernmental fund and remit the money to the County Treasurer.

9. The County Treasurer shall deposit the money received pursuant to subsection 8 in the County Treasury for credit to a fund to be known as the Railroad Grade Separation Projects Fund. The Railroad Grade Separation Projects Fund must be accounted for as a separate fund and not as a part of any other fund.

10. The money in the Railroad Grade Separation Projects Fund, including interest and any other income from the Fund must be used by the Board of County Commissioners for the cost of the acquisition, establishment, construction or expansion of one or more railroad grade separation projects, including the payment and prepayment of principal and interest on notes, bonds or other obligations issued to fund such projects.

Sec. 101. Section 18 of the Douglas County Sales and Use Tax Act of 1999, being chapter 37, Statutes of Nevada 1999, at page 83, is hereby amended to read as follows:

Sec. 18. An ordinance enacted pursuant to this act, except an ordinance authorizing the issuance of bonds or other securities, must include provisions in substance as follows:

1. A provision imposing a tax of not more than one-quarter of 1 percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail or stored, used or otherwise consumed in the County.

2. Provisions substantially identical to those contained in chapter 374 of NRS, insofar as

applicable.

3. A provision that an amendment to chapter 374 of NRS enacted after the effective date of the ordinance, not inconsistent with this act, automatically becomes part of the ordinance imposing the tax.

4. A provision that the Board shall contract before the effective date of the ordinance with the Department to perform all the functions incident to the administration or operation of the tax in the County.

5. A provision that **[exempts from the tax the gross receipts from] a purchaser is entitled to a refund, in accordance with the provisions of NRS 374.635 to 374.720, inclusive, of the amount of the tax required to be paid that is attributable to the tax imposed upon** the sale of tangible personal property used for the performance of a written contract for the construction of an improvement to real property:

(a) That was entered into on or before the effective date of the tax; or

(b) For which a binding bid was submitted before that date if the bid was afterward accepted, and pursuant to the terms of the contract or bid, the contract price or bid amount may not be adjusted to reflect the imposition of the tax.

6. A provision that specifies the date on which the tax is first imposed or on which any change in the rate of the tax becomes effective, which must be the first day of the first calendar quarter that begins at least 120 days after the effective date of the ordinance.

Sec. 102. Section 24 of chapter 364, Statutes of Nevada 2001, at page 1716, is hereby amended to read as follows:

Sec. 24. 1. This section, sections 1 to 13, inclusive, and 17 to 23, inclusive, of this act become effective upon passage and approval.

2. **[Sections 14, 15 and] Section 16** of this act **[become] becomes** effective on the date this state becomes a member of the streamlined sales and use tax agreement.

3. Sections 14 and 15 of this act become effective on January 1, 2006.

Sec. 103. At the general election on November 2, 2004, a proposal must be submitted to the registered voters of this state to amend the Sales and Use Tax Act, which was enacted by the 47th Session of the Legislature of the State of Nevada and approved by the Governor in 1955, and subsequently approved by the people of this state at the general election held on November 6, 1956.

Sec. 104. At the time and in the manner provided by law, the Secretary of State shall transmit the proposed act to the several county clerks, and the county clerks shall cause it to be published and posted as provided by law.

Sec. 105. The proclamation and notice to the voters given by the county clerks pursuant to law must be in substantially the following form:

Notice is hereby given that at the general election on November 2, 2004, a question will appear on the ballot for the adoption or rejection by the registered voters of the State of the following proposed act:

AN ACT to amend an Act entitled “An Act to provide revenue for the State of Nevada; providing for sales and use taxes; providing for the manner of collection; defining certain terms; providing penalties for violation, and other matters properly relating thereto.” approved March 29, 1955, as amended.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section 1. The above-entitled Act, being chapter 397, Statutes of Nevada 1955, at page 762, is hereby amended by adding thereto three new sections to be designated as sections 18.2, 47.4 and 47.5, respectively, immediately following sections 18.1 and 47, respectively, to read as follows:

Sec. 18.2. *“Vehicle” has the meaning ascribed to it in NRS 482.135.*

Sec. 47.4. *1. For the purposes of this section, “authorized appraisal” means an appraisal of the value of a motor vehicle made by:*

- (a) An employee of the Department of Motor Vehicles on its behalf;*
- (b) A county assessor or his employee as an agent of the Department of Motor Vehicles;*
- (c) A person licensed by the Department of Motor Vehicles as a dealer; or*
- (d) An independent appraiser authorized by the Department of Motor Vehicles.*

2. When computing the tax on the sale of a vehicle by a seller who is not required to be registered by the Department of Taxation, the Department of Motor Vehicles or the county assessor as an agent of the Department of Taxation shall, if an authorized appraisal is submitted, use as the vehicle’s sales price the amount stated on the authorized appraisal or \$100, whichever is greater.

3. The Department of Motor Vehicles shall establish by regulation the procedure for appraising vehicles and shall establish and make available a form for an authorized appraisal.

4. The Department of Motor Vehicles shall retain a copy of the appraisal considered pursuant to subsection 2 with its record of the collection of the tax.

5. A fee which does not exceed \$10 may be charged and collected for each authorized appraisal made. Any money so collected by the Department of Motor Vehicles for such an appraisal made by its employees must be deposited with the State Treasurer to the credit of the Motor Vehicle Fund. Any money so collected by a county assessor must be deposited with the county treasurer to the credit of the county’s general fund.

6. If an authorized appraisal is not submitted, the Department of Motor Vehicles or the county assessor as an agent of the Department of Taxation shall establish the sales price as a value which is based on the depreciated value of the vehicle as determined in accordance with the schedule in section 47.5 of chapter 397, Statutes of Nevada 1955. To determine the original price from which the depreciation is calculated, the Department of Motor Vehicles shall use:

(a) The manufacturer’s suggested retail price in Nevada, excluding options and extras, as of the time the particular make and year model is first offered for sale in Nevada;

(b) If the vehicle is specially constructed, the original retail price to the original purchaser of the vehicle as evidenced by such document or documents as the Department may require;

(c) The procedures set forth in subsections 3 and 4 of NRS 371.050; or

(d) If none of these applies, its own estimate from any available information.

Sec. 47.5. *1. Except as otherwise provided in subsection 2, for the purpose of computing the tax on the sale of a vehicle by a seller who is not required to be registered with the Department of Taxation in the manner provided for in subsection 6 of section 47.4 of chapter 397, Statutes of Nevada 1955, a vehicle must be depreciated according to the following schedule:*

<i>Age</i>	<i>Percentage</i>	<i>of</i>
<i>New</i>	<i>Initial</i>	<i>Value</i>
<i>1</i>	<i>100</i>	<i>percent</i>
<i>1 year</i>	<i>85</i>	<i>percent</i>
<i>2 years</i>	<i>75</i>	<i>percent</i>
<i>3 years</i>	<i>65</i>	<i>percent</i>
<i>4 years</i>	<i>60</i>	<i>percent</i>

5	years	.....	55	percent
6	years	.....	50	percent
7	years	.....	45	percent
8	years	.....	40	percent
9	years	.....	35	percent
10	years	.....	30	percent
11	years	.....	25	percent
12	years	.....	20	percent
13	years	.....	15	percent
14	years	or more	10	percent

2. The amount of depreciation calculated under subsection 1 must be rounded to the nearest whole multiple of \$20 and the depreciated value must not be reduced below \$100.

Sec. 2. Section 11 of the above-entitled Act, being chapter 397, Statutes of Nevada 1955, at page 764, is hereby amended to read as follows:

Sec. 11. 1. "Sales price" means the total amount for which tangible property is sold, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

- (a) The cost of the property sold.
- (b) The cost of materials used, labor or service cost, interest charged, losses, or any other expenses.
- (c) The cost of transportation of the property prior to its purchase.

2. The total amount for which property is sold includes all of the following:

- (a) Any services that are a part of the sale.
- (b) Any amount for which credit is given to the purchaser by the seller.

3. "Sales price" does not include any of the following:

- (a) Cash discounts allowed and taken on sales.
- (b) The amount charged for property returned by customers when the entire amount charged therefor is refunded either in cash or credit; but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.

(c) The amount charged for labor or services rendered in installing or applying the property sold.

(d) The amount of any tax, ~~[(~~ not including ~~], however,~~ any manufacturers' or importers' excise tax, ~~)]~~ imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

(e) The amount of any allowance against the selling price given by a retailer for the value of a used vehicle that is taken in trade on the purchase of another vehicle.

4. For the purpose of a sale of a vehicle by a seller who is not required to be registered with the Department of Taxation, the sales price is the value established in the manner set forth in section 47.4 of chapter 397, Statutes of Nevada 1955.

Sec. 3. Section 12 of the above-entitled Act, being chapter 397, Statutes of Nevada 1955, at page 764, is hereby amended to read as follows:

Sec. 12. 1. "Gross receipts" means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

- (a) The cost of the property sold. However, in accordance with such rules and regulations as the Tax Commission may prescribe, a deduction may be taken if the retailer has purchased

property for some other purpose than resale, has reimbursed his vendor for tax which the vendor is required to pay to the State or has paid the use tax with respect to the property, and has resold the property **[prior to] before** making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.

(b) The cost of the materials used, labor or service cost, interest paid, losses or any other expense.

(c) The cost of transportation of the property **[prior to] before** its sale to the purchaser.

2. The total amount of the sale or lease or rental price includes all of the following:

(a) Any services that are a part of the sale.

(b) All receipts, cash, credits and property of any kind.

(c) Any amount for which credit is allowed by the seller to the purchaser.

3. "Gross receipts" does not include any of the following:

(a) Cash discounts allowed and taken on sales.

(b) **[Sale] The sale** price of property returned by customers when the full sale price is refunded either in cash or credit, **[;]** but this exclusion **[shall] does** not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.

(c) The price received for labor or services used in installing or applying the property sold.

(d) The amount of any tax, **[()] not including [, however,]** any manufacturers' or importers' excise tax, **[)]** imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

(e) The amount of any allowance against the selling price given by a retailer for the value of a used vehicle which is taken in trade on the purchase of another vehicle.

4. For purposes of the sales tax, if the retailers establish to the satisfaction of the Tax Commission that the sales tax has been added to the total amount of the sale price and has not been absorbed by them, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed.

Sec. 4. Section 15 of the above-entitled Act, being chapter 397, Statutes of Nevada 1955, at page 765, is hereby amended to read as follows:

Sec. 15. 1. "Retailer" includes:

(a) Every seller who makes any retail sale or sales of tangible personal property, and every person engaged in the business of making retail sales at auction of tangible personal property owned by the person or others.

(b) Every person engaged in the business of making sales for storage, use or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use or other consumption.

(c) Every person making ***any retail sale of a vehicle or*** more than two retail sales of ***other*** tangible personal property during any 12-month period, including sales made in the capacity of assignee for the benefit of creditors, or receiver or trustee in bankruptcy.

2. When the Tax Commission determines that it is necessary for the efficient administration of this chapter to regard any salesmen, representatives, peddlers or canvassers as the agents of the dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors or employers, the Tax Commission may so regard them and may regard the dealers, distributors, supervisors or

employers as retailers for purposes of this chapter.

~~{3. A licensed optometrist or physician and surgeon is a consumer of, and shall not be considered, a retailer within the provisions of this chapter, with respect to the ophthalmic materials used or furnished by him in the performance of his professional services in the diagnosis, treatment or correction of conditions of the human eye, including the adaptation of lenses or frames for the aid thereof.}~~

Sec. 5. Section 18.1 of the above-entitled Act, being chapter 397, Statutes of Nevada 1955, at page 766, is hereby amended to read as follows:

Sec. 18.1 NRS 372.035 is hereby amended to read as follows:

372.035 1. "Occasional sale" includes:

(a) A sale of property not held or used by a seller in the course of an activity for which he is required to hold a seller's permit, **[provided such] if the** sale is not one of a series of sales sufficient in number, scope and character to constitute an activity requiring the holding of a seller's permit.

(b) Any transfer of all or substantially all the property held or used by a person in the course of such an activity when after ~~[such] the~~ transfer the real or ultimate ownership of **[such] the** property is substantially similar to that which existed before **[such] the** transfer.

2. The term does not include the sale of a vehicle other than the sale or transfer of a used vehicle to the seller's spouse, child, grandchild, parent, grandparent, brother or sister. For the purposes of this section, the relation of parent and child includes adoptive and illegitimate children and stepchildren.

3. For the purposes of this section, stockholders, bondholders, partners or other persons holding an interest in a corporation or other entity are regarded as having the "real or ultimate ownership" of the property of such corporation or other entity. Sec. 6. Section 56.1 of the above-entitled Act, being chapter 397, Statutes of Nevada 1955, as added by chapter 306, Statutes of Nevada 1969, at page 532, and amended by chapter 627, Statutes of Nevada 1985, at page 2028, and amended by chapter 404, Statutes of Nevada 1995, at page 1007, is hereby amended to read as follows:

Sec. 56.1. 1. There are exempted from the taxes imposed by this act the gross receipts from sales and the storage, use or other consumption of:

(a) Prosthetic devices, orthotic appliances and ambulatory casts for human use, and other supports and casts if prescribed or applied by a licensed provider of health care, within his scope of practice, for human use.

(b) Appliances and supplies relating to an ostomy.

(c) Products for hemodialysis.

(d) Any ophthalmic or ocular device or appliance prescribed by a physician or optometrist.

(e) Medicines:

(1) Prescribed for the treatment of a human being by a person authorized to prescribe medicines, and dispensed on a prescription filled by a registered pharmacist in accordance with law;

(2) Furnished by a licensed physician, dentist or podiatric physician to his own patient for the treatment of the patient;

(3) Furnished by a hospital for treatment of any person pursuant to the order of a licensed physician, dentist or podiatric physician; or

(4) Sold to a licensed physician, dentist, podiatric physician or hospital for the treatment of a human being.

2. As used in this section:

(a) "Medicine" means any substance or preparation intended for use by external or internal

application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease or affliction of the human body and which is commonly recognized as a substance or preparation intended for such use. The term includes splints, bandages, pads, compresses and dressings.

(b) "Medicine" does not include:

(1) Any auditory [, ophthalmic or ocular] device or appliance.

(2) Articles which are in the nature of instruments, crutches, canes, devices or other mechanical, electronic, optical or physical equipment.

(3) Any alcoholic beverage, except where the alcohol merely provides a solution in the ordinary preparation of a medicine.

(4) Braces or supports, other than those prescribed or applied by a licensed provider of health care, within his scope of practice, for human use.

3. Insulin furnished by a registered pharmacist to a person for treatment of diabetes as directed by a physician shall be deemed to be dispensed on a prescription within the meaning of this section. Sec. 7. The above-entitled Act, being chapter 397, Statutes of Nevada 1955, at page 762, is hereby amended by adding thereto a new section to be designated as section 56.3, immediately following section 56.2, to read as follows:

Sec. 56.3. 1. There are exempted from the taxes imposed by this Act the gross receipts from the sale of, and the storage, use or other consumption in a county of, farm machinery and equipment employed for the agricultural use of real property.

2. As used in this section:

(a) "Agricultural use" has the meaning ascribed to it in NRS 361A.030.

(b) "Farm machinery and equipment" means a farm tractor, implement of husbandry, piece of equipment used for irrigation, or a part used in the repair or maintenance of farm machinery and equipment. The term does not include:

(1) A vehicle required to be registered pursuant to the provisions of chapter 482 or 706 of NRS; or

(2) Machinery or equipment only incidentally employed for the agricultural use of real property.

(c) "Farm tractor" means a motor vehicle designed and used primarily for drawing an implement of husbandry.

(d) "Implement of husbandry" means a vehicle that is designed, adapted or used for agricultural purposes, including, without limitation, a plow, machine for mowing, hay baler, combine, piece of equipment used to stack hay, till, harvest, handle agricultural commodities or apply fertilizers, or other heavy, movable equipment designed, adapted or used for agricultural purposes.

Sec. 8. The above-entitled Act, being chapter 397, Statutes of Nevada 1955, at page 762, is hereby amended by adding thereto two new sections to be designated as sections 57.1 and 57.2, respectively, immediately following section 57, to read as follows:

Sec. 57.1. 1. Except as otherwise provided in section 57.2 of chapter 397, Statutes of Nevada 1955, there are exempted from the taxes imposed by this chapter the gross receipts from the sale of, and the storage, use or other consumption of, works of fine art for public display.

2. In determining whether a payment made pursuant to a lease of a work of fine art is exempt under subsection 1, the value for the purpose of paragraph (a) of subsection 4 is the value of the work and not the value of possession for the term of the lease, and the calendar or fiscal year described in paragraph (a) of subsection 4 is the first full calendar or fiscal year, respectively, after the payment is made.

3. During the first full fiscal year following the purchase of fine art for which a taxpayer receives the exemption provided in this section, the taxpayer shall make available, upon written request and without charge to any public school as defined in NRS 385.007, private school as defined in NRS 394.103 and parent of a child who receives instruction in a home pursuant to NRS 392.070, one copy of a poster depicting the fine art that the facility has on public display and that the facility makes available for purchase by the public at the time of the request.

4. As used in this section:

(a) "Fine art for public display":

(1) Except as otherwise provided in subparagraph (2), means a work of art which:

(I) Is an original painting in oil, mineral, water colors, vitreous enamel, pastel or other medium, an original mosaic, drawing or sketch, an original sculpture of clay, textiles, fiber, wood, metal, plastic, glass or a similar material, an original work of mixed media or a lithograph;

(II) Is purchased in an arm's length transaction for \$25,000 or more, or has an appraised value of \$25,000 or more;

(III) Will be on public display in a public or private art gallery, museum or other building or area in this state for at least 20 hours per week during at least 35 weeks of the first full calendar year after the date on which it is purchased or, if the facility displaying the fine art disposes of it before the end of that year, during at least two-thirds of the full weeks during which the facility had possession of it, or if the gallery, museum, or other building or area in which the fine art will be displayed will not be opened until after the beginning of the first full calendar year after the date on which the fine art is purchased, these display requirements must instead be met for the first full fiscal year after the date of opening, and the date of opening must not be later than 2 years after the purchase of the fine art being displayed; and

(IV) Will be on display in a facility that is available for group tours by pupils or students for at least 5 hours on at least 60 days of the first full fiscal year after the purchase of the fine art, during which the facility in which it is displayed is open, by prior appointment and at reasonable times, without charge; and

(2) Does not include:

(I) A work of fine art that is a fixture or an improvement to real property;

(II) Materials purchased by an artist for consumption in the production of a work of art that is to be a fixture or an improvement to real property;

(III) A work of fine art that constitutes a copy of an original work of fine art, unless the work is a lithograph that is a limited edition and that is signed and numbered by the artist;

(IV) Products of filmmaking or photography, including, without limitation, motion pictures;

(V) Literary works;

(VI) Property used in the performing arts, including, without limitation, scenery or props for a stage; or

(VII) Property that was created for a functional use other than, or in addition to, its aesthetic qualities, including, without limitation, a classic or custom-built automobile or boat, a sign that advertises a business, and custom or antique furniture, lamps, chandeliers, jewelry, mirrors, doors or windows.

(b) "Public display" means the display of a work of fine art where members of the public have access to the work of fine art for viewing during publicly advertised hours. The term does not include the display of a work of fine art in an area where the public does not generally have access, including, without limitation, a private office, hallway or meeting room of a

business, a room of a business used for private lodging and a private residence.

(c) "Pupil" means a person who:

(1) Is enrolled for the current academic year in a public school as defined in NRS 385.007 or a private school as defined in NRS 394.103; or

(2) Receives instruction in a home and is excused from compulsory attendance pursuant to NRS 392.070.

(d) "Student" means a person who is enrolled for the current academic year in:

(1) A community college or university; or

(2) A licensed postsecondary educational institution as defined in NRS 394.099 and a course concerning fine art.

Sec. 57.2. 1. A taxpayer may collect an admission fee for the exhibition of fine art otherwise exempt from taxation on its sale, storage, use or other consumption pursuant to section 57.1 of chapter 397, Statutes of Nevada 1955, if the taxpayer offers to residents of the State of Nevada a discount of 50 percent from any admission fee charged to nonresidents. The discounted admission fee for residents must be offered at any time the exhibition is open to the public and admission fees are being charged.

2. If a taxpayer collects a fee for the exhibition of fine art otherwise exempt from taxation on its sale, storage, use or other consumption pursuant to section 57.1 of chapter 397, Statutes of Nevada 1955, and the fee is collected during the first full fiscal year after the purchase of the fine art, the exemption pertaining to that fine art must be reduced by the net revenue derived by the taxpayer for that first full fiscal year. The exemption pertaining to fine art must not be reduced below zero, regardless of the amount of the net revenue derived by the taxpayer for that first full fiscal year.

3. Any tax due pursuant to this section must be paid with the first sales and use tax return otherwise required to be filed by the taxpayer following the 15th day of the fourth month after the end of the first full fiscal year following the purchase of the fine art or, if no sales and use tax return is otherwise required to be filed by the taxpayer, with a sales and use tax return filed specifically for this purpose on or before the last day of the fourth month after the end of the first full fiscal year following the purchase of the fine art.

4. A taxpayer who is required to pay a tax resulting from the operation of this section may receive a credit against the tax for any donations made by the taxpayer to the Nevada Arts Council, the Division of Museums and History Dedicated Trust Fund established pursuant to NRS 381.0031, a museum that provides exhibits specifically related to nature or a museum that provides exhibits specifically related to children, if the taxpayer:

(a) Made the donation before the date that either return required pursuant to subsection 3 is due; and

(b) Provides to the Department documentation of the donation at the time that he files the return required pursuant to subsection 3.

5. For the purposes of this section:

(a) "Direct costs of owning and exhibiting the fine art" does not include any allocation of the general and administrative expense of a business or organization that conducts activities in addition to the operation of the facility in which the fine art is displayed, including, without limitation, an allocation of the salary and benefits of a senior executive who is responsible for the oversight of the facility in which the fine art is displayed and who has substantial responsibilities related to the other activities of the business or organization.

(b) "Net revenue" means the amount of the fees collected for exhibiting the fine art during the fiscal year less the following paid or made during the fiscal year:

(1) The direct costs of owning and exhibiting the fine art; and

(2) The cost of educational programs associated with the taxpayer's public display of fine art, including the cost of meeting the requirements of sub-subparagraph (IV) of subparagraph (1) of paragraph (a) of subsection 4 of section 57.1 of chapter 397, Statutes of Nevada 1955.

Sec. 9. Section 6 of the above-entitled Act, being chapter 397, Statutes of Nevada 1955, at page 763, is hereby amended to read as follows:

Sec. 6. 1. "Retail sale" or "sale at retail" means a sale for any purpose other than resale in the regular course of business of tangible personal property. *The terms do not include a sale of property that:*

(a) Meets the requirements of subparagraphs (1) and (2) of paragraph (a) of subsection 4 of section 57.1 of chapter 397, Statutes of Nevada 1955;

(b) Is made available for sale within 2 years after it is acquired; and

(c) Is made available for viewing by the public or prospective purchasers, or both, within 2 years after it is acquired, whether or not a fee is charged for viewing it and whether or not it is also used for purposes other than viewing.

2. The delivery in this state of tangible personal property by an owner or former owner thereof or by a factor, or agent of such owner, former owner or factor, if the delivery is to a consumer or person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this state, is a retail sale in this state by the person making the delivery. He shall include the retail selling price of the property in his gross receipts.

Sec. 10. Section 7 of the above-entitled Act, being chapter 397, Statutes of Nevada 1955, at page 763, is hereby amended to read as follows:

Sec. 7. "Storage" includes any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased from a retailer. *The term does not include keeping, retaining or exercising any right or power over tangible property that:*

1. Meets the requirements of subparagraphs (1) and

(2) of paragraph (a) of subsection 4 of section 57.1 of chapter 397, Statutes of Nevada 1955;

2. Is made available for sale within 2 years after it is acquired; and

3. Is made available for viewing by the public or prospective purchasers, or both, within 2 years after it is acquired whether or not a fee is charged for viewing it and whether or not it is also used for purposes other than viewing.

Sec. 11. Section 61.5 of the above-entitled Act, being chapter 397, Statutes of Nevada 1955, at page 762, as added by chapter 466, Statutes of Nevada 1985, at page 1441, is hereby amended to read as follows:

Sec. 61.5. There are exempted from the taxes imposed by this chapter the gross receipts from the sale

[of aircraft and major components] and the storage, use or other consumption in this state of:

1. Aircraft, aircraft engines and component parts of aircraft [, such as engines and other components made for use only in aircraft, to an air carrier which:

1. Holds a certificate to engage in air transportation issued pursuant to 49 U.S.C. § 1371 and is not solely a charter air carrier or a supplemental air carrier as described in Title 49 of the United States Code; and

2. Maintains its central office in Nevada and bases a majority of its aircraft in Nevada.] or aircraft engines which are manufactured exclusively for use in aircraft, sold or purchased for lease to a commercial air carrier for use in the transportation of persons or property in

intrastate, interstate or foreign commerce pursuant to a certificate or license issued to the air carrier authorizing such transportation; and

2. Machinery, tools and other equipment and parts which are used exclusively in the repair, remodeling or maintenance of aircraft, aircraft engines or component parts of aircraft or aircraft engines which meet the requirements of subsection 1.

Sec. 12. The above-entitled Act, being chapter 397, Statutes of Nevada 1955, at page 762, is hereby amended by adding thereto a new section to be designated as section 61.6, immediately following section 61.5, to read as follows:

Sec. 61.6. *1. There are exempted from the taxes imposed by this chapter the gross receipts from the sale, furnishing or service of, and the storage, use or other consumption in this state of:*

(a) All engines and chassis of a professional racing vehicle;

(b) All parts and components that are used to replace or rebuild existing parts or components of any engine or chassis of a professional racing vehicle;

(c) All motor vehicles used by professional racing teams to transport professional racing vehicles or to transport parts or components of professional racing vehicles, including, without limitation, an engine and chassis of a professional racing vehicle; and

(d) All motor vehicles used by a professional racing team or sanctioning body to transport the business office of the professional racing team or sanctioning body or to transport a facility from which hospitality services are provided.

2. As used in this section:

(a) "Professional racing team" means a racing operation that qualifies for the taxable year as an activity engaged in for profit pursuant to the Internal Revenue Code, Title 26 of the United States Code.

(b) "Professional racing motor vehicle" means any motor vehicle which is used in a professional racing competition and which is owned, leased or operated by a professional racing team.

(c) "Sanctioning body" means an organization that establishes an annual schedule of professional racing events in which professional racing teams participate, grants rights to conduct such events and establishes and administers rules and regulations governing the persons who conduct or participate in such events.

Sec. 13. This act becomes effective on January 1, 2006.

Sec. 106. The ballot page assemblies and the paper ballots to be used in voting on the question must present the question in substantially the following form:
Shall the Sales and Use Tax Act of 1955 be amended to:

1. Provide an exemption from the taxes imposed by this Act on the gross receipts from the sale and the storage, use or other consumption of the value of any used vehicle taken in trade on the purchase of another vehicle and to remove the exemption from those taxes for occasional sales of vehicles except where such sales are between certain family members;

2. Provide an exemption from the taxes imposed by this Act on the gross receipts from the sale and the storage, use or other consumption of ophthalmic or ocular devices or appliances prescribed by a physician or optometrist;

3. Provide an exemption from the taxes imposed by this Act on the gross receipts from the sale and the storage, use or other consumption of farm machinery and equipment employed for the agricultural use of real property;

4. Provide an exemption from the taxes imposed by this Act on the gross receipts from the sale and the storage, use or other consumption of works of fine art for public display;

5. Revise and clarify the criteria used to determine which aircraft and parts of aircraft are

exempt from the taxes imposed by this Act, including removing the requirement that an air carrier must be based in Nevada to be eligible for the exemption, and providing an exemption for certain machinery and equipment used on eligible aircraft and parts of aircraft; and

6. Provide an exemption from the taxes imposed by this Act on the gross receipts from the sale and the storage, use or other consumption of engines and chassis, including replacement parts and components for the engines and chassis, of professional racing vehicles that are owned, leased or operated by professional racing teams?

Yes _ No _

Sec. 107. The explanation of the question which must appear on each paper ballot and sample ballot and in every publication and posting of notice of the question must be in substantially the following form:

(Explanation of Question) The proposed amendment to the Sales and Use Tax Act of 1955 would:

1. Exempt from the taxes imposed by this Act the gross receipts from the sale and the storage, use or other consumption of the value of any used vehicle taken in trade on the purchase of another vehicle and remove the exemption from those taxes for occasional sales of vehicles except where such sales are between certain family members;

2. Exempt from the taxes imposed by this Act the gross receipts from the sale and the storage, use or other consumption of ophthalmic or ocular devices or appliances prescribed by a physician or optometrist;

3. Exempt from the taxes imposed by this Act the gross receipts from the sale and the storage, use or other consumption of farm machinery and equipment employed for the agricultural use of real property;

4. Exempt from the taxes imposed by this Act the gross receipts from the sale and the storage, use or other consumption of works of fine art for public display;

5. Revise and clarify the criteria used to determine which aircraft and parts of aircraft are exempt from the taxes imposed by this Act, including removing the requirement that an air carrier must be based in Nevada to be eligible for the exemption, and providing an exemption for certain machinery and equipment used on eligible aircraft and parts of aircraft; and

6. Exempt from the taxes imposed by this Act the gross receipts from the sale and the storage, use or other consumption of engines and chassis, including replacement parts and components for the engines and chassis, of professional racing vehicles that are owned, leased or operated by professional racing teams. A “yes” vote approves all of the proposals set forth in the question. A “no” vote disapproves all of the proposals set forth in the question. The proposals set forth in the question may not be voted upon individually.

Secs. 108-132. (Deleted by amendment.)

Sec. 133. If a majority of the votes cast on the question is yes, the amendment to the Sales and Use Tax Act of 1955 becomes effective on January 1, 2006. If less than a majority of votes cast on the question is yes, the question fails and the amendment to the Sales and Use Tax Act of 1955 does not become effective.

Sec. 134. All general election laws not inconsistent with this act are applicable.

Sec. 135. Any informalities, omissions or defects in the content or making of the publications, proclamations or notices provided for in this act and by the general election laws under which this election is held must be so construed as not to invalidate the adoption of the act by a majority of the registered voters voting on the question if it can be ascertained with reasonable certainty from the official returns transmitted to the Office of the Secretary of State whether the

proposed amendment was adopted by a majority of those registered voters.

Sec. 136. 1. Except as otherwise provided in this section, the Department of Taxation shall waive the amount of any sales and use taxes, and any penalties and interest thereon, otherwise due in this state from a seller at the time the seller registers pursuant to section 9 of this act if the seller:

(a) During the year 2005:

(1) Did not hold a seller's permit issued pursuant to chapter 372 or 374 of NRS; and

(2) Was not registered as a retailer pursuant to chapter 372 or 374 of NRS;

(b) Registers pursuant to section 9 of this act no later than December 31, 2006; and

(c) Remains registered pursuant to section 9 of this act for at least 36 months and collects and remits to this state all sales and use taxes due in this state for that period. Each statutory period of limitation applicable to any procedure or proceeding for the collection or enforcement of any sales or use tax due from a seller at the time the seller registers as provided in paragraph (b) is tolled for 36 months from the commencement of that registration.

2. The Department of Taxation shall not, pursuant to this section, waive any liability of a seller:

(a) Regarding any matter for which the seller received notice of the commencement of an audit which, including any related administrative and judicial procedures, has not been finally resolved before the registration of the seller pursuant to section 9 of this act.

(b) For any sales and use taxes collected by the seller or paid or remitted to the State before the registration of the seller pursuant to section 9 of this act.

(c) For any fraud or material misrepresentation of a material fact committed by the seller.

(d) For any sales or use taxes due from the seller in his capacity as a buyer and not as a seller.

3. For the purposes of this section, the words and terms defined in NRS 360B.040 to 360B.100, inclusive, as amended by this act, have the meanings ascribed to them in those sections.

Sec. 137. The amendatory provisions of sections 83, 84, 85, 87 to 92, inclusive, and 94 to 101, inclusive, of this act do not apply to any ordinance enacted before January 1, 2006.

Sec. 138. NRS 374.107, 374.112, 374.113, 374.286, 374.291, 374.2911, 374.322 and 374.323 are hereby repealed. **Sec. 139.** 1. This section and section 102 of this act become effective upon passage and approval.

2. Sections 103 to 135, inclusive, of this act become effective on July 1, 2003.

3. Sections 1 to 29, inclusive, 32 to 38, inclusive, 40 to 50, inclusive, 52 to 57, inclusive, 66, 67, 69 to 72, inclusive, 74 to 80, inclusive, 83, 84, 85, 87 to 92, inclusive, 94 to 101, inclusive, 136 and 137 of this act become effective:

(a) Upon passage and approval for the purposes of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On January 1, 2006, for all other purposes.

4. Sections 30 and 39 of this act become effective on January 1, 2006, only if the proposal submitted pursuant to sections 103 to 107, inclusive, of this act is approved by the voters at the general election on November 2, 2004.

5. Sections 31, 51, 58 to 65, inclusive, 68, 73, 81, 82, 86, 93 and 138 of this act become effective on January 1, 2006, only if the proposal submitted pursuant to sections 103 to 107, inclusive, of this act is not approved by the voters at the general election on November 2, 2004.