# Study of Nevada Laws Governing Public Books and Records


Legislative Counsel Bureau

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# STUDY OF NEVADA LAWS GOVERNING PUBLIC BOOKS AND RECORDS

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SEPTEMBER 1992

TABLE OF CONTENTS

Page

## SUMMARY OF RECOMMENDATIONS

Following is a summary of the recommendations approved by the Legislative Commission's Subcommittee to Study the Laws Governing Public Books and Records.

A. DEFINITIONS RELATED TO PUBLIC RECORDS AND CATEGORIZATION OF SUCH RECORDS

1. **Enact legislation that provides for broad definitions of "public record" and "governmental entity." The definition should include electronic records as public records.** (BDR 19-398)

2. **Enact legislation that creates certain categories which, by example, lists those records that are always included as public records.** (BDR 19-399)

   In summary, records that are public include records regarding title to real property, contracts of government agencies, and certain job description information related to government employees.

3. **Enact legislation that creates a category which lists certain information that is not to be considered a public record.** (BDR 19-399)

   In summary, such information includes certain working drafts for personal use, material legally owned by an individual, copy-righted material and proprietyary software.

4. **Enact legislation that lists certain kinds of information that falls within the definition of public records, but notwithstanding that fact, must not be disclosed.** (BDR 19-399)

   In summary, this list includes information where access is restricted by a Federal or State statute, certain medical records, certain personnel files, information that is privileged, and information related to certain governmental investigations.

5. **Enact legislation addressing the category of non-disclosable public records which allows any record deemed non-disclosable to be disclosed if, with**

respect to the particular record, the general policy in favor of open records outweighs an expectation of privacy or a public policy justification. (BDR 19-399)

6. **Adopt a resolution requiring a study of all exemptions to the public records laws to determine which exemptions should be repealed, amended, or remain the same.** (BDR R-395)

B. PROCEDURES FOR ACCESS TO PUBLIC RECORDS

7. **Enact legislation which provides a uniform method of requesting information, procedures to provide access to or deny that information, and time frames within which responses or other actions are required.** (BDR 19-397)

In summary, the following elements were recommended:

- Each agency, upon request by any person, shall make public records available for inspection and copying during regular business hours. Provide that the request may be oral or written and may be made in person, by telephone or by mail.

- Unless information is readily retrievable by the agency in the form in which it is requested, an agency is not required to prepare a compilation or summary of its records.

- Each agency shall ensure reasonable access to facilities for duplicating records and for making memoranda or abstracts from them.

- If an agency is not immediately able to fulfill a request for a governmental record, does not intend to fulfill it or denies it, the agency must inform the requester of his right to make a formal written request.

- Within a reasonable time, but no later than 3 working days after receiving a written request

for access which reasonably identifies or describes a governmental record, the agency shall:

a. Make the record available to the requester;

b. Inform the requester that unusual circumstances (such as the volume of records which have been requested or the need to search for, consult with or obtain records from another office or agency) have delayed the handling of the request and specify a time and date, no later than 10 working days after the reply would otherwise be due, when the record will be available;

c. Inform the requester that the agency does not maintain the requested record and provide, if known, the name and location of the agency maintaining the record; or

d. Deny the request.

8. **Enact legislation which provides that where access is denied, the complaining party may directly appeal to a court of competent jurisdiction seeking an order compelling access and giving such proceedings priority on the court's calender. Provide that court costs and attorneys' fees are awardable if the requester prevails.** (BDR 19-393)

9. **Include in the final report a statement of the subcommittee's support for the concept of an intermediate appellate body that would have concurrent jurisdiction with the courts to consider appeals from the denial of a public record.**

10. **Enact legislation to establish that the fact that a record contains restricted and non-restricted information is not a reason for denying access to the non-restricted information.** (BDR 19-397)

11. **Enact legislation that prohibits a public body from inquiring about the intended use of requested public information or making any other inquiry of a person requesting to inspect or receive copies of public information, except to the extent necessary**

to clarify the request for information. Include an exception for information requested from the Department of Motor Vehicles and Public Safety because *Nevada Revised Statutes* 482.170 requires the department to make an inquiry as to the purpose for requesting certain information. (BDR 19-397)

C. THE TREATMENT OF ELECTRONIC RECORDS

12. Urge the Department of Data Processing, in cooperation with the Nevada State Library and Archives, to create and maintain an inventory of statewide hardware, software and information.

13. Urge the Division of Archives and Records to work with other State agencies to establish retention and disposition schedules for records when information systems are designed or redesigned. Furthermore, urge all State agencies to consider record retention/disposition requirements at the point of system design.

14. Urge the Division of Archives and Records to undertake a program to educate State officials about their responsibilities for retention, care, and preservation of government records with special emphasis on electronically-stored public records.

15. Include in the final report a statement of the subcommittee's support for the concept of creating a centralized information storage facility and developing procedures for maintaining information.

(These resolutions are all drafted as BDR R-394.)

D. COSTS ASSOCIATED WITH PUBLIC RECORDS

16. Enact legislation that allows only the cost of the materials and the equipment, not labor, regarding reproduction of records. (BDR 19-396)

17. Include in the final report support for the concept of government using a cost analysis formula to calculate a per copy price. The formula should consider the average number of copies per month, the purchase price of the copying equipment, and an amortized cost per month over the anticipated life

of the equipment to achieve a total machine cost per copy.

18. Enact legislation which authorizes, but does not require, a governmental entity to fill "custom" requests (such as re-formatting information) and to charge a reasonable fee for completing such requests. (BDR 19-396)

19. Enact legislation which provides that, when a requester wants information in a format which is different from the format used to maintain or store the information, the governmental entity is not required to re-format that data. (BDR 19-396)

E. ENFORCEMENT OF PUBLIC RECORDS LAWS

20. Repeal the existing criminal penalty relative to the failure to disclose a public record. (BDR 13-393)

21. Enact legislation that prescribes the procedures for direct appeal to a court of law seeking an order compelling access and giving such proceedings priority on the court's calendar. Provide for court costs and attorneys' fees if the requester prevails. (Discussed in Section C regarding procedures for access.) (BDR 19-393)

22. Enact legislation providing that governmental entities and employees are immune from suit and liability if they act in good faith in disclosing or refusing to disclose information. (BDR 13-393)

# REPORT TO THE 67TH SESSION OF THE NEVADA LEGISLATURE BY THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO STUDY THE LAWS GOVERNING PUBLIC BOOKS AND RECORDS

## I. INTRODUCTION

This report is submitted in compliance with Assembly Concurrent Resolution No. 90 (File No. 184, *Statutes of Nevada 1991*, pages 2643-2644) which directed the Legislative Commission to study Nevada's laws governing public books and records. The Legislative Commission appointed the following legislators to conduct the study:

Assemblyman Gene T. Porter, Chairman
Senator Ron Cook (resigned during the study)
Senator Joseph M. Neal, Jr. (appointed to replace Senator Cook)
Senator Dina Titus
Assemblywoman Jan Evans
Assemblyman James A. Gibbons

The resolution required the Governor to appoint at least five members to serve as a technical advisory group to assist the legislative subcommittee. The Governor responded by appointing the following 12 members representing various groups interested in the public records law:

Melanie Meehan-Crossley, Deputy Attorney General, Office of the Attorney General
Andrea K. Engleman, Nevada Press Association
Gentty Etcheverry, Executive Director, Nevada League of Cities
Robert S. Hadfield, Executive Director, Nevada Association of Counties
William E. Isaeff, Chairman, Public Lawyers Section, Nevada State Bar
Karen Kavanau, Director, Nevada's Department of Data Processing
Joan Kerschner, State Librarian, State Library and Archives
Donald Klasic, General Counsel, University of Nevada System
Dennis Myers, President, Society of Professional Journalists
Guy L. Rocha, State Archivist, Division of Archives and Records, State Library and Archives

Carl Scarbrough, Vice President, Las Vegas Chapter,
Society of Professional Journalists
Larry D. Struve, Director,
Department of Commerce

Legislative Counsel Bureau staff services for the study were provided by:

Dennis Neilander of the Research Division
Principal Staff

Kimberly Ann Morgan
and
Kerry Schomer
of the Legal Division
Legal Counsel

Lyndl Payne of the Research Division
Committee Secretary

## SUBCOMMITTEE AND ADVISORY GROUP HEARINGS

A total of 11 meetings were held in association with the study. Four of the hearings were joint meetings with participation from both the legislative subcommittee and the advisory group, although the advisory group did not have any voting privileges.

At the first meeting of the subcommittee, various parties interested in the public records issue testified regarding the problems that exist with the law. The parties included representatives from:

1. A private company that exchanges information with public entities in Nevada;

2. The Health Division of Nevada's Department of Human Resources;

3. Nevada's Department of Motor Vehicles and Public Safety (DMV&PS);

4. The Central Repository for Nevada Records of Criminal History in the Nevada Highway Patrol Division (DMV&PS);

5. The Office of Court Administrator;

6. Nevada district judges;

7. The Office of the Secretary of State;

8. Local government; and

9. The public.

At the second meeting, staff presented a comparison with other state public records laws and an overview of the Federal Freedom of Information Act (FOIA). Presentations regarding computer records and the fraudulent use of information were also given. The Chairman directed the advisory group to consider all the information presented and submit proposals to the subcommittee for consideration at the third meeting.

The advisory group then held a meeting that identified five major areas to be addressed. Those areas were:

- The definition and categorization of public records;
- Procedures for access to public records;
- The treatment of electronic records;
- The costs associated with public records; and
- Enforcement of public records laws.

The advisory group divided into five subgroups to propose recommendations in each of these areas. These groups conducted meetings and reported to the advisory group as a whole. The advisory group subsequently met two additional times and developed recommendations to submit to the legislative subcommittee. The subcommittee considered these proposals at its third and fourth meetings. The subcommittee adopted a total of 22 recommendations.

This final report of the subcommittee contains a discussion of the current status of the public records law in Nevada and an explanation of the recommendations adopted by the members. The report is divided into the areas of concern identified by the advisory group and subcommittee.

## II. CURRENT STATUS OF NEVADA'S PUBLIC RECORDS LAW AND PROBLEMS IDENTIFIED

In order to readily understand the recommendations adopted by the subcommittee, this section of the report provides relevant background information. The current status of the law is discussed for each of the five major areas addressed by the subcommittee.

### A. THE DEFINITION AND CATEGORIZATION OF PUBLIC RECORDS

This area was the most controversial and received the greatest amount of discussion. The Nevada Public Records Law was enacted in 1911 and has remained largely unchanged since that period. It provides in relevant part:

> All public books and public records of the state * * * the contents of which are not otherwise declared confidential, shall be open at all times during office hours to inspection by any person, and the same may be fully copied * * *

While the law states that "all public books and records" shall be open to the public, it does not define the term. In the early 1900's, the lack of a specific definition was common among state laws. However, the complexion of records has changed dramatically over the years in both the characteristics and kind of records kept by government as well as the volume and manner in which they are maintained.

The lack of definitions has resulted in a constantly evolving body of law that includes related legislation, Attorney General opinions, and judicial decisions. With respect to legislation, the subcommittee discovered over 250 exemptions to the general law that public records be open to the public. These exemptions are contained in both the *Nevada Revised Statutes* (NRS) and the *Nevada Administrative Code*. Appendix A provides the general public records law and a list of the exemptions.

In 1965, the Nevada Legislature amended the law by inserting the term "public" when describing government records. The previous law declared that "all" books and records of the State were open to the public. In common law, the right of access to government records was restricted to public records; therefore, the 1911 law was actually an expansion of the right to access because of its failure to qualify the

records as public. That right was restricted in 1965 by adding the term "public." The 1965 amendment is the most significant change to the law since its enactment.

In an attempt to discern the meaning of the law, at least a dozen opinions interpreting the law have been issued by the Attorney General. Most of these opinions were initiated by various state agencies attempting to decide whether to release a record.

Only one Nevada Supreme Court case dealt squarely with the public records law. That case is attached as Appendix B (*Donrey of Nevada v. Bradshaw*, 106 Nev 630, 798 P.2d 144, [1990]). The case concerned the accessibility of certain criminal investigative records as public records. The party seeking the records argued for the application of a balancing test, which was announced and applied in various Attorney General opinions (although these opinions are not binding). This test balanced the interest and justification of the agency, or the public in general, in maintaining the confidentiality of the document against the interest or need of the public to review the document.

Nevada's Supreme Court agreed and proceeded to apply a balancing test. It held that there were no pending or anticipated criminal proceedings regarding the records at issue, no confidential source or investigative technique to protect, no potential jeopardy to law enforcement personnel, and no possibility of denying someone a fair trial. The court ordered the records to be released.

In so doing, the court weighed the absence of any privacy or policy justifications for nondisclosure and the general policy in favor of open government. The test favors open government, but recognizes the existence of policy or privacy reasons for nondisclosure of public records.

This case has provided some guidance in determining the scope of the term "public record," but state agency officials and others in possession of public records testified that the balancing test is difficult to apply.

## B. PROCEDURES FOR ACCESS TO PUBLIC RECORDS

The next area of concern identified by the subcommittee involves access to public records. Even if a definition of a public record is adopted and clarified, the current law is

void of any procedures governing access to such records. The method for agencies to respond to requests and the procedures that should be followed in the granting or denying of a request is not addressed. If a dispute arises, there is no direction regarding the method of resolving it.

C. THE TREATMENT OF ELECTRONIC RECORDS

The subcommittee received testimony indicating that electronic records are generally treated as public records as a matter of practice; however, the law is not specific to electronic records. Because of the unique and technologically advancing means of storing records electronically, it was suggested that any amendments to the law consider and include reference to the treatment of electronic records.

D. THE COSTS ASSOCIATED WITH PUBLIC RECORDS

The law is currently vague about the costs of providing access to and copies of public records. The law does not address the issue of whether an agency or local government may recoup the costs of equipment in addition to copies or the costs of computer equipment that may be necessary to provide equitable access. The law also does not address the issue of the government generating a profit by providing access to certain records.

E. THE ENFORCEMENT OF PUBLIC RECORDS LAWS

The public records law provides that all public records be open to the public for inspection and copying. The current mechanism of enforcement is codified at NRS 239.010 (2) and provides that:

> Any officer having custody of any of the public books and records described in subsection 1 who refuses any person the right to inspect such books and records as provided in subsection 1 is guilty of a misdemeanor.

Testimony indicated that the law is not substantive without some means of enforcement; however, due to the lack of definitions and other ambiguities in the statute, public officials could potentially be criminally liable for failing to release a record in good faith. It was suggested during the hearings that the criminal penalty be repealed and replaced with a civil mechanism of enforcement. On the other hand, it was suggested that, if some of the ambi-

guities in the law were clarified, the criminal penalty may be appropriate.

## III. DISCUSSION OF RECOMMENDATIONS RELATED TO THE DEFINITION AND CATEGORIZATION OF PUBLIC RECORDS

Because the current law is void of a definition, the subcommittee recommended the adoption of a definition. In addition, it recommended a categorization scheme for public records.

### A. THE DEFINITION OF PUBLIC RECORDS

In an effort to define public records in Nevada, the subcommittee and the advisory group looked to other states' definitions. Appendix C is a summary of the public records laws in the 50 states. An examination of the right to access in other states reveals that, although almost every state guarantees some right of access, the definitions and procedures for such access vary considerably. Parties interested in public records issues represent significant competing interests. Among these interests are the need for government efficiency, the right of the public to know, and the protection of confidential and private information.

After examining the various definitions, there appeared to be consensus among the subcommittee members and the advisory group regarding the basic definition of "public record." (A minority position preferred to use the term "government record" while the majority favored the term "public record.")

Therefore, the subcommittee recommends that the Nevada Legislature:

> **Enact legislation that provides for broad definitions of "public record" and "governmental entity." The definition should include electronic records as public records.** (BDR 19-398)

During the work session, the subcommittee adopted the following language as a model for drafting the definition:

> *"Governmental entity" means the State, its officers, agencies, political subdivisions, and any office, board or commission thereof which is funded, at least in*

*part, by public money, or is established by the government to carry out the public's business.*

*"Public record" means a book, letter, document, paper, final budget, proposed budget and supporting information, map, plan, photograph, film, card, tape, recording or other material and electronic data, regardless of physical form or characteristics, which is prepared, owned, used, received, retained or maintained by a governmental entity in connection with the transaction of public business, the expenditure of public money or the administration of public property.*

This model language was derived from Chapter 259, *Laws of Utah 1991*. The previous Utah public records law was similar to Nevada's as it was somewhat ambiguous. The Utah Legislature rewrote the law after studying the issue for over 2 years. The definition is very broad and inclusive.

B. RECORDS THAT ARE PUBLIC

The subcommittee and advisory group determined that, in addition to the basic definition, the law should be amended to include a categorization scheme that, by example, lists what is a record and which records are disclosable and which are not.

Therefore, the subcommittee recommended that the Nevada Legislature:

**Enact legislation that creates certain categories which, by example, lists those records that are always included as public records.** (BDR 19-399)

The subcommittee adopted the following language as a model to be used in drafting this category. The list identifies those records that are commonly recognized as public and should always be available for public inspection:

*"Public record" includes, but is not limited to:*
*(a) Records maintained by a county recorder, clerk, treasurer, surveyor, the State Land Registrar, the State Engineer and other governmental entities which evidence:*
*(1) The title or encumbrances to real property;*
*(2) Any restrictions on the use of real property;*
*(3) The capacity of a person to take or convey title to real property; or*

*(4) The amount of any tax assessed to real or personal property, and the status of the account.*
*(b) Any contract entered into by a governmental entity.*
*(c) The name, gender, gross compensation, job title, job description, job qualification, business address, business telephone number, number of hours worked per pay period, amount of annual and sick leave taken and date of employment and termination of any former or present officer or employee other than law enforcement officers or investigative personnel if such a disclosure would impair the effectiveness of an investigation or endanger any person's safety.*
*(d) A draft that has never been made final but was relied upon by the governmental entity in carrying out action or policy.*

C. RECORDS THAT ARE NOT PUBLIC

The subcommittee then determined that a list should be created to name those records that should not be deemed public even though the government may have possession of them.

Therefore, the subcommittee recommended that the Legislature:

**Enact legislation that creates a category which lists certain information that is not to be considered a public record.** (BDR 19-399)

This category contains information not normally considered "public". Access to this information would not be available to the public because it would not be deemed a public record. The subcommittee adopted the following language as a model to be used in drafting this category.

*"Public record" does not include:*
*(a) Except as otherwise provided in this subsection, a temporary draft or similar material which is prepared for the originator's personal use or use by a person for whom the originator is working. A draft of a proposed budget and the supporting information for that proposal are not temporary, for the purposes of this subsection, if the originating department or entity submits that version of the proposal for final approval or adoption.*

*(b) Any material which is legally owned by a person in his private capacity.*
*(c) Any material to which access is limited by the laws of copyright or patent, unless the copyright or patent is owned by a governmental entity. This subsection does not grant the right of a governmental entity to obtain a copyright or patent.*
*(d) Proprietary software.*
*(e) Junk mail or commercial publications which are received by a governmental entity, officer or employee.*
*(f) Books, governmental publications or other materials which are:*
*(1) Cataloged, indexed or inventoried; and*
*(2) Contained, in the collections of public libraries.*
*(g) Property acquired by a library or museum for exhibition.*
*(h) Artifacts and nondocumentary tangible property.*

D. PUBLIC RECORDS THAT SHOULD NOT BE DISCLOSED

The subcommittee also determined that a list should be created that categorized certain records and conditions related to those records and provided that, although they may fit the definition of public records, they should not be disclosed.

Therefore, the subcommittee recommended that the Legislature:

**Enact legislation that lists certain kinds of information that falls within the definition of public record, but not withstanding that fact, must not be disclosed.** (BDR 19-399)

The following list of such records was adopted by the subcommittee, with general agreement among the advisory group, to be used as a model to assist in the drafting of this category. If a record contains one of the following characteristics, it would not be available for public inspection.

1. *Access is restricted by a specific Federal statute or regulation or by a specific statute of this State.*

2. *It contains information of a governmental agency relating to an ongoing or planned audit, unless the final report of the audit has been released.*
3. *Disclosure would jeopardize the physical security of governmental property, juvenile facilities, detentional facilities or correctional institutions.*
4. *The information is related to a governmental investigation, unless the investigation has been closed, or to the identity of a confidential informant.*
5. *The information is privileged from disclosure pursuant to a statute of this State or a rule of the Nevada Supreme Court.*
6. *It is material in a library, archive or museum which has been donated by a private person and the period of limitation on disclosure has not passed. If no period is specifically agreed upon by the donor and the custodian of the material, the period of nondisclosure must be the period of the donor's life or 30 years after the receipt of the material, whichever is longer.*
7. *It contains questions or answers used in, or prepatory information relating to, an academic examination or an examination to determine fitness for licensure, certification or employment, and if:*
   *(a) Disclosure would compromise the security, fairness or objectivity of the examination; or*
   *(b) A contract governing the use of the examination provides for the confidentiality of the questions or answers.*
8. *It is information which is in the custody of a governmental entity that performs data processing, microfilming or similar services, but which belongs to another agency that is using those services.*

E. DISPUTED ITEMS

The following possible additions to the list were debated. There was disagreement on some of these issues among the members and the advisory group. Where an addition was made for each of the following various subheadings, the language in italics was adopted as a model to be used in drafting the remainder of this category.

Access Conditionally Restricted

9. *Access is restricted as a condition of participation in a State or Federal program or for receiving State or Federal money.*

There was some discussion of inserting the word "indirectly" to modify "participation." However, it was argued that the omission of the word would cover both indirect and direct participation.

Exemptions by Regulation

Some members of the advisory group favored adding a provision that would exclude records declared confidential by State agency regulations. The subcommittee elected not to include such records in the list, arguing that the responsibility to exempt records should remain with the Legislature.

Information Related to Benefits

Some members of the advisory group favored adding a provision that would protect information concerning eligibility for unemployment insurance benefits, social services, and welfare benefits. The subcommittee chose not to provide any additional protection than is already provided by law.

Personnel Files

After discussions regarding the merit of protecting certain information in personnel files, the subcommittee proposed the following model language:

10. *It is a personnel file of a governmental entity which contains information relating to the preemployment application or a postemployment evaluation, retention or promotion of the employee, to the extent that such information would reveal the person's home phone number, address, medical history or information of a personal or familial nature and not related to compensation or benefits received or to be received by the employee or his or her beneficiaries.*

Medical Files

The subcommittee debated the merits of allowing some medical records to be released as public records. The members determined that medical information of a personal nature should not be public, but such information of a general statistical nature should be public. Therefore, the subcommittee recommended that the following model language be included in the BDR.

> *11. Access to a record is restricted if it contains information regarding a person's medical, psychiatric or psychological history, diagnosis, condition, treatment, evaluation, or similar data, to the extent that the information would reveal the person's identity.*

Auditing Techniques

The subcommittee adopted the following model language to protect against the disclosure of information that could facilitate embezzlement activity with government money by circumventing an audit.

> *12. It contains information that would disclose auditing techniques, procedures or policies if disclosure would risk circumvention of an audit.*

Licensing Boards

Some members of the advisory group suggested a provision to protect information within the possession of licensing boards regarding a person's criminal history. It was argued that this information is already addressed by other state statutes, and such a provision was not included.

Government Appraisal and Procurement

It was also suggested that a provision be added to protect real estate appraisal information as the publication of this data may make future negotiations by the government for real property more difficult. The subcommittee determined that such publication did not create an unfair advantage and elected not to include such a provision.

A similar argument was made based on governmental procurement and the creation of an advantage in contracting, but

the subcommittee dismissed the notion for the same reasons stated earlier.

Litigation

The subcommittee adopted the following model language to protect certain information related to court cases.

> *13. It contains material directly related to an existing lawsuit prepared in anticipation of or during litigation which has not been filed with a court or which would not be discoverable in accordance with the rules of Federal or State courts in which the matter is being litigated and which has been specifically determined by that court to be privileged for good cause shown under the standards of rule 26(c) of Nevada Rules of Civil Procedure by the Parties seeking nondisclosure.*

Trade Secrets

The subcommittee adopted model language to protect trade secrets. There appeared to be consensus among the advisory group and the members on the following language:

> *14. The information contains trade secrets as defined in NRS 600A.030.*

Record Keeping Systems

The subcommittee recommended the following model language to protect the security of certain record keeping systems:

> *15. It contains non-substantive administrative or technical information, including that contained in computer systems and programs, operating procedures or manuals, whose disclosure would jeopardize the security of a record keeping system.*

Balancing Test

One of the major points of contention during the study involved the balancing test adopted by Nevada's Supreme Court in *Donrey v. Bradshaw*. The majority of the advisory group argued that this balancing test is imperative because

it is impossible to define the universe of public records, and judgment calls will always be necessary. Even with a comprehensive definition and categorization of records, some information will inevitably be missed by the law. Also, some information collected by governments in the future may not be contemplated by the current law. This position also argued that the balancing test originates in the privacy protections guaranteed by the *United States Constitution* and cannot be altered by the State Legislature.

Another position argued that the balancing test was instituted because no statutory definition of public record and a definition would eliminate the need for the test. This position also argued that the balancing test is inconsistently applied by various agencies that and it is improper for an Executive Branch employee to conduct what is essentially a judicial test.

During the course of the hearings, it was also suggested that a different balancing test be adopted. The new test would be applied only to a record deemed nondisclosable. Some members of the advisory group argued that this use of the test was the intent of Nevada's Supreme Court in *Bradshaw* and that the case has been misconstrued. The balancing test should be applied to records deemed nondisclosable to determine if they should be disclosed, rather than applying them to public records to determine if they should not be disclosed.

After much debate, the subcommittee chose the latter approach and retained the balancing test but amended its application. The model language adopted by the subcommittee follows:

> **Enact legislation addressing the category of nondisclosable public records which allows any record deemed nondisclosable to be disclosed if, with respect to the particular record, the general policy in favor of open records outweighs an expectation of privacy or a public policy justification.**
> (BDR 19-399)

## F. EXEMPTIONS

The advisory group determined that, due to the number of exemptions in Nevada law, it would be impossible to review them adequately within the budget and time constraints of

this legislative interim period. Thus, it was suggested that the exemptions remain as they are and be examined during the next interim.

Therefore, the subcommittee recommends that the 1993 Legislature:

> **Adopt a resolution requiring a study of all exemptions to the public records laws to determine which exemptions should be repealed, amended, or remain the same.** (BDR R-395)

## IV. DISCUSSION OF RECOMMENDATIONS RELATED TO PROCEDURES FOR ACCESS TO PUBLIC RECORDS

The subcommittee determined that the final report should recommend rules of access to records and procedures for the denial of access and an appeal of such denial. The current law is void of any such guidelines.

The subcommittee and advisory group examined the Federal FOIA's provisions in this regard and utilized the concept of providing a uniform means of requesting information and responding to such requests. Appendix D provides an explanation of the FOIA.

The subcommittee and advisory group also examined the results of a previous study and relied on that study in establishing procedures for access to public records. The results of that study are reported in Legislative Counsel Bureau Bulletin No. 83-2, *Access to Government Records*.

### A. INITIAL PROCEDURES REGARDING ACCESS TO PUBLIC RECORDS

Based primarily on the analysis of the 1983 recommendations and relevant provisions in the FOIA, the subcommittee recommended that the 1993 Legislature:

> **Enact legislation which provides a uniform method of requesting information, procedures to provide access to or deny that information, and time frames within which responses or other actions are required.** (BDR 19-397)

Following is the model language adopted by the subcommittee regarding the procedures for access to public records:

*1. Except as otherwise provided, each agency upon request by any person shall make public records available for inspection and copying during regular business hours. The request may be oral or written and may be made in person, by telephone or by mail.*

*2. Unless information is readily retrievable by the agency in the form in which it is requested, an agency is not required to prepare a compilation or summary of its records.*

*3. Each agency shall ensure reasonable access to facilities for duplicating records and for making memoranda or abstracts from them.*

*4. If an agency is not immediately able to fulfill a request for a governmental record, does not intend to fulfill it or denies it, the agency shall inform the requester of his right to make a written request.*

*5. Within a reasonable time, but no later than 3 working days after receiving a written request for access which reasonably identifies or describes a governmental record, the agency shall:*

*(a) Make the record available to the requester, including, if necessary, an explanation of any code readable by machine or any other code or abbreviation;*

*(b) Inform the requester that unusual circumstances, such as the volume of records which have been requested or the need to search for, consult with or obtain records from another office or agency, have delayed the handling of the request and specify a time and date, no later than 10 working days after the reply would otherwise be due, when the record will be available;*

*(c) Inform the requester that the agency does not maintain the requested record and provide, if known, the name and location of the agency maintaining the record; or*

*(d) Deny the request.*

B. PROCEDURES UPON DENIAL OF ACCESS TO PUBLIC RECORDS

There appeared to be consensus among both the subcommittee and the advisory group on the initial procedures and rules regarding access. The subcommittee addressed the issue of denial of a request for information at the agency level.

The advisory group initially recommended that the subcommittee establish an intermediate appeals committee or panel that could review the agency decision to deny access. Some members of the advisory group preferred an ombudsman approach rather than an appellate panel. Other members of the advisory group did not support the concept of an appellate body but preferred to create a mechanism for appeals to be advanced directly to the courts in an expedited manner.

After much debate, the subcommittee recommended that the Legislature:

> **Enact legislation which provides that where access is denied, the complaining party may directly appeal to a court of competent jurisdiction seeking an order compelling access and giving such proceedings priority on the court's calendar. Provide that court costs and attorneys' fees are awardable if the requester prevails.** (BDR 19-393)

C. ADMINISTRATIVE PANEL FOR APPEALS

As discussed earlier, some members of the subcommittee supported the concept of an intermediate panel and proposed that it be further explored. Testimony revealed that the State Library and Archives was requesting a bill draft separate from the interim study that would establish a committee for the approval of records and retention schedules. A similar bill was requested in 1991 but never introduced. The suggested committee was similar to the Utah public records committee which was considered by the advisory group and the subcommittee as a model during the course of the hearings. Chairman Porter directed the staff of the State Library and Archives to include the appellate board proposal in the bill draft as discussed by the advisory group. Thus, the subcommittee recommended to:

> **Include in the final report a statement of the subcommittee's support for the concept of an intermediate appealate body that would have concurrent jurisdiction with the courts to consider appeals from the denial of a public record.**

Although the subcommittee did not recommend specifically the establishment of an appellate committee, it did support the concept and directed that this report include a

discussion of the various alternatives. Following is a description of the alternatives considered by the advisory group and the subcommittee throughout the course of the hearings.

The majority of the advisory group supported the creation of an administrative level committee or panel to decide appeals when access has been denied. Some members of the advisory group supported an "ombudsman" approach similar to that used in New York. That state has a Policymaking Committee and an Executive Director that hears appeals in these matters.

The group did not agree on the membership of the committee but agreed it should be broad based and ad hoc. The group analyzed Utah's approach and determined it could be used as a model. The group agreed that the Office of the Attorney General should not be on the panel, but should act as counsel to the panel.

Some examples of approaches used in other states follow.

New York

The New York Committee on Open Government is made up of 11 members that set policy and serve staggered 4-year terms. Six members are from the news media and the public. The remaining five are from government agencies. The committee establishes policy and the Executive Director actually hears the individual appeals.

Connecticut

The Connecticut Freedom of Information Commission actually hears the appeals and consists of five part-time commissioners. Two are from the media, two are from agencies and one is a lay person. No more than three may be from one political party.

Utah

Since the advisory group and subcommittee studied the Utah scheme closely, the following description of the Utah program is included in the report.

1. The State Records Committee was created within the Utah Department of Administrative Services. The committee is made up of the following individuals:

   a. The State Archivist;

   b. The State Librarian;

   c. One citizen member appointed to a four year term by the governor upon the recommendation of the records committee;

   d. One individual representing the news media appointed by the Governor to a 4-year term;

   e. The Director of the Division of History;

   f. One individual representing political subdivisions appointed by the Governor for a 4-year term; and

   g. The State Auditor.

2. The Records Committee is required to take the following actions:

   a. Meet at least once every 3 months to review and approve rules and programs for the collection, classification, and disclosure of records;

   b. Review and approve retention and disposal of records;

   c. Hear appeals from determinations of access; and

   d. Appoint a chairman from among its members.

3. The Records Committee is authorized to:

   a. Make rules to govern its own proceedings; and

   b. Reassign classification for any record series by a governmental entity if that classification is inconsistent with the law.

4. The State Archivist is the Executive Secretary to the committee.

5. The State Archivist provides staff and supportive services for the records committee.

6. Unless otherwise reimbursed, the citizen member and the representative of the news media receive a per diem.

7. If the records committee reassigns the classification of a record, the governmental entity may appeal the re-classification to the district court.

The Utah law allows appeals to the records committee with the following being the major procedural and substantive provisions:

1. Appeal requested within 30 days after denial by the agency, or within 35 days after an agency has failed to act.

2. Records Committee schedules hearing no later than 5 days after notice of appeal and holds hearing within 30 days of the notice.

3. Records Committee provides notice to relevant parties.

4. Records Committee holds hearing allowing testimony and evidence and must issue an order within 3 days following the hearing.

5. The statute describes the requirements of the order and notice of right to appeal to district court.

D. OTHER PROVISIONS REGARDING ACCESS TO PUBLIC RECORDS

Testimony indicated that at times public information may be withheld because it is mixed with confidential information. The current law does not address this issue. Thus, the subcommittee recommended to:

**Enact legislation to establish that the fact that a record contains both restricted and non-restricted information is not a reason for denying access to the non-restricted information.** (BDR 19-397)

It was argued that once information is declared to be public and accessible, the government should not have an interest in attempting to determine the intended purpose of the information.

The members adopted the following recommendation in that regard:

> **Enact legislation that prohibits a public body from inquiring about the intended use of requested public information or making any other inquiry of a person requesting to inspect or receive copies of public information, except to the extent necessary to clarify the request for information. Include an exception for information requested from the Department of Motor Vehicles and Public Safety because *Nevada Revised Statutes* 482.170 requires the department to make an inquiry as to the purpose for requesting certain information.** (BDR 19-397)

An exception to this rule would exist for information requested from the DMV&PS because NRS 482.170 requires the department to make an inquiry as to the purpose for requesting certain information. The department is entitled to deny the information if it appears that it will be used for an illegal purpose.

## V. DISCUSSION OF RECOMMENDATIONS RELATED TO THE TREATMENT OF ELECTRONIC RECORDS

The advisory group determined that any recommendations, in providing definitions, should address the status of the record storage medium. This includes micrographic, audio, video, digital and optical formats, and how these forms of information storage, when deemed public records, should be preserved and managed.

There appeared to be consensus among the advisory group and the subcommittee regarding the adoption of the five major recommendations made by a consultant, Margaret Hedstrom, in her December 1990 report to the Nevada State Historical Records Advisory Board entitled: "Management and Preservation of Nevada's Electronic Public Records." A summary of the report is attached as Appendix E. This study was done pursuant to executive order, and the recommendations address the concerns expressed during the course of the hearings.

These recommendations are listed below. The subcommittee recommended that they be in the form of resolutions urging action rather than mandates. This is due in part, to the budget constraints and uncertainties related to the economy. The subcommittee recommended the following:

- **The Department of Data Processing, in cooperation with the Nevada State Library and Archives is urged to create and maintain an inventory of statewide hardware, software and information.**

- **The Division of Archives and Records is urged to work with other State agencies to establish retention and disposition schedules for records when information systems are designed or redesigned. All State agencies are urged to consider record retention/disposition requirements at the point of system design.**

- **The Division of Archives and Records is urged to undertake a program to educate State officials about their responsibilities for retention, care, and preservation of government records with special emphasis on electronically-stored public records.**

- **Include in the final report support for the concept that the State should create an information storage facility and develop procedures for maintaining information.**

(These resolutions are all drafted as BDR R-394.)

## VI. DISCUSSION OF RECOMMENDATIONS RELATED TO THE COSTS ASSOCIATED WITH PUBLIC RECORDS

The subcommittee determined that the costs of providing access to public records is primarily a part of the government "doing business". The members supported the concept that government agencies should be allowed to recoup the costs associated with reproduction of records. Some members of the advisory group suggested a flat copying fee be enacted into law. However, local governments objected to this approach as it would require amendment by the Legislature for any changes in the fees. Also, they argued that a flat fee may not be appropriate in rural areas of Nevada as the costs of copying may be higher because of service fees and other pertinent charges.

Therefore, the subcommittee recommended that the Legislature:

> **Enact legislation that allows only the cost of the materials and the equipment, not labor, regarding reproduction of records.** (BDR 19-396)

The advisory group and subcommittee examined the Idaho Public Records Law with respect to costs for copying information. The subcommittee based its recommendations, in part, on that law. The members directed that information relative to the Idaho law be included in this report, although it did not mandate the use of the exact formula. Appendix F is a letter from the Idaho Attorney General that explains the Idaho law, including the provisions addressing the costs of providing copies. Therefore, the subcommittee recommended the following:

> **Include in the final report support for the concept of government using a cost analysis formula to calculate a per copy price. The formula should consider the average number of copies per month, the purchase price of the copying equipment, and an amortized cost per month over the anticipated life of the equipment to achieve a total machine cost per copy.**

There was discussion among the advisory group and the subcommittee concerning "custom requests." These requests involve such things as personalized searches for records. The subcommittee recommended that agencies should not be mandated to conduct such searches, but if an agency determines to fulfill such a request, it may charge a reasonable fee for the search. The fee may take into account personnel time in additional to costs related to equipment.

The subcommittee, therefore, recommended that the Legislature:

> **Enact legislation which authorizes, but does not require, a governmental entity to fill "custom requests" (such as re-formatting information) and to charge a reasonable fee for completing such requests.** (BDR 19-396)

Some members of the advisory group raised the issue of requests for information in a format that is not normally

used by a government entity. The existing law does not provide guidance in this regard.

The subcommittee determined that re-formatting data to comply with such a request should not be mandatory, but should be permissive. Such requests are "custom requests" and should be governed by the preceding recommendation. Therefore, the subcommittee recommended the following:

> **Enact legislation which provides that, when a requester wants information in a format which is different from the format used to maintain or store the information, the government entity is not required to re-format the data.** (BDR 19-396)

## VII. DISCUSSION OF RECOMMENDATIONS RELATED TO THE ENFORCEMENT OF PUBLIC RECORDS LAWS

Testimony before the subcommittee and discussions in the advisory committee meetings raised the issue of whether criminal penalties are appropriate in public records cases. Various agency directors argued that the current Nevada law, which makes it a misdemeanor to withhold a public record, is inappropriate since there is no definition of public record. It has also been argued that the statute may have constitutional deficiencies because it is vague. Others have argued that the use of penalties is not an issue since the statute has never been used to charge a government official.

The enforcement of the public records laws is discussed last because its provisions were dependent upon the amendments and other additions to the law regarding access.

One option suggested during the course of the hearings was that the criminal penalties should be replaced with civil penalties. As discussed in the section on access to records, the subcommittee elected to establish an expedited procedure in court that grants attorneys fees and court costs to a requesting party that prevails. Because of this provision, the subcommittee determined not to recommend civil penalties, and to repeal the criminal penalties. Therefore, the subcommittee recommended that the Legislature:

> **Repeal the existing criminal penalty relative to the failure to disclose a public record.** (BDR 19-393)

**Enact legislation that prescribes the procedures for direct appeal to a court of law seeking an order compelling access and giving such proceedings priority on the court's calendar. Provide for court costs and attorneys' fees if the requester prevails.** (BDR 19-393) (Also discussed in Section IV regarding access.)

Because of the complexity associated with modern public records and the sensitive information that is contained in some records, the subcommittee determined a need for a liability standard that could be applied to the actions of government employees. The subcommittee elected to base the standard on "good faith."

Therefore, the subcommittee recommended the following:

**Enact legislation providing that governmental entities and employees are immune from suit and liability if they act in good faith in disclosing or refusing to disclose information.** (BDR 19-393)

## VIII. APPENDICES

# A P P E N D I X  A

GENERAL STATUTE REGARDING

PUBLIC RECORDS AND

EXCEPTIONS THERETO

## GENERAL STATUTE REGARDING PUBLIC RECORDS:

**239.010 Public books and records open to inspection; penalty.**

1. **All public books and public records** of state, county, city, district, governmental subdivision and quasi-municipal corporation officers and offices of this state (and all departments thereof), the contents of which are not otherwise declared by law to be confidential, **shall be open** at all times during office hours to inspection by any person, and the same may be fully copied or an abstract or memorandum prepared therefrom, and any copies, abstracts or memoranda taken therefrom may be utilized to supply the general public with copies, abstracts or memoranda of the records or in any other way in which the same may be used to the advantage of the owner thereof or of the general public.

2. Any officer having the custody of any of the public books and public records described in subsection 1 who refuses any person the right to inspect such books and records as provided in subsection 1 is guilty of a misdemeanor.

[1:149:1911; RL § 3232; NCL § 5620]--(NRS A 1963, 26; 1965, 69)

## PRELIMINARY LIST OF NRS SECTIONS DECLARING RECORDS CONFIDENTIAL:

Explanation--Matter included in brackets [ ] is for informational purposes only.

### JUDICIAL DEPARTMENT GENERALLY

**Section. 1. 1.400 Regulations.** The commission on judicial selection may adopt regulations for the operation of the commission and for maintaining the **confidentiality** of its proceedings and records.

(Added to NRS by 1977, 410)

### ACTIONS FOR MEDICAL MALPRACTICE

**Sec. 2. 41A.053 Early disclosure of medical records prohibited; penalty.**

1. Upon the request of the department [Department of Insurance] or counsel for a patient, a custodian of any medical records shall not allow anyone to review any of those records relevant to a complaint filed with the department before those records are transferred to a requesting party or the authority issuing the subpena.

2. A violation of this subsection is punishable as a misdemeanor.

(Added to NRS by 1985, 2009; A 1989, 425; 1991, 1612)

### ADMISSIBILITY GENERALLY

**Sec. 3. 48.109 Closure of meeting held to further resolution of dispute; exclusion of admission, representation or statement made during mediation proceedings; confidentiality of matter discussed during mediation proceeding. [Expires by limitation on June 30, 1995.]**

1. A meeting held to further the resolution of a dispute may be closed at the discretion of the mediator.

2. The proceedings of the mediation session must be regarded as settlement negotiations, and no admission, representation or statement made during the session, not otherwise discoverable or obtainable, is admissible as evidence or subject to discovery.

3. A mediator is not subject to civil process requiring the **disclosure** of any matter discussed during the mediation proceedings.

(Added to NRS by 1991, 919)

PRIVILEGES

**Sec. 4. 49.275 News media.** No reporter, former reporter or editorial employee of any newspaper, periodical or press association or employee of any radio or television station may be required to **disclose** any published or unpublished information obtained or prepared by such person in such person's professional capacity in gathering, receiving or processing information for communication to the public, or the source of any information procured or obtained by such person, in any legal proceedings, trial or investigation:

1. Before any court, grand jury, coroner's inquest, jury or any officer thereof.
2. Before the legislature or any committee thereof.
3. Before any department, agency or commission of the state.
4. Before any local governing body or committee thereof, or any officer of a local government.

(Added to NRS by 1971, 786; A 1975, 502)

**Sec. 5. 49.335 Privilege to refuse disclosure of identity of informer.** The state or a political subdivision thereof has a privilege to refuse to **disclose** the identity of a person who has furnished to a law enforcement officer information purporting to reveal the commission of a crime.

(Added to NRS by 1971, 787)

**Sec. 6. 49.375 Legality of obtaining evidence.**

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

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

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

(Added to NRS by 1971, 787)

JUVENILE COURTS

**Sec. 7. 62.120 Duties and powers of probation officers in counties whose population is less than 100,000.**

1. In counties whose population is less than 100,000, the probation officer under the general supervision of the judge or judges and with the advice of the probation committee shall organize, direct and develop the administrative work of the probation department and detention home, including the social, financial and clerical work, and he shall perform such other duties as the judge directs. All information obtained in discharge of official duty by an officer or other employee of the court is privileged and must not be **disclosed** to anyone other than the judge and others entitled under this chapter to receive that information, unless otherwise ordered by the judge.

2. Probation officers and assistant probation officers who are required to be certified by NRS 481.054 have the same powers as peace officers when performing duties pursuant to this chapter, NRS 213.220 to 213.290, inclusive, or chapter 432B of NRS, including the power to arrest an adult criminal offender encountered while in the performance of those duties.

3. Every effort must be made by a county to provide sufficient personnel for the probation department to uphold the concept of separation of powers in the court process.

[11:63:1949; 1943 NCL § 1038:11]--(NRS A 1969, 993, 1545; 1973, 1342; 1979, 505; 1989, 7, 69; 1991, 139)

**Sec. 8. 62.122 Duties and powers of probation officers serving under director of juvenile services.**

1. The probation officer under the general supervision of the director of juvenile services and with the advice of the probation committee shall organize, direct and develop the administrative work of the probation department and detention home, including the social, financial and clerical work, and he shall perform such other duties as the director of juvenile services directs. All information obtained in discharge of official duty by an officer or other employee of the court is privileged and must not be **disclosed** to anyone other than the director of juvenile services and others entitled under this chapter to receive such information, unless otherwise permitted by the director of juvenile services.

2. Probation officers and assistant probation officers who are required to be certified by NRS 481.054 have the same powers as peace officers when performing duties pursuant to this chapter, NRS 213.220 to 213.290, inclusive, or chapter 432B of NRS, including the power to arrest an adult criminal offender encountered while in the performance of those duties.

(Added to NRS by 1969, 996; A 1989, 7; 1991 139)

**Sec. 9. 62.193 Proceedings not criminal in nature; judicial procedure; advising parties of rights; period for final disposition; disclosure to victim.**

1. Proceedings concerning any child alleged to be delinquent, in need of supervision or in need of commitment to an institution for the mentally retarded are not criminal in nature and must be heard separately from the trial of cases against adults, and without a jury. The hearing may be conducted in an informal manner and may be held at a juvenile detention facility or elsewhere at the discretion of the judge. Stenographic notes or other transcript of the hearing are not required unless the court so orders. The general public must be excluded and only those persons having a direct interest in the case may be admitted, as ordered by the judge, or, in case of a reference, as ordered by the referee.

2. The court shall provide written notice of any hearing after the initial detention hearing to the parent, guardian or custodian of the child together with a copy of a notice which the parent, guardian or custodian may provide to his employer. The employer's copy of the notice must set forth the date and time of the hearing and the provisions of NRS 62.410. The employer's copy of the notice must not set forth the name of the child or the offense alleged.

3. The parties must be advised of their rights in their first appearance at intake and before the court. They must be informed of the specific allegations in the petition and given an opportunity to admit or deny those allegations.

4. If the allegations are denied, the court shall proceed to hear evidence on the petition. The court shall record its findings on whether the acts ascribed to the child in the petition were committed by him. If the court finds that the allegations in the petition have not been established, it shall dismiss the petition and order the child discharged from any detention or temporary care theretofore ordered in the proceedings, unless otherwise ordered by the court.

5. If the court finds on the basis of an admission or a finding on proof beyond a reasonable doubt, based upon competent, material and relevant evidence, that a child committed the acts by reason of which he is alleged to be delinquent, it may, in the absence of objection, proceed immediately to make a proper disposition of the case.

6. In adjudicatory hearings all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value. The parties or their counsel must be afforded an opportunity to examine and controvert written reports so received and to cross- examine persons making reports when reasonably available.

7. On its motion or that of a party, the court may continue the hearings under this section for a reasonable period to receive reports and other evidence bearing on the disposition. The court shall make an appropriate order for detention or temporary care of the child subject to supervision of the court during the period of the continuance.

8. If the court finds by preponderance of the evidence that the child is in need of supervision or is in need of commitment to an institution for the mentally retarded, the court may proceed immediately, or at a postponed hearing, to make proper disposition of the case.

9. Unless the court by written order extends the time for disposition of the case and sets forth specific reasons for the extension, the court shall make its final disposition no later than 60 days after the petition was filed.

10. The district attorney may **disclose** to the victim of an act committed by a child the disposition of the child's case regarding that act. The victim shall not **disclose** to any other person the information so **disclosed** by the district attorney.

(Added to NRS by 1973, 1348; A 1985, 1393; 1987, 832; 1989, 62, 1812)

**Sec. 10. 62.360 Records: Maintenance and inspection; release of child's name for use in civil action.**

1. The court shall make and keep records of all cases brought before it.

2. The records may be opened to **inspection** only by order of the court to persons having a legitimate interest therein except that a release without a court order may be made of any:

(a) Records of traffic violations which are being forwarded to the department of motor vehicles and public safety; and

(b) Records which have not been sealed and are required by the department of parole and probation for preparation of presentence reports pursuant to NRS 176.135.

3. The clerk of the court shall prepare and cause to be printed forms for social and legal records and other papers as may be required.

4. Whenever the conduct of a juvenile with respect to whom the jurisdiction of the juvenile court has been invoked may be the basis of a civil action, any party to the civil action may petition the court for release of the child's name, and upon satisfactory showing to the court that the purpose in obtaining the information is for use in a civil action brought or to be brought in good faith, the court shall order the release of the child's name and authorize its use in the civil action.

[26:63:1949; 1943 NCL § 1038.26]--(NRS A 1968, 60; 1973, 1533; 1981, 1209; 1985, 1974)

**Sec. 11. 62.370 Records: Procedure for sealing and unsealing.**

1. In any case in which a child is taken into custody by a peace officer, is taken before a probation officer, or appears before a judge or master of a juvenile court, district court, justice's court or municipal court, the child or a probation officer on his behalf may petition for the **sealing** of all records relating to the child, including records of arrest, but not including records relating to misdemeanor traffic violations, in the custody of the juvenile court, district court, justice's court or municipal court, probation officer, law enforcement agency, or any other agency or public official, if:

(a) Three years or more have elapsed after termination of the jurisdiction of the juvenile court; or

(b) Three years or more have elapsed since the child was last referred to the juvenile court and the child has never been declared a ward of the court.

2. The court shall notify the district attorney of the county and the probation officer, if he is not the petitioner. The district attorney, probation officer, any of their deputies or any other persons having relevant evidence may testify at the hearing on the petition.

3. If, after the hearing, the court finds that, since such termination of jurisdiction, the child has not been convicted of a felony or of any misdemeanor involving moral turpitude and that rehabilitation has been attained to the satisfaction of the court, it shall order all records, papers and exhibits in the juvenile's case in the custody of the juvenile court, district court, justice's court, municipal court, probation officer, law enforcement agency or any other agency or public official **sealed**. Other records relating to the case, in the custody of such other agencies and officials as are named in the order, must also be ordered **sealed**. All juvenile records must be automatically **sealed** when the person reaches 24 years of age.

4. The court shall send a copy of the order to each agency and official named therein. Each agency and official shall, within 5 days after receipt of the order:

(a) **Seal** records in its custody, as directed by the order.

(b) Advise the court of its compliance.

(c) **Seal** the copy of the court's order that it or he received.

As used in this section, "seal" means placing the records in a separate file or other repository not accessible to the general public.

5. If the court orders the records **sealed**, all proceedings recounted in the records are deemed never to have occurred and the minor may properly reply accordingly to any inquiry concerning the proceedings and the events which brought about the proceedings.

6. The person who is the subject of records **sealed** pursuant to this section may petition the court to permit inspection of the records by a person named in the petition and the court may order the inspection.

7. The court may, upon the application of a district attorney or an attorney representing a defendant in a criminal action, order an inspection of the records for the purpose of obtaining information relating to persons who were involved in the incident recorded.

8. The court may, upon its own motion and for the purpose of sentencing a convicted adult who is under 21 years of age, inspect any records of that person which are sealed pursuant to this section.

9. An agency charged with the medical or psychiatric care of a person may petition the court to unseal his juvenile records.

(Added to NRS by 1971, 861; A 1973, 1346; 1977, 1276; 1981, 2002)--(Substituted in revision for NRS 62.275)

SECURITIES (Uniform Act)

**Sec. 12. 90.730 Public information and confidentiality.**

1. Except as otherwise provided in subsection 2, information and documents filed with or obtained by the administrator [administrator of the securities division of the office of the Secretary of State] are public information and are available for public examination.

2. Except as otherwise provided in subsections 3 and 4, the following information and documents do not constitute public information under subsection 1 and are **confidential**:

(a) Information or documents obtained by the administrator in connection with an investigation concerning possible violations of this chapter; and

(b) Information or documents filed with the administrator in connection with a registration statement filed under this chapter or a report under NRS 90.390 which constitute trade secrets or commercial or financial information of a person for which that person is entitled to and has asserted a claim of privilege or **confidentiality** authorized by law.

3. The administrator may submit any information or evidence obtained in connection with an investigation to the attorney general or appropriate district attorney for the purpose of prosecuting a criminal action under this chapter.

4. The administrator may **disclose** any information obtained in connection with an investigation pursuant to NRS 90.620 to the agencies and administrators specified in subsection 1 of NRS 90.740 but only if **disclosure** is provided for the purpose of a civil, administrative or criminal investigation or proceeding, and the receiving agency or administrator represents in writing that under applicable law protections exist to preserve the integrity, **confidentiality** and security of the information.

5. This chapter does not create any privilege or diminish any privilege existing at common law, by statute, regulation or otherwise.

(Added to NRS by 1987, 2184; A 1989, 160; 1991, 609)

COMMODITIES

**Sec. 13. 91.160 Administration.**

1. This chapter must be administered by the administrator of the securities division of the office of the secretary of state.

2. It is unlawful for the administrator or any employee of the administrator to use for personal benefit any information which is filed with or obtained by the administrator and which is not made public. It is unlawful for the administrator or any employee of the administrator to conduct any dealings regarding a security or commodity based upon any such information, even though made public, if there has not been a sufficient period of time for the securities or commodity markets to assimilate such information.

3. Except as otherwise provided in subsection 4, all information and materials collected, assembled or maintained by the administrator are public records.

4. The following information is **confidential**:

(a) Information obtained in private investigations pursuant to NRS 91.300; and

(b) Information obtained from federal agencies which may not be **disclosed** under federal law.

5. The administrator in his discretion may **disclose** any information made **confidential** under subsection 4 to persons identified in subsection 1 of NRS 91.170.

6. No provision of this chapter either creates or derogates any privilege which exists at common law, by statute or otherwise when any documentary or other evidence is sought under subpena directed to the administrator or any employee of the administrator.

(Added to NRS by 1987, 1289)

**Sec. 14. 119.280 Powers of administrator [chief of the real estate division of the Department of Commerce] to take testimony, administer oaths, issue subpenas and classify confidential records.**

1. The administrator may:

(a) Take testimony and other evidence concerning all matters within the jurisdiction of the division under this chapter.

(b) Administer oaths.

(c) Certify to all official acts.

(d) For cause, issue subpenas for attendance of witnesses and the production of books and papers.

2. The administrator shall classify as **confidential** certain records and information obtained by the division when such matters are trade secrets, including but not limited to lists of prospective purchasers and lists of purchasers with whom a sale has been consummated. This power is subject to the limitations and protective measures in NRS 49.325.

(Added to NRS by 1973, 1761)

TIME SHARES

**Sec. 15. 119A.280 Developers: Order to cease; hearing; agreement in lieu of order.**

1. The administrator [chief of the real estate division of the Department of Commerce] may issue an order directing a developer to cease engaging in activities for which the developer has not received a permit under this chapter or conducting activities in a manner not in compliance with the provisions of this chapter or the regulations adopted pursuant thereto.

2. The order to cease must be in writing and must state that, in the opinion of the administrator, the developer has not been issued a permit for the activity or the terms of the permit do not allow the developer to conduct the activity in that manner. The developer shall not engage in any activity regulated by this chapter after he receives such an order.

3. Within 30 days after receiving such an order, a developer may file a verified petition with the administrator for a hearing. The administrator shall hold a hearing within 30 days after the petition has been filed. If the administrator fails to hold a hearing within 30 days, or does not render a written decision within 45 days after the final hearing, the cease and desist order is rescinded.

4. If the decision of the administrator after a hearing is against the person ordered to cease and desist, he may appeal that decision by filing, within 30 days after the date on which the decision was issued, a petition in the district court for the county in which he conducted the activity. The burden of proof in the appeal is on the appellant. The court shall consider the decision of the administrator for which the appeal is taken and is limited solely to a consideration and determination of the question of whether there has been an abuse of discretion on the part of the administrator in making the decision.

5. In lieu of the issuance of an order to cease such activities, the administrator may enter into an agreement with the developer in which the developer agrees to:

(a) Discontinue the activities that are not in compliance with this chapter;

(b) Pay all costs incurred by the division in investigating the developer's activities and conducting any necessary hearings; and

(c) Return to the purchasers any money or property which he acquired through such violations.

The terms of such an agreement are **confidential** unless violated by the developer.

(Added to NRS by 1983, 994; A 1985, 1140)

MEMBERSHIPS IN CAMPGROUNDS

**Sec. 16. 119B.370 Order to cease activities conducted without permit; hearing; agreement in lieu of order.**

1. The administrator [chief of the real estate division of the Department of Commerce] may issue an order directing a developer to cease engaging in activities for which the developer has not received a permit under this chapter or conducting activities in a manner not in compliance with the terms of his permit.

2. The order to cease must be in writing and must state that, in the opinion of the administrator, the developer has not been issued a permit for the activity or the terms of the permit do not allow the developer to conduct the activity in that manner. The developer shall not engage in any activity regulated by this chapter after he receives such an order.

3. Within 30 days after receiving such an order, a developer may file a verified petition with the administrator for a hearing. The administrator shall hold a hearing within 30 days after the petition is filed. If the administrator fails to hold a hearing within 30 days, or does not render a written decision within 45 days after the final hearing, the order to cease is rescinded.

4. If the decision of the administrator after a hearing is against the person ordered to cease, he may obtain judicial review from that decision by filing, within 30 days after the date on which the decision was issued, a petition in the district court for the county in which he conducted the activity. The burden of proof is on the petitioner. The court shall consider the decision of the administrator which is being reviewed and shall consider and determine solely whether there has been an abuse of discretion on the part of the administrator in making the decision.

5. In lieu of the issuance of an order to cease such activities, the administrator may enter into an agreement with the developer in which the developer agrees to:

(a) Discontinue the activities that are not in compliance with this chapter;

(b) Pay all costs incurred by the administrator in investigating the developer's activities and conducting any necessary hearings; and

(c) Return to the purchasers any money or property which he acquired through such violations.

The terms of such an agreement are **confidential** unless violated by the developer.

(Added to NRS by 1985, 1670)

DISPOSITION OF UNCLAIMED PROPERTY (Uniform Act)

**Sec. 17. 120A.145 Information to remain confidential.** The administrator or any officer, agent or employee of the division shall not use or **disclose** any information received by the administrator [chief of the division of unclaimed property in the Department of Commerce] in the course of carrying out the provisions of this chapter which is **confidential** or which is provided to the division on the basis that the information is to remain **confidential**, unless the use or **disclosure** of the information is necessary to locate the owner of unclaimed or abandoned property.

(Added to NRS by 1983, 1462)

DISSOLUTION OF MARRIAGE

**Sec. 18. 125.110 What pleadings and papers open to public inspection; written request of party for sealing.**

1. In any action for divorce, the following papers and pleadings in the action shall be open to public inspection in the clerk's office: [county clerk's]

(a) In case the complaint is not answered by the defendant, the summons, with the affidavit or proof of service; the complaint with memorandum endorsed thereon that the default of the defendant in not answering was entered, and the judgment; and in case where service is made by publication, the affidavit for publication of summons and the order directing the publication of summons.

(b) In all other cases, the pleadings, the finding of the court, any order made on motion as provided in Nevada Rules of Civil Procedure, and the judgment.

2. All other papers, records, proceedings and evidence, including exhibits and transcript of the testimony, shall, upon the written request of either party to the action, filed with the clerk, be **sealed** and shall not be open to **inspection** except to the parties or their attorneys, or when required as evidence in another action or proceeding.

([1:222:1931; 1931 NCL § 9467.03]--(NRS A 1963, 544)

OBLIGATION OF SUPPORT

**Sec. 19. 125B.150 Assistance by district attorney to establish parentage and obligation of support and to enforce payment of support; confidentiality; regulations of welfare division.**

1. The district attorney of the county of residence of the child or a nonsupporting parent shall take such action as is necessary to establish parentage of the child and locate and take legal action against a deserting or nonsupporting parent of the child when requested to do so by the custodial parent or a public agency which provides assistance to the parent or child.

If the court for cause transfers the action to another county, the clerk of the receiving court shall notify the district attorney of that county, and that district attorney shall proceed to prosecute the cause of action and take such further action as is necessary to establish parentage and the obligation of support and to enforce the payment of support pursuant to this chapter or chapter 31A, 126, 130 or 425 of NRS.

2. In a county where the district attorney has deputies to aid him in the performance of his duties, the district attorney shall designate himself or a particular deputy as responsible for performing the duties imposed by subsection 1.

3. The district attorney and his deputies do not represent the parent or the child in the performance of their duties pursuant to this chapter and chapter 31A, 126, 130 or 425 of NRS, but are rendering a public service as representatives of the state.

4. Except as otherwise provided in subsections 5 and 6, a privilege between lawyer and client arises between the parent or child to whom the public service is rendered and the district attorney.

5. Officials of the welfare division of the department of human resources are entitled to access to the information obtained by the district attorney if that information is relevant to the performance of their duties. The district attorney or his deputy shall inform each person who provides information pursuant to this section concerning the limitations on the privilege between lawyer and client under these circumstances.

6. **Disclosures** of criminal activity by a parent or child are not privileged.

7. The district attorney shall inform each parent who applies for his assistance in this regard that a procedure is available to collect unpaid support from any refund owed to the deserting or nonsupporting parent because an excessive amount of money was withheld to pay his federal income tax. The district attorney shall submit to the welfare division all documents and information it requires to pursue such a collection if:

(a) The applicant is not receiving public assistance.

(b) The district attorney has in his records:

(1) A copy of the order of support for a child and any modifications of the order which specify their date of issuance and the amount of the ordered support;

(2) A copy of a record of payments received or, if no such record is available, an affidavit signed by the custodial parent attesting to the amount of support owed; and

(3) The current address of the custodial parent.

(c) From the records in his possession, the district attorney has reason to believe that the amount of unpaid support is not less than $500.

Before submitting the documents and information to the welfare division, the district attorney shall verify the accuracy of the documents submitted relating to the amount claimed as unpaid support and the name and social security number of the deserting or nonsupporting parent. If the district attorney has verified this information previously, he need not reverify it before submitting it to the welfare division.

8. The welfare division shall adopt such regulations as are necessary to carry out the provisions of subsection 7.

(Added to NRS by 1969, 589; A 1979, 1281; 1981, 1574; 1987, 2252; 1989, 670, 1642)

**Sec. 20. 125B.170 Disclosure of information by enforcing authority; fee; regulations.**

1. The enforcing authority shall release information concerning a responsible parent's failure to pay support for a child to an agency of the kind defined in 15 U.S.C. § 1681a(f) at its request, except that:

(a) If the amount of the delinquent payment is less than $1,000, the release of the information is at the discretion of the enforcing authority; and

(b) The information may be given to the agency only after notice of the proposed **disclosure** has been sent to the responsible parent and he has had 20 days to correct the information.

2. The enforcing authority shall collect from the requesting agency a fee not to exceed the actual cost of providing the information.

3. The welfare division shall adopt regulations prescribing the content of the notice of the proposed **disclosure** and establishing procedures for the responsible parent to correct any of the information to be **disclosed**.

4. As used in this section, "enforcing authority" means the welfare division of the department of human resources or the district attorney.

(Added to NRS by 1985, 1428; A 1987, 2247)--(Substituted in revision for NRS 31A.200)

**Sec. 21. 126.051 Presumptions of paternity; acknowledgment.**

1. A man is presumed to be the natural father of a child if:

(a) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 285 days after the marriage is terminated by death, annulment, declaration of invalidity or divorce, or after a decree of separation is entered by a court.

(b) He and the child's natural mother were cohabiting for at least 6 months before the period of conception and continued to cohabit through the period of conception.

(c) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is invalid or could be declared invalid, and:

(1) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 285 days after its termination by death, annulment, declaration of invalidity or divorce; or

(2) If the attempted marriage is invalid without a court order, the child is born within 285 days after the termination of cohabitation.

(d) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child.

(e) At any time he acknowledges or admits his paternity of the child in a writing filed with the state registrar of vital statistics.

2. The state registrar of vital statistics shall promptly inform the natural mother of the filing of an acknowledgment, and the presumption is nullified if she disputes the acknowledgment in a writing filed with the registrar within 60 days after this notice is given. Each acknowledgment filed must be maintained by the registrar in a sealed **confidential** file until it is consented to by the mother and any other presumed father. This does not preclude access by an appropriate state official incident to his official responsibility concerning the parentage of the child. The acknowledgment must not be made public unless the mother affirmatively consents to the acknowledgment or a court adjudicates parentage. Each acknowledgment must be signed by the person filing it, and contain:

(a) The name and address of the person filing the acknowledgment;

(b) The name and last known address of the mother of the child; and

(c) The date of birth of the child, or, if the child is unborn, the month and year in which the child is expected to be born. If another man is presumed under this section to be the child's father, acknowledgment of paternity may be effected only with the written consent of the presumed father or after the presumption has been rebutted by a court decree. Acknowledgment by both parents as to the parentage of a child makes the child legitimate from birth, and the birth must be documented as provided in chapter 440 of NRS.

3. A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

(Added to NRS by 1979, 1270; A 1983, 1868)

**Sec. 22. 126.061 Artificial insemination.**

1. If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination, and file the husband's consent with the health division of the department of human resources, where it must be kept **confidential** and in a sealed file. The physician's failure to do so does not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

2. The donor of semen provided to a licensed physician for use in artificial insemination of a married woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived.

(Added to NRS by 1979, 1271)

**Sec. 23. 126.141 Pretrial recommendations.**

1. On the basis of the information produced at the pretrial hearing, the judge, master or referee conducting the hearing shall evaluate the probability of determining the existence or nonexistence of the father and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement must be made to the parties, which may include any of the following:

(a) That the action be dismissed with or without prejudice.

(b) That the matter be compromised by an agreement among the alleged father, the mother and the child, in which the father and child relationship is not determined but in which a defined economic obligation, fully secured by payment or otherwise, is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the judge, master or referee conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the judge, master or referee conducting the hearing shall consider the best interest of the child, discounted by the improbability, as it appears to him, of establishing the alleged father's paternity or nonpaternity of the child in a trial of the action. In the best interest of the child, the court may order that the alleged father's identity be kept **confidential**. In that case, the court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him.

(c) That the alleged father voluntarily acknowledge his paternity of the child.

2. If the parties accept a recommendation made in accordance with subsection 1, judgment may be entered accordingly.

3. If a party refuses to accept a recommendation made under subsection 1 and blood tests have not been taken, the court shall require the parties to submit to blood tests, if practicable. Thereafter the judge, master or referee shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action must be set for trial.

4. The guardian ad litem may accept or refuse to accept a recommendation under this section.

5. The pretrial hearing may be terminated and the action set for trial if the judge, master or referee conducting the hearing finds unlikely that all parties would accept a recommendation he might make under subsection 1 or 3.

(Added to NRS by 1979, 1274; A 1983, 1871; 1989, 860)

**Sec. 24. 126.211 Hearings and records: Confidentiality.** Any hearing or trial held under this chapter must be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in the welfare division of the department of human resources or elsewhere, are subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

(Added to NRS by 1979, 1276)

**Sec. 25. 126.371 Promise to furnish support for child: Enforcement; confidentiality.**

1. Any promise in writing to furnish support for a child, growing out of a supposed or alleged parent and child relationship, does not require consideration and is enforceable according to its terms.

2. In the best interest of the child or the custodial parent, the court may, and upon the promisor's request shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise.

(Added to NRS by 1979, 1276; A 1983, 1875)

**Sec. 26. 127.057 Consent to adoption: Copy to be furnished welfare division of department of human resources within 48 hours; recommendations; penalty.**

1. Any person to whom a consent to adoption executed in this state or executed outside this state for use in this state is delivered shall, within 48 hours after receipt of the executed consent to adoption, furnish a true copy thereof to the welfare division of the department of human resources, together with a report of the permanent address of the person in whose favor the consent was executed.

2. Any person recommending in his professional or occupational capacity, the placement of a child for adoption in this state shall immediately notify the welfare division of the impending adoption.

3. All information received by the welfare division pursuant to the provisions of this section is **confidential** and must be protected from **disclosure** in the same manner that information concerning recipients of public assistance is protected under NRS 422.290.

4. Any person who violates any of the provisions of this section is guilty of a misdemeanor.

(Added to NRS by 1961, 737; A 1963, 890; 1967, 1147; 1973, 1406, 1588; 1987, 2050)

**Sec. 27. 127.130 Confidentiality of reports; petitioner may rebut adverse report.** The report of either the welfare division of the department of human resources or the licensed child- placing agency designated by the court shall not be made a matter of public record, but shall be given in writing and in confidence to the district judge before whom the matter is pending. If the recommendation of the welfare division or the designated agency is adverse, the district judge, before denying the petition, shall give the petitioner an opportunity to rebut the findings and recommendation of the report of the welfare division or the designated agency.

[13:332:1953]--(NRS A 1963, 891; 1965, 36; 1967, 1148; 1973, 1406)

**Sec. 28. 127.140 Confidentiality of hearings, files and records.**

1. All hearings held in proceedings under this chapter are **confidential** and must be held in closed court, without admittance of any person other than the petitioners, their witnesses, the director of an agency, or their authorized representatives, attorneys and persons entitled to notice by this chapter, except by order of the court.

2. The files and records of the court in adoption proceedings are not open to inspection by any person except upon an order of the court expressly so permitting pursuant to a petition setting forth the reasons therefor or if a natural parent and the child are eligible to receive information from the state register of adoptions.

[14:332:1953]--(NRS A 1979, 1283)

## PROCEEDINGS AFTER COMMITMENT AND BEFORE INDICTMENT

**Sec. 29. 172.075 Officers of grand jury.** The jury shall elect one of its members to be foreman, another to be deputy foreman and a third to be secretary. The foreman shall have power to administer oaths and affirmations and shall sign all presentments and indictments. The secretary shall keep a record of the number of jurors concurring in the finding of every presentment or indictment and shall file the record with the clerk of the court, but the record shall not be made **public** except on order of the court. During the absence of the foreman, the deputy foreman shall act as foreman, and if both are absent, the jury shall elect a temporary foreman.

(Added to NRS by 1967, 1408)

**Sec. 30. 172.225 Transcripts: Preparation; public record.**

1. If an indictment has been found or accusation presented against a defendant, the stenographic reporter shall certify and file with the county clerk an original transcription of his notes and a copy thereof and as many additional copies as there are defendants.

2. The reporter shall complete the certification and filing within 10 days after the indictment has been found or the accusation presented unless the court for good cause makes an order extending the time.

3. The county clerk shall:

(a) Deliver a copy of the transcript so filed with him to the district attorney immediately upon his receipt thereof;

(b) Retain one copy for use only by judges in proceedings relating to the indictment or accusation; and

(c) Deliver a copy of the transcript to each defendant who is in custody or has given bail or to his attorney.

4. Any defendant to whom a copy has not been delivered is entitled upon motion to a continuance of his arraignment until a date 10 days after he actually receives a copy.

5. If several criminal charges against a defendant are investigated on one investigation and thereafter separate indictments are returned or accusations presented upon the several charges, the delivery to the defendant or his attorney of one copy of the transcript of the investigation is a compliance with this section as to all of the indictments or accusations.

6. Upon the filing of such a transcript with the county clerk, the transcript and any related physical evidence exhibited to the grand jury become a matter of **public record unless** the court:

(a) Orders that the presentment or indictment remain secret until the defendant is in custody or has been given bail; or

(b) Upon motion, orders the transcript and evidence to remain secret until further order of the court.

(Added to NRS by 1967, 1410; A 1975, 910; 1983, 359)

**Sec. 31. 172.245 Secrecy of proceedings of grand jury; permitted disclosures; penalty.**

1. The **disclosure** of:

(a) Evidence presented to the grand jury;

(b) Information obtained by the grand jury;

(c) The results of an investigation made by the grand jury; and

(d) An event occurring or a statement made in the presence of the grand jury other than its deliberations and the vote of a juror,

may be made to the district attorney for use in the performance of his duties.

2. Except as otherwise provided in subsection 3, the attorney general or a member of his staff, a grand juror, district attorney or member of his staff, peace officer, clerk, stenographer, interpreter, witness or other person invited or allowed to attend the proceedings of a grand jury shall not **disclose:**

(a) Evidence presented to the grand jury;

(b) An event occurring or a statement made in the presence of the grand jury;

(c) Information obtained by the grand jury; or

(d) The results of an investigation made by the grand jury.

3. A person may **disclose** his knowledge concerning the proceedings of a grand jury:

(a) When so directed by the court preliminary to or in connection with a judicial proceeding;

(b) When permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the presentment or indictment because of matters occurring before the grand jury;

(c) If he was a witness before the grand jury and is **disclosing** his knowledge of the proceedings to his own attorney; or

(d) As provided in NRS 172.225.

4. No obligation of secrecy may be imposed upon any person except in accordance with this section. The court may direct that a presentment or indictment be kept secret until the defendant is in custody or has been given bail, and the clerk shall seal the presentment or indictment. It is unlawful for any person to **disclose** the finding of the secret presentment or indictment except when necessary for the issuance and execution of a warrant or summons.

5. A person who violates any of the provisions of this section is guilty of a gross misdemeanor and contempt of court.

6. The attorney general or district attorney shall investigate and prosecute a violation of this section.

7. The grand jury shall inform each person who appears before the grand jury of the provisions of this section and the penalties for its violation.

(Added to NRS by 1967, 1410; A 1985, 552)

**Sec. 32. 176.156 Disclosure of report and recommendations.**

1. The court shall **disclose** to the district attorney, the counsel for the defendant and the defendant the factual content of the report of the presentence investigation and the recommendations of the department of parole and probation and afford an opportunity to each party to object to factual errors and comment on the recommendations.

2. Except for the **disclosures** required by subsection 1, the report and its sources of information are **confidential** and must not be made a part of any public record.

(Added to NRS by 1967, 1434; A 1969, 405; 1975, 576; 1981, 1209; 1985, 149)

GENERAL PROVISIONS (Criminal Procedure)

**Sec. 33. 178.5696 Separate waiting area; disposition of personal property; fees for testifying.**

1. A court trying a criminal case shall provide victims and witnesses a secure waiting area which is not used by the members of the jury or the defendant and his family and friends.

2. A court or law enforcement agency which has custody of any stolen or other personal property belonging to such a victim or witness shall:

(a) Upon the written request of the victim or witness, make available to him a list describing the property held in custody, unless it is shown that the **disclosure** of the identity or nature of the property would seriously impede the investigation of the crime; or

(b) Return the property to him expeditiously when it is no longer needed as evidence.

3. The prosecuting attorney shall inform each such witness of the fee to which he is entitled for testifying and how to obtain the fee.

(Added to NRS by 1983, 890)

SPECIAL PROCEEDINGS OF A CRIMINAL NATURE;
SEALING RECORDS OF CRIMINAL PROCEEDINGS;
REWARDS; FORMS

**Sec. 34. 179.1173 Proceedings for forfeiture: Priority over other civil matters; motion to stay; standard of proof; conviction of claimant not required; confidentiality of informants; return of property to claimant.**

1. The district court shall proceed as soon as practicable to a trial and determination of the matter. A proceeding for forfeiture is entitled to priority over other civil actions which are not otherwise entitled to priority.

2. At a proceeding for forfeiture, the plaintiff [the law enforcement agency which has commenced forfeiture proceedings] or claimant [the person claiming an interest in or possession of the property subject to forfeiture] may file a motion for an order staying the proceeding and the court shall grant that motion if a criminal action which is the basis of the proceeding is pending trial. The court shall, upon a motion made by the plaintiff, lift the stay upon a satisfactory showing that the claimant is a fugitive.

3. A party to a proceeding for forfeiture must establish proof by a preponderance of the evidence.

4. In a proceeding for forfeiture, the rule of law that forfeitures are not favored does not apply.

5. The plaintiff is not required to plead or prove that a claimant has been charged with or convicted of any criminal offense. If proof of such a conviction is made, and it is shown that the judgment of conviction has become final, the proof is, as against any claimant, conclusive evidence of all facts necessary to sustain the conviction.

6. The plaintiff has an absolute privilege to refuse to **disclose** the identity of any person, other than a witness, who has furnished to a law enforcement officer information purporting to reveal the commission of a crime. The privilege may be claimed by an appropriate representative of the plaintiff.

7. If the court determines that the property is not subject to forfeiture, it shall order the property returned to the claimant found to be entitled to the property. If the court determines that the property is subject to forfeiture, it shall so decree. The property must be forfeited to the plaintiff, subject to the right of any claimant who establishes a protected

interest. Any such claimant must, upon the sale or retention of the property, be compensated for his interest in the manner provided in NRS 179.118.

(Added to NRS by 1987, 1382)

**Sec. 35. 179.245 Sealing record after conviction: Petition; notice; hearing; order.**

1. Except as other times and procedures are provided in NRS 453.3365, a person who has been convicted of:

(a) Any felony may, after 15 years from the date of his conviction or, if he is imprisoned, from the date of his release from actual custody;

(b) Any gross misdemeanor may, after 10 years from the date of his conviction or release from custody;

(c) A violation of NRS 484.379 other than a felony may, after 7 years from the date of his conviction or release from custody; or

(d) Any other misdemeanor may, after 5 years from the date of his conviction or release from custody,

petition the court in which the conviction was obtained for the **sealing** of all records relating to the conviction.

2. The court shall notify the district attorney of the county in which the conviction was obtained, and the district attorney and any person having relevant evidence may testify and present evidence at the hearing on the petition.

3. If after the hearing the court finds that, in the period prescribed in subsection 1, the petitioner has not been arrested, except for minor moving or standing traffic violations, the court may order **sealed** all records of the conviction which are in the custody of the court, of another court in the State of Nevada or of a public or private agency, company or official in the State of Nevada, and may also order all such criminal identification records of the petitioner returned to the file of the court where the proceeding was commenced from, but not limited to, the Federal Bureau of Investigation, the California identification and investigation bureau, sheriffs' offices and all other law enforcement agencies reasonably known by either the petitioner or the court to have possession of such records.

(Added to NRS by 1971, 955; A 1983, 1088; 1991, 303)

**Sec. 36. 179.255 Sealing records after dismissal or acquittal: Petition; notice; hearing; order.**

1. A person who has been arrested for alleged criminal conduct, where the charges were dismissed or such person was acquitted of the charge, may after 30 days from the date the charges were dismissed or from the date of the acquittal petition the court in and for the county where such arrest was made for the **sealing** of all records relating to the arrest.

2. The court shall notify the district attorney of the county in which the arrest was made, and the district attorney and any person having relevant evidence may testify and present evidence at the hearing on the petition.

3. If after hearing the court finds that there has been an acquittal or that the charges were dismissed and there is no evidence that further action will be brought against the person, the court may order **sealed** all records of the arrest and of the proceedings leading to the acquittal which are in the custody of the court, of another court in the State of Nevada or of a public or private company, agency or official in the State of Nevada.

(Added to NRS by 1971, 955)

**Sec. 37. 179.275 Order sealing record: Distribution; compliance.** Where the court orders the **sealing** of a record pursuant to NRS 179.245, 179.255 or 453.3365, a copy of the order must be sent to each public or private company, agency or official named in the order, and that person shall **seal** the records in his custody which relate to the matters contained in the order, shall advise the court of his compliance, and shall then **seal** the order.

(Added to NRS by 1971, 956; A 1991, 304)

**Sec. 38. 179.465 Disclosure or use of intercepted communications.**

1. Any investigative or law enforcement officer who, by any means authorized by NRS 179.410 to 179.515, inclusive, or 704.195 or 18 U.S.C. §§ 2510 to 2520, inclusive, has obtained knowledge of the contents of any wire or oral communication, or evidence derived therefrom, may **disclose** the contents to another investigative or law enforcement officer or use the contents to the extent that the **disclosure** or use is appropriate to the proper performance of the official duties of the officer making or receiving the **disclosure.**

2. Any person who has received, by any means authorized by NRS 179.410 to 179.515, inclusive, or 704.195 or 18 U.S.C. §§ 2510 to 2520, inclusive, or by a statute of another state, any information concerning a wire or oral communication, or

evidence derived therefrom intercepted in accordance with the provisions of NRS 179.410 to 179.515, inclusive, may **disclose** the contents of that communication or the derivative evidence while giving testimony under oath or affirmation in any criminal proceeding in any court or before any grand jury in this state, or in any court of the United States or of any state, or in any federal or state grand jury proceeding.

3. An otherwise privileged wire or oral communication intercepted in accordance with, or in violation of, the provisions of NRS 179.410 to 179.515, inclusive, or 18 U.S.C. §§ 2510 to 2520, inclusive, does not lose its privileged character.

4. When an investigative or law enforcement officer engaged in intercepting wire or oral communications as authorized by NRS 179.410 to 179.515, inclusive, intercepts wire or oral communications relating to offenses other than those specified in the order provided for in NRS 179.460, the contents of the communications and the evidence derived therefrom may be **disclosed** or used as provided in subsection 1. The direct evidence derived from the communications is inadmissible in a criminal proceeding, but any other evidence obtained as a result of knowledge obtained from the communications may be **disclosed** or used as provided in subsection 2 when authorized or approved by a justice of the supreme court or district judge who finds upon application made as soon as practicable that the contents of the communications were intercepted in accordance with the provisions of NRS 179.410 to 179.515, inclusive, or 18 U.S.C. §§ 2510 to 2520, inclusive.

(Added to NRS by 1973, 1743; A 1983, 117; 1989, 658)

**Sec. 39. 179.490 Sealing of applications and orders; disclosure.**

1. Applications made and orders granted under this statute shall be sealed by the judge. Custody of the applications and orders shall be placed with whomever the judge orders. Such applications and orders shall be **disclosed** only upon a showing of good cause before a judge of a court of competent jurisdiction and shall not be destroyed except on order of the judge who issued or denied the order, and in any event shall be kept for 10 years.

2. Any violation of the provisions of this section may be punished as contempt of court.

(Added to NRS by 1973, 1747)

**Sec. 40. 179.495 Notice to parties to intercepted communications.**

1. Within a reasonable time but not later than 90 days after the termination of the period of an order or any extension thereof, the judge who issued the order shall cause to be served on the chief of the investigation division of the department of motor vehicles and public safety, persons named in the order and any other parties to intercepted communications, an inventory which must include notice of:

(a) The fact of the entry and a copy of the order.

(b) The fact that during the period wire or oral communications were or were not intercepted.

The inventory filed pursuant to this section is **confidential** and must not be released for inspection unless subpenaed by a court of competent jurisdiction.

2. The judge, upon receipt of a written request from any person who was a party to an intercepted communication or from the person's attorney, shall make available to the person or his counsel those portions of the intercepted communications which contain his conversation. On an ex parte showing of good cause to a district judge, the serving of the inventory required by this section may be postponed for such time as the judge may provide.

(Added to NRS by 1973, 1747; A 1975, 1520; 1983, 119; 1985, 1976)

**Sec. 41. 179.500 Contents of intercepted communications inadmissible in evidence unless transcript provided to parties before trial.** The contents of any intercepted wire or oral communication or evidence derived therefrom shall not be received in evidence or otherwise **disclosed** in any trial, hearing or other proceeding in any court of this state unless each party, not less than 10 days before the trial, hearing or proceeding, has been furnished with a copy of the court order and accompanying application under which the interception was authorized and a transcript of any communications intercepted. Such 10-day period may be waived by the judge if he finds that it was not possible to furnish the party with such information 10 days before the trial, hearing or proceeding and that the party will not be prejudiced by the delay in receiving such information.

(Added to NRS by 1973, 1747)

**Sec. 42. 179A.100 Records which may be disseminated without restriction; persons to whom records must be disseminated upon request; permission required for dissemination of information relating to sexual offenses.**

1. The following records of criminal history may be disseminated by an agency of criminal justice without any restriction pursuant to this chapter:

(a) Any which reflect records of conviction only; and

(b) Any which pertain to an incident for which a person is currently within the system of criminal justice, including parole or probation.

2. Without any restriction pursuant to this chapter, a record of criminal history or the absence of such a record may be:

(a) **Disclosed** among agencies which maintain a system for the mutual exchange of criminal records.

(b) Furnished by one agency to another to administer the system of criminal justice, including the furnishing of information by a police department to a district attorney.

(c) Reported to the central repository.

3. An agency of criminal justice shall disseminate to a prospective employer, upon request, records of criminal history concerning a prospective employee or volunteer which:

(a) Reflect convictions only; or

(b) Pertain to an incident for which the prospective employee or volunteer is currently within the system of criminal justice, including parole or probation.

4. The central repository [central repository for Nevada records of criminal history] shall disseminate to a prospective or current employer, upon request, information relating to sexual offenses concerning an employee, prospective employee, volunteer or prospective volunteer who gives his written consent to the release of that information.

5. Records of criminal history must be disseminated by an agency of criminal justice upon request, to the following persons or governmental entities:

(a) The person who is the subject of the record of criminal history for the purposes of NRS 179A.150.

(b) The person who is the subject of the record of criminal history or his attorney of record when the subject is a party in a judicial, administrative, licensing, disciplinary or other proceeding to which the information is relevant.

(c) The gaming control board.

(d) The private investigator's licensing board to investigate an applicant for a license.

(e) A public administrator to carry out his duties as prescribed in chapter 253 of NRS.

(f) A public guardian to investigate a ward or proposed ward or persons who may have knowledge of assets belonging to a ward or proposed ward.

(g) Any agency of criminal justice of the United States or of another state or the District of Columbia.

(h) Any public utility subject to the jurisdiction of the public service commission of Nevada when the information is necessary to conduct a security investigation of an employee or prospective employee, or to protect the public health, safety or welfare.

(i) Persons and agencies authorized by statute, ordinance, executive order, court rule, court decision or court order as construed by appropriate state or local officers or agencies.

(j) Any person or governmental entity which has entered into a contract to provide services to an agency of criminal justice relating to the administration of criminal justice, if authorized by the contract, and if the contract also specifies that the information will be used only for stated purposes and that it will be otherwise **confidential** in accordance with state and federal law and regulation.

(k) Any reporter for the electronic or printed media in his professional capacity for communication to the public.

(l) Prospective employers if the person who is the subject of the information has given written consent to the release of that information by the agency which maintains it.

(m) For the express purpose of research, evaluative or statistical programs pursuant to an agreement with an agency of criminal justice.

6. Agencies of criminal justice in this state which receive information from sources outside the state concerning transactions involving criminal justice which occur outside Nevada shall treat the information as **confidentially** as is required by the provisions of this chapter.

(Added to NRS by 1979, 1852; A 1985, 913; 1987, 1765; 1989, 5, 560, 562, 991; 1991, 130)

**Sec. 43. 179A.120 Disclosures to victims of crime.**

1. Agencies of criminal justice may **disclose** to victims of a crime, members of their families or their guardians the identity of persons suspected of being responsible for the crime, including juveniles who have been certified to stand trial as adults, together with information, including dispositions, which may be of assistance to the victim in obtaining redress for his injury or loss in a civil action. This **disclosure** may be made regardless of whether charges have been filed, and even if a prosecuting attorney has declined to file charges or the charge has been dismissed.

2. **Disclosure** of investigative information pursuant to this section does not establish a duty to **disclose** any additional information concerning the same incident or make any **disclosure** of information obtained by an investigation, except as compelled by legal process.

(Added to NRS by 1979, 1853; A 1981, 2025)

CRIMES AGAINST PUBLIC JUSTICE

**Sec. 44. 199.520 Disclosure of information to subject of investigation.** Any officer or employee of a court or law enforcement agency who, with the intent to obstruct a criminal investigation, directly or indirectly:

1. Notifies any person who is the subject of the investigation about the existence of the investigation; or

2. **Discloses** to any such person any information obtained in the course of the investigation,

shall be punished by imprisonment in the state prison for not less than 1 year nor more than 5 years, or by a fine of not more than $5,000, or by both fine and imprisonment.

(Added to NRS by 1991, 212)

CRIMES AGAINST THE PERSON

**Sec. 45. 200.5095 Reports and records confidential; when disclosure permitted or required.**

1. Reports made pursuant to NRS 200.5093 and 200.5094 [these provisions address the abuse, neglect and exploitation of older persons] are **confidential**.

2. Any person, law enforcement agency or public or private agency, institution or facility who willfully releases data or information concerning the reports and investigation of the abuse, neglect or exploitation of older persons, except:

(a) Pursuant to criminal prosecution under the provisions of NRS 200.5092 to 200.5099, inclusive; and

(b) To persons or agencies enumerated in subsection 3 of this section,

is guilty of a misdemeanor.

3. Data or information concerning the reports and investigations of the abuse, neglect or exploitation of an older person is available only to:

(a) A physician who has in his care an older person who he reasonably believes may have been abused, neglected or exploited;

(b) An agency responsible for or authorized to undertake the care, treatment and supervision of the older person;

(c) A district attorney or other law enforcement official who requires the information in connection with an investigation of the abuse, neglect or exploitation of the older person;

(d) A court which has determined, in camera, that public **disclosure** of such information is necessary for the determination of an issue before it;

(e) A person engaged in bona fide research, but the identity of the subjects of the report must remain **confidential**;

(f) A grand jury upon its determination that access to such records is necessary in the conduct of its official business;

(g) Any comparable authorized person or agency in another jurisdiction;

(h) A legal guardian of the older person, if the identity of the person who was responsible for reporting the alleged abuse, neglect or exploitation to the public agency is protected, and the legal guardian is not the person suspected of the abuse, neglect or exploitation; or

(i) The person named in the report as allegedly being abused, neglected or exploited, if that person is not legally incompetent.

4. If the person who is reported to have abused, neglected or exploited an older person is the holder of a license or certificate issued pursuant to chapters 630 to 640, inclusive, or chapter 641 or 641A of NRS, information contained in the report must be submitted to the board which issued the license.

(Added to NRS by 1981, 1335; A 1983, 1654)

**Sec. 46. 200.620 Interception and attempted interception of wire or radio communication prohibited; exceptions.**

1. Except as otherwise provided in NRS 179.410 to 179.515, inclusive, 209.419 and 704.195, it is unlawful for any person to intercept or attempt to intercept any wire communication unless:

(a) The interception or attempted interception is made with the prior consent of one of the parties to the communication; and

(b) An emergency situation exists and it is impractical to obtain a court order as required by NRS 179.410 to 179.515, inclusive, before the interception, in which event the interception is subject to the requirements of subsection 3. If the application for ratification is denied, any use or **disclosure** of the information so intercepted is unlawful, and the person who made the interception shall notify the sender and the receiver of the communication that:

(1) The communication was intercepted; and

(2) Upon application to the court, ratification of the interception was denied.

2. This section does not apply to any person, or to the officers, employees or agents of any person, engaged in the business of providing service and facilities for wire communication where the interception or attempted interception is to construct, maintain, conduct or operate the service or facilities of that person.

3. Any person who has made an interception in an emergency situation as provided in paragraph (b) of subsection 1 shall, within 72 hours of the interception, make a written application to a justice of the supreme court or district judge for ratification of the interception. The interception must not be ratified unless the applicant shows that:

(a) An emergency situation existed and it was impractical to obtain a court order before the interception; and

(b) Except for the absence of a court order, the interception met the requirements of NRS 179.410 to 179.515, inclusive.

4. NRS 200.610 to 200.690, inclusive, do not prohibit the recording, and NRS 179.410 to 179.515, inclusive, do not prohibit the reception in evidence, of conversations on wire communications installed in the office of an official law enforcement or fire- fighting agency, or a public utility, if the equipment used for the recording is installed in a facility for wire communications or on a telephone with a number listed in a directory, on which emergency calls or requests by a person for response by the law enforcement or fire-fighting agency or public utility are likely to be received. In addition, those sections do not prohibit the recording or reception in evidence of conversations initiated by the law enforcement or fire-fighting agency or public utility from such a facility or telephone in connection with responding to the original call or request, if the agency or public utility informs the other party that the conversation is being recorded.

(Added to NRS by 1957, 334; A 1973, 1748; 1975, 747; 1983, 120, 681; 1989, 659)

CRIMES AGAINST PROPERTY

**Sec. 47. 205.4765 Unlawful acts: Generally.**

1. Except as otherwise provided in subsection 5, a person who knowingly, willingly and without authorization:

(a) Modifies;

(b) Damages;

(c) Destroys;

(d) **Discloses;**

(e) Uses;

(f) Transfers;

(g) Conceals;

(h) Takes;

(i) Retains possession of;

(j) Copies;

(k) Obtains or attempts to obtain access to, permits access to or causes to be accessed; or

(l) Enters,

data, a program or any supporting documents which exist inside or outside a computer, system or network is guilty of a misdemeanor.

2. Except as otherwise provided in subsection 5, a person who knowingly, willingly and without authorization:

(a) Modifies;

(b) Destroys;

(c) Uses;

(d) Takes;

(e) Damages;

(f) Transfers;

(g) Conceals;

(h) Copies;

(i) Retains possession of; or

(j) Obtains or attempts to obtain access to, permits access to or causes to be accessed,

equipment or supplies that are used or intended to be used in a computer, system or network is guilty of a misdemeanor.

3. Except as otherwise provided in subsection 5, a person who knowingly, willingly and without authorization:

(a) Destroys;

(b) Damages;

(c) Takes;

(d) Alters;

(e) Transfers;

(f) **Discloses;**

(g) Conceals;

(h) Copies;

(i) Uses;

(j) Retains possession of; or

(k) Obtains or attempts to obtain access to, permits access to or causes to be accessed,

a computer, system or network is guilty of a misdemeanor.

4. Except as otherwise provided in subsection 5, a person who knowingly, willingly and without authorization:

(a) Obtains and **discloses;**

(b) Publishes;

(c) Transfers; or

(d) Uses,

a device used to access a computer, network or data is guilty of a misdemeanor.

5. If the violation of any provision of this section:

(a) Was committed to devise or execute a scheme to defraud or illegally obtain property;

(b) Caused damage in excess of $500; or

(c) Caused an interruption or impairment of a public service, such as a governmental operation, system of public communication or transportation or supply of water, gas or electricity,

the person shall be punished by imprisonment in the state prison for not less than 1 year nor more than 6 years, and may be further punished by a fine of not more than $100,000.

(Added to NRS by 1983, 1203; A 1991, 50)

**Sec. 48. 207.120 Statements and fingerprints confidential; dissemination of information.**

1. The statements and fingerprints provided for in NRS 207.090, 207.100 and 207.110 must at all times be kept by the sheriff or chief of police in a file separate and apart from other files and records maintained and kept by the sheriff or chief of police, and must not be open to inspection by the public, or by any person other than a regular law enforcement officer.

2. Copies of those statements and fingerprints may be transmitted to:

(a) The sheriff of any county in this state;

(b) The head of any organized police department of any municipality in this state;

(c) The head of any department of the State of Nevada engaged in the enforcement of any criminal law of this state;

(d) The Nevada gaming commission and state gaming control board or any successor thereto;

(e) The head of any federal law enforcement agency;

(f) Any sheriff or chief of police of a municipality; or

(g) The head of any other law enforcement agency in any state or territory outside of this state, if a request is made in writing by such sheriff or other head of a law enforcement agency asking for the record of a certain person named therein, or for the record of a person whose fingerprints reasonably correspond with fingerprints submitted with the request, and stating that the record is deemed necessary for the use of that law enforcement officer or agency in or concerning the investigation of any crime, or any person who is accused of committing a crime, or any crime which is reported to have been committed, and further stating that the record will be used only for that purpose.

3. A sheriff or chief of police shall, upon the written request of a county clerk or registrar of voters, furnish him with a list containing the name and current address of the residence of each person required to register pursuant to NRS 207.090 and 207.100.

[5:123:1955]--(NRS A 1965, 1031; 1989, 2173)

DEPARTMENT OF PRISONS

**Sec. 49. 209.419 Interception of offender's communications by telephone: Notice; exceptions.**

1. Communications made by an offender on any telephone in an institution or facility to any person outside the institution or facility may be intercepted if:

(a) The interception is made by an authorized employee of the department; and

(b) Signs are posted near all telephones in the institution or facility indicating that communications may be intercepted.

2. The director [director of the Department of Prisons] shall provide notice or cause notice to be provided to both parties to a communication which is being intercepted pursuant to subsection 1, indicating that the communication is being intercepted. For the purposes of this section, a periodic sound which is heard by both parties during the communication shall be deemed notice to both parties that the communication is being intercepted.

3. The director shall adopt regulations providing for an alternate method of communication for those communications by offenders which are **confidential**.

4. A communication made by an offender is **confidential** if it is made to:

(a) A federal or state officer.

(b) A local governmental officer who is at some time responsible for the custody of the offender.

(c) An officer of any court.

(d) An attorney who has been admitted to practice law in any state or is employed by a recognized agency providing legal assistance.

(e) A reporter or editorial employee of any organization that reports general news including, but not limited to, any wire service or news service, newspaper, periodical, press association or radio or television station.

(f) The director.

(g) Any other employee of the department whom the director may, by regulation, designate.

5. Reliance in good faith on a request or order from the director or his authorized representative constitutes a complete defense to any action brought against any public utility intercepting or assisting in the interception of communications made by offenders pursuant to subsection 1.

(Added to NRS by 1983, 682; A 1985, 253)

## PARDONS AND PAROLES; REMISSIONS OF FINES AND COMMUTATIONS OF PUNISHMENTS

**Sec. 50. 213.1098 Information obtained by parole and probation officers and employees privileged; nondisclosure.** All information obtained in the discharge of official duty by a parole and probation officer or employee of the board [state board of parole commissioners] shall be privileged and shall not be **disclosed** directly or indirectly to anyone other than the board, the judge, district attorney or others entitled to receive such information, unless otherwise ordered by the board or judge or unless necessary to perform the duties of the department.

(Added to NRS by 1959, 799; A 1975, 179)

## AID TO CERTAIN VICTIMS OF CRIME

**Sec. 51. 217.105 Confidentiality of information.** Any information which a compensation officer [compensation officer of the hearings division of the Department of Administration] obtains in the investigation of a claim for compensation pursuant to NRS 217.090 or which is submitted pursuant to NRS 217.100 is **confidential** and must not be **disclosed** except:

1. Upon the request of the applicant or his attorney;
2. In the necessary administration of this chapter; or
3. Upon the lawful order of a court of competent jurisdiction,

unless the **disclosure** is otherwise prohibited by law.

(Added to NRS by 1989, 1509; A 1991, 765)

## STATE LEGISLATURE

**Sec. 52. 218.5391 Records and reports of district attorneys and public defenders to be prescribed by legislative commission; use.**

1. The legislative commission shall prescribe by regulation:

(a) The kinds of records to be kept by each district attorney and public defender for the information of the legislature, and may classify such requirements by population of the county if appropriate.

(b) The reports to be made of the contents of such records, including the period to be covered and the date of submission of each report.

2. Each report prescribed pursuant to this section is for the use of the legislature, the legislative commission and the staff of the legislative counsel bureau only. Statistical summaries may be published, but information upon the qualifications or salary of any particular person shall not be **disclosed** outside the legislative department.

(Added to NRS by 1977, 331)

**Sec. 53. 218.625 Officers and employees not to oppose or urge legislation; restrictions upon disclosure; public inspection of records of expenses of travel.**

1. The director, other officers and employees of the legislative counsel bureau shall not:

(a) Oppose or urge legislation, except as the duties of the director, the legislative auditor, the legislative counsel, the research director and the fiscal analysts require them to make recommendations to the legislature.

(b) Except as otherwise provided in this section, NRS 218.2475, 218.2477 and 353.211, **disclose** to any person outside the legislative counsel bureau the contents or nature of any matter, unless the person entrusting the matter to the legislative counsel bureau so requests or consents.

2. Except as the legislative auditor and his staff are further restricted by this chapter, the nature or content of any work previously done by the personnel of the legislative counsel bureau may be **disclosed** to a legislator or public agency if or to the

extent that the **disclosure** does not reveal the identity of the person who requested it or include any material submitted by the requester which has not been published or publicly **disclosed.**

3. When a statute has been enacted or a resolution adopted, the legislative counsel shall upon request **disclose** to any person the state or other jurisdiction from whose law it appears to have been adopted.

4. The records of the travel expenses of legislators and officers and employees of the legislative counsel bureau are available for public inspection at such reasonable hours and under such other conditions as the legislative commission prescribes.

5. If a legislator asks whether a request for proposed legislation relating to a specific topic has been submitted to the legislative counsel for preparation, the legislative counsel shall **disclose** to that legislator whether such a request has been submitted.

6. Upon receipt of a request for the preparation of a measure to be submitted to the legislature which duplicates or closely resembles a request previously submitted for the same legislative session, the legislative counsel shall, to the extent practicable, notify the person submitting the duplicative request of that fact and, except as otherwise provided in this subsection, ask the person to withdraw the request. If the request is not withdrawn, the legislative counsel shall inform the previous requester of the fact that a duplicative request has been made. If the request is submitted by a legislator on his own behalf, and the previous request was submitted by a legislator who is a member of the other house of the legislature, the legislative counsel shall inform the second requester of the fact that the request is duplicative.

(Added to NRS by 1977, 340; A 1979, 1327; 1985, 1131; 1987, 1167; 1989, 267; 1991, 462, 1835, 2447)

**Sec. 54. 218.823 Audits: Presentation and distribution of final report; restriction on disclosure.**

1. The legislative auditor shall present a final written report of each audit to the legislative commission and furnish copies to all members of the legislature, other appropriate state officers and the head of the agency audited.

2. The legislative commission may by regulation provide for the:

(a) Presentation of the final written report of each audit to the audit subcommittee before the report is presented to the legislative commission.

(b) Distribution of copies of the final written report of an audit to each member of the legislative commission or audit subcommittee, or both, before the report is presented to the legislative commission.

(c) Distribution of copies of the final written report or a summary of the final report to all members of the legislature, other appropriate state officers and the head of the agency audited after the final report is presented to the audit subcommittee.

3. Except as otherwise provided by this chapter, the legislative auditor shall not **disclose** the content of any audit before it is presented to the:

(a) Audit subcommittee, if the final written report is presented to the audit subcommittee pursuant to regulations adopted by the legislative commission.

(b) Legislative commission, if the final written report is not presented to the audit subcommittee pursuant to regulations adopted by the legislative commission.

(Added to NRS by 1977, 756; A 1989, 264; 1991, 393)

**Sec. 55. 218.870 Legislative auditor to keep file of reports and releases; confidentiality of working papers from audit.**

1. The legislative auditor shall keep or cause to be kept a complete file of copies of all reports of audits, examinations, investigations and all other reports or releases issued by him.

2. All working papers from an audit are **confidential** and may be destroyed by the legislative auditor 5 years after the report is issued, except that the legislative auditor:

(a) Shall release such working papers when subpenaed by a court; or

(b) May make such working papers available for inspection by an authorized representative of any other governmental entity for a matter officially before him or by any other person authorized by the legislative commission.

[16:205:1949; 1943 NCL § 7345.16]--(NRS A 1963, 1021; 1969, 497; 1973, 1664; 1977, 6; 1979, 291; 1985, 854)

**Sec. 56. 218.893 Audits to ensure compliance with federal regulations: Selection of firm to perform audit; performance of audit; submission, presentation and distribution of report.**

1. The audit subcommittee shall confer with the legislative auditor to establish standards of performance to be required of a firm chosen to perform an audit. The audit subcommittee shall conduct negotiations with each of the firms recommended for consideration by the legislative auditor and shall select the firm or firms which, in the judgment of the audit subcommittee, are best qualified to meet the standards of performance established. During the negotiations and in making its selection, the audit subcommittee shall consider:

(a) The competency of the firms being considered;

(b) The estimated cost of the services required to conduct the audit; and

(c) The scope and complexity of the services required.

2. Each contract for an audit must be signed by the legislative auditor and an authorized representative of the firm selected to perform the audit. The legislative auditor shall periodically inspect the performance of the firm performing the audit to ensure that the terms of the contract are being complied with.

3. Except as otherwise provided in NRS 218.891 and 218.892 and in this section, the officers and employees of a firm performing an audit shall keep information **disclosed** by an audit in strict confidence and shall not **disclose** the contents of an audit before it is presented to the audit subcommittee. The officers and employees of the firm have the same rights of access to books, accounts, records, files, correspondence or other documents that the legislative auditor has.

4. At the conclusion of the audit, the firm or firms which have performed the audit shall submit a written report of the audit to the legislative auditor. The legislative auditor shall follow the procedures set forth in NRS 218.821, concerning preliminary audit reports and shall attend, or have a member of his staff attend, the discussion held pursuant to that section.

5. The legislative commission may by regulation provide for the distribution of copies of the written report submitted to the legislative auditor pursuant to subsection 4, to each member of the audit subcommittee before the report is presented to the audit subcommittee pursuant to subsection 6.

6. The legislative auditor shall present the final audit report to the audit subcommittee and thereafter distribute the report or a summary of the report to members of the legislature, other appropriate state officers and the head of the agency audited.

(Added to NRS by 1981, 1177; A 1983, 162; 1991, 394)

## ECONOMIC DEVELOPMENT AND TOURISM

**Sec. 57. 231.069 Confidentiality of records and documents submitted by client.**

1. If so requested by a client, the commission on economic development shall keep **confidential** any record or other document in its possession concerning the initial contact with and research and planning for that client. If such a request is made, the executive director shall attach to the file containing the record or document a certificate signed by him stating that a request for **confidentiality** was made by the client and the date of the request.

2. Records and documents that are **confidential** pursuant to subsection 1 remain **confidential** until the client:

(a) Initiates any process regarding the location of his business in Nevada which is within the jurisdiction of a state agency other than the commission; or

(b) Decides to locate his business in Nevada.

(Added to NRS by 1987, 1671; A 1989, 554)

## COMMISSION ON EQUAL RIGHTS

**Sec. 58. 233.190 Confidentiality of information.** All information gathered by the commission in the course of its investigation of an alleged unlawful discriminatory practice in housing, employment or public accommodations is **confidential** until the commission has determined to conduct a hearing on the matter or applies for a temporary restraining order or an injunction. If the commission's attempts at mediating or conciliating the cause of the grievance succeed, the information shall remain **confidential**. If the commission proceeds with a hearing or applies for injunctive relief, **confidentiality** concerning any information except negotiations for a settlement is no longer required.

(Added to NRS by 1977, 1606)

**Sec. 59. 239.013 Confidentiality of records of library which identify user with property used.** Any records of a public library or other library which contain the identity of a user and the books, documents, films, recordings or other property of the library which he used are **confidential** and not public books or records within the meaning of NRS 239.010. Such records may be **disclosed** only in response to an order issued by a court upon a finding that the **disclosure** of such records is necessary to protect the public safety or to prosecute a crime.

(Added to NRS by 1981, 182)

## MEETINGS OF STATE AND LOCAL AGENCIES

**Sec. 60. 241.030 Exceptions to requirement for open and public meetings.**

1. Nothing contained in this chapter prevents a public body from holding a closed meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of a person.

2. A public body may close a meeting upon a motion which specifies the nature of the business to be considered.

3. This chapter does not:

(a) Apply to judicial proceedings.

(b) Prevent the removal of any person who willfully disrupts a meeting to the extent that its orderly conduct is made impractical.

(c) Prevent the exclusion of witnesses from a public or private meeting during the examination of another witness.

(d) Require that any meeting be closed to the public.

(e) Permit a closed meeting for the discussion of the appointment of any person to public office or as a member of a public body.

4. The exception provided by this section, and electronic communication, must not be used to circumvent the spirit or letter of this chapter in order to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory powers.

(Added to NRS by 1960, 25; A 1977, 1100; 1983, 331)

**Sec. 61. 241.035 Public meetings: Minutes; aural and visual reproduction.**

1. Each public body shall keep written minutes of each of its meetings, including:

(a) The date, time and place of the meeting.

(b) Those members of the body who were present and those who were absent.

(c) The substance of all matters proposed, discussed or decided and, at the request of any member, a record of each member's vote on any matter decided by vote.

(d) The substance of remarks made by any member of the general public who addresses the body if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.

(e) Any other information which any member of the body requests to be included or reflected in the minutes.

2. Minutes of public meetings are public records. Minutes or audiotape recordings of the meetings must be made available for inspection by the public within 30 working days after the adjournment of the meeting at which taken. The minutes must be retained by the public body for at least 5 years. Minutes of meetings closed pursuant to NRS 241.030 become public records when the body determines that the matters discussed no longer require **confidentiality** and the person whose character, conduct, competence or health was discussed has consented to their **disclosure.** That person is entitled to a copy of the minutes upon request whether or not they become public records.

3. All or part of any meeting of a public body may be recorded on audiotape or any other means of sound or video reproduction by a member of the general public if it is a public meeting so long as this in no way interferes with the conduct of the meeting.

4. Each public body may record on audiotape or any other means of sound reproduction each of its meetings, whether public or closed. If a meeting is so recorded:

(a) The record must be retained by the public body for at least 1 year after the adjournment of the meeting at which it was recorded.

(b) The record of a public meeting is a public record and must be made available for inspection by the public during the time the record is retained.

Any record made pursuant to this subsection must be made available to the attorney general upon request.

(Added to NRS by 1977, 1099; A 1989, 571)



**Sec. 62. 244.335 Powers of commissioners and county license boards; application for certain licenses; license tax as lien; confidential information.**

1. Except as otherwise provided in subsection 2, the board of county commissioners may:

(a) Regulate all character of lawful trades, callings, industries, occupations, professions and business conducted in its county outside of the limits of incorporated cities and towns.

(b) Except as otherwise provided in NRS 244.3359, fix, impose and collect a license tax for revenue or for regulation, or for both revenue and regulation, on such trades, callings, industries, occupations, professions and business.

2. The county license boards have the exclusive power in their respective counties to regulate entertainers employed by an entertainment by referral service and the business of conducting a dancing hall, escort service, entertainment by referral service or gambling game or device permitted by law, outside of an incorporated city. The county license boards may fix, impose and collect license taxes for revenue or for regulation, or for both revenue and regulation, on such employment and businesses.

3. No license to engage in any type of business may be granted unless the applicant for the license signs an affidavit affirming that the business has complied with the provisions of chapter 364A of NRS. The county license board shall provide upon request an application for a business license pursuant to chapter 364A of NRS.

4. No license to engage in business as a seller of tangible personal property may be granted unless the applicant for the license presents written evidence that:

(a) The department of taxation has issued or will issue a permit for this activity, and this evidence clearly identifies the business by name; or

(b) Another regulatory agency of the state has issued or will issue a license required for this activity.

5. Any license tax levied for the purposes of NRS 244.3358 or 244A.597 to 244A.655, inclusive, constitutes a lien upon the real and personal property of the business upon which the tax was levied until the tax is paid. The lien must be enforced in the following manner:

(a) By recording in the office of the county recorder, within 90 days following the date on which the tax became delinquent, a notice of the tax lien containing the following:

(1) The amount of tax due and the appropriate year;

(2) The name of the record owner of the property;

(3) A description of the property sufficient for identification; and

(4) A verification by the oath of any member of the board of county commissioners or the county fair and recreation board; and

(b) By an action for foreclosure against the property in the same manner as an action for foreclosure of any other lien, commenced within 2 years after the date of recording of the notice of the tax lien, and accompanied by appropriate notice to other lienholders.

6. The board of county commissioners may delegate the authority to enforce liens from taxes levied for the purposes of NRS 244A.597 to 244A.655, inclusive, to the county fair and recreation board. Except as otherwise provided in NRS 244.3357, all information concerning license taxes levied by an ordinance authorized by this section or other information concerning the business affairs or operation of any licensee obtained as a result of the payment of such license taxes or as the result of any audit or examination of the books by any authorized employee of a county fair and recreation board of the county for any license tax levied for the purpose of NRS 244A.597 to 244A.655, inclusive, is **confidential** and must not be **disclosed** by any member, officer or employee of the county fair and recreation board or the county imposing the license tax unless the **disclosure** is authorized by the affirmative action of a majority of the members of the appropriate county fair and recreation

board. Continuing **disclosure** may be so authorized under an agreement with the department of taxation for the exchange of information concerning taxpayers.

[Part 8:80:1865; A 1871, 47; 1931, 52; 1933, 203; 1953, 681]--(NRS A 1959, 220; 1961, 364; 1963, 794; 1971, 497; 1973, 324; 1977, 818; 1979, 727; 1983, 759; 1985, 386; 1987, 2306; 1989, 242, 906, 1970; 1991, 27, 165, 2461)

## POWERS AND DUTIES COMMON TO CITIES AND TOWNS INCORPORATED UNDER GENERAL OR SPECIAL LAWS

**Sec. 63. 268.095 Powers of governing body; application for certain licenses; uses of proceeds of tax; license tax as lien; confidential information.**

1. The city council or other governing body of each incorporated city in the State of Nevada, whether organized under general law or special charter, may:

(a) Except as otherwise provided in NRS 268.0968, fix, impose and collect for revenues or for regulation, or both, a license tax on all character of lawful trades, callings, industries, occupations, professions and businesses conducted within its corporate limits.

(b) Assign the proceeds of any one or more such license taxes to the county within which the city is situated for the purpose or purposes of making the proceeds available to the county:

(1) As a pledge as additional security for the payment of any general obligation bonds issued pursuant to NRS 244A.597 to 244A.655, inclusive;

(2) For redeeming any general obligation bonds issued pursuant to NRS 244A.597 to 244A.655, inclusive;

(3) For defraying the costs of collecting or otherwise administering any such license tax so assigned, of the county fair and recreation board and of officers, agents and employees hired thereby, and of incidentals incurred thereby;

(4) For operating and maintaining recreational facilities under the jurisdiction of the county fair and recreation board;

(5) For improving, extending and bettering recreational facilities authorized by NRS 244A.597 to 244A.655, inclusive; and

(6) For constructing, purchasing or otherwise acquiring such recreational facilities.

(c) Pledge the proceeds of any tax imposed on the revenues from the rental of transient lodging pursuant to this section for the payment of any general obligations issued by the city for a purpose authorized by the City Bond Law, NRS 268.672 to 268.740, inclusive.

(d) Use the proceeds of any tax imposed pursuant to this section on the revenues from the rental of transient lodging:

(1) To pay the principal, interest or any other indebtedness on any general or special obligations issued by the city pursuant to the City Bond Law, NRS 268.672 to 268.740, inclusive;

(2) For the expense of operating or maintaining, or both, any facilities of the city; and

(3) For any other purpose for which other money of the city may be used.

2. The proceeds of any tax imposed pursuant to this section that are pledged for the repayment of general obligations may be treated as "pledged revenues" for the purposes of NRS 350.020.

3. No license to engage in any type of business may be granted unless the applicant for the license signs an affidavit affirming that the business has complied with the provisions of chapter 364A of NRS. The city licensing agency shall provide upon request an application for a business license pursuant to chapter 364A of NRS.

4. No license to engage in business as a seller of tangible personal property may be granted unless the applicant for the license presents written evidence that:

(a) The department of taxation has issued or will issue a permit for this activity, and this evidence clearly identifies the business by name; or

(b) Another regulatory agency of the state has issued or will issue a license required for this activity.

5. Any license tax levied under the provisions of this section constitutes a lien upon the real and personal property of the business upon which the tax was levied until the tax is paid. The lien must be enforced in the following manner:

(a) By recording in the office of the county recorder, within 90 days following the date on which the tax became delinquent, a notice of the tax lien containing the following:

(1) The amount of tax due and the appropriate year;

(2) The name of the record owner of the property;

(3) A description of the property sufficient for identification; and

(4) A verification by the oath of any member of the board of county commissioners or the county fair and recreation board; and

(b) By an action for foreclosure against such property in the same manner as an action for foreclosure of any other lien, commenced within 2 years after the date of recording of the notice of the tax lien, and accompanied by appropriate notice to other lienholders.

6. The city council or other governing body of each incorporated city may delegate the power and authority to enforce such liens to the county fair and recreation board. Except as otherwise provided in NRS 268.0966, all information concerning license taxes levied by an ordinance authorized by this section or other information concerning the business affairs or operation of any licensee obtained as a result of the payment of those license taxes or as the result of any audit or examination of the books of the city by any authorized employee of a county fair and recreation board for any license tax levied for the purpose of NRS 244A.597 to 244A.655, inclusive, is **confidential** and must not be **disclosed** by any member, official or employee of the county fair and recreation board or the city imposing the license tax unless the **disclosure** is authorized by the affirmative action of a majority of the members of the appropriate county fair and recreation board. Continuing **disclosure** may be so authorized under an agreement with the department of taxation for the exchange of information concerning taxpayers.

7. The powers conferred by this section are in addition and supplemental to, and not in substitution for, and the limitations imposed by this section do not affect the powers conferred by, any other law. No part of this section repeals or affects any other law or any part thereof, it being intended that this section provide a separate method of accomplishing its objectives, and not an exclusive one.

(Added to NRS by 1957, 643; A 1960, 179; 1963, 794; 1971, 497; 1973, 325; 1983, 761; 1987, 1712; 1989, 908; 1991, 31, 2327, 2462)

**Sec. 64. 268.490 Records; confidentiality.** The municipality shall cause to be kept proper records of all license taxes which become due or which are collected, or both, including, without limiting the generality of the foregoing, records of delinquent taxes, interest thereon and penalties therefrom, which records shall be deemed **confidential** and shall not be revealed in whole or in part to anyone except in the necessary administration of NRS 268.460 to 268.510, inclusive, or as otherwise provided by law.

(Added to NRS by 1960, 115)

GENERAL PROVISIONS

(Public Officers and Employees)

**Sec. 65. 281.511 Commission to hold public hearings, render advisory opinions and publish abstracts; confidentiality; notice and hearing.**

1. The commission [Commission on Ethics] shall render an opinion interpreting the statutory ethical standards and apply the standards to a given set of facts and circumstances, upon request, from a public officer or employee who is seeking guidance on questions which directly relate to the propriety of his own past, present or future conduct as an officer or employee. He may also request the commission to hold a public hearing regarding the requested opinion. If a requested opinion relates to the propriety of his own present or future conduct, the opinion of the commission is:

(a) Binding upon the requester as to his future conduct; and

(b) Final and subject to judicial review pursuant to NRS 233B.130, except that any proceeding regarding this review must be held in closed court without admittance of any person other than those necessary to the proceeding, unless this right to **confidential** proceedings is waived by the requester.

2. The commission may render an opinion interpreting the statutory ethical standards and apply the standards to a given set of facts and circumstances:

(a) Upon request from a specialized or local ethics committee;

(b) Upon request from any person, if the requester submits all related evidence deemed necessary by the commission for it to make a preliminary determination of whether it desires to take jurisdiction over the matter; or

(c) Upon the commission's own motion regarding the propriety of conduct by a public officer or employee, if the commission first determines in an adopted motion that there is just and sufficient cause to render an opinion concerning the conduct of that public officer or employee,

on the condition that any public officer or employee about whom an opinion is requested or authorized must be notified immediately by certified mail that an opinion has been requested or authorized and that he has a right to appear before the commission and present evidence and argument. The commission shall not issue an opinion nor determine that just and sufficient cause exists to render an opinion without extending him an opportunity to appear before the commission and present evidence and argument.

3. The commission shall render the opinion requested pursuant to this section as expeditiously as possible in light of the circumstances of the public officer or employee about whom the opinion is requested, so as to minimize any adverse consequences to him that may result from any delay in issuing the opinion.

4. Each opinion rendered by the commission and any motion relating to the opinion is **confidential** unless:

(a) The public officer or employee acts in contravention of the opinion, in which case the commission may **disclose** the contents of the opinion and any motion related thereto;

(b) It is an opinion requested pursuant to subsection 1 and the requester **discloses** the content of the opinion;

(c) It is an opinion requested or issued pursuant to paragraph (b) or (c) of subsection 2 and the person about whom the opinion was requested **discloses** the content of the opinion, the request or any motion or action related thereto;

(d) It is an opinion requested pursuant to subsection 2, the commission determines that there is insufficient basis to render an opinion and the person about whom the opinion was requested has asked the commission to make public the reasons for not rendering the opinion;

(e) It is a motion or preliminary determination relating to an opinion requested pursuant to paragraph (b) of subsection 2 that the commission determines should be made public; or

(f) It is an opinion relating to the propriety of past conduct that the commission determines should be made public.

5. If an opinion is requested and a motion that there is just and sufficient cause to render an opinion has been adopted by the commission, the commission shall:

(a) Notify the person about whom the opinion was requested of the place and time of the commission's hearing on the matter;

(b) Allow him to be represented by counsel; and

(c) Allow him to hear the evidence presented to the commission and to respond and present evidence on his own behalf.

The commission's hearing may be held no sooner than 2 weeks after the notice is given.

6. If any person requesting an opinion pursuant to subsection 1 or 2 does not:

(a) Submit all necessary information to the commission; and

(b) Declare by oath or affirmation that he will testify truthfully,

the commission may decline to render an opinion.

7. For the purposes of NRS 41.032, the members of the commission and its employees shall be deemed to be exercising or performing a discretionary function or duty when taking any action related to the rendering of an opinion pursuant to this section.

8. Except as otherwise provided in this subsection, the commission shall publish hypothetical opinions which are abstracted from the opinions rendered under subsection 1 or 2, for the future guidance of all persons concerned with ethical standards in government. The commission need not publish a hypothetical opinion regarding issues covered by an opinion which was made public in accordance with subsection 4.

9. A meeting held by the commission to receive information concerning the propriety of the conduct of any public officer or employee is not subject to any provision of chapter 241 of NRS.

(Added to NRS by 1977, 1107; A 1985, 2124; 1987, 2095; 1991, 1598)

**Sec. 66. 281.541 Specialized or local ethics committee: Establishment; functions; confidentiality.**

1. Any department, board, commission or other agency of the state or the governing body of a county or an incorporated city may establish a specialized or local ethics committee to complement the functions of the commission. Such a committee may:

(a) Establish a code of ethical standards suitable for the particular ethical problems encountered in its sphere of activity. The standards may not be less restrictive than the statutory ethical standards.

(b) Render an opinion upon the request of any public officer or employee of its own organization or level seeking an interpretation of its ethical standards on questions directly related to the propriety of his own future official conduct or refer the request to the commission. Any public officer or employee under such a committee shall direct his inquiry to that committee instead of the commission.

2. Such a committee shall not attempt to interpret or render an opinion regarding the statutory ethical standards.

3. Each request submitted to a local ethics committee, each opinion rendered by a committee and any motion relating to the opinion is **confidential** unless:

(a) The public officer or employee acts in contravention of the opinion; or

(b) The requester **discloses** the content of the opinion.

(Added to NRS by 1977, 1107; A 1985, 2126; 1991, 105)

STATE PERSONNEL SYSTEM

**Sec. 67. 284.4068 Screening tests: Results confidential; admissibility of results; security; disclosure.** The results of a screening test taken pursuant to NRS 284.4061 to 284.407, inclusive, are **confidential** and:

1. Are not admissible in a criminal proceeding against the person tested;

2. Must be securely maintained by the appointing authority or his designated representative separately from other files concerning personnel; and

3. Must not be **disclosed** to any person, except:

(a) Upon the written consent of the person tested;

(b) As required by medical personnel for the diagnosis or treatment of the person tested, if he is physically unable to give his consent to the **disclosure;**

(c) As required pursuant to a properly issued subpena;

(d) When relevant in a formal dispute between the appointing authority and the person tested; or

(e) As required for the administration of a plan of benefits for employees.

(Added to NRS by 1991, 1351)

PUBLIC EMPLOYEES' RETIREMENT

**Sec. 68. 286.110 Public employees' retirement system: Establishment; review of system; use of state services; public inspection of records; liability of public employers.**

1. An actuarially funded system of retirement providing benefits for the retirement, disability or death of employees of public employers is hereby established and shall be known as the public employees' retirement system. The system is a public agency supported by administrative fees transferred from the retirement funds. The executive and legislative departments of the state government shall regularly review the system.

2. The system is entitled to use any services provided to state agencies, and shall use the services of the purchasing division of the department of general services, but is not required to use any other service. The purpose of this subsection is to provide to the board [public employees' retirement board] the necessary autonomy for an efficient and economic administration of the system and its program.

3. The official correspondence and records, other than the files of individual members or retired employees, and the minutes and books of the system are public records and are available for **public inspection**.

4. The respective participating public employers are not liable for any obligation of the system.

[3:181:1947; 1943 NCL § 5230.03]--(NRS A 1975, 1030; 1977, 1576)

**Sec. 69. 286.686 Authorized investments: Real property; mortgages and leases of real property; confidentiality of records.**

1. The board [Public Employees Retirement Board] may invest the money in its funds in real property, real property mortgages and leases of real property if the board first obtains appraisals and other studies by professionally qualified persons establishing the value of the property and the probable return on such a proposed investment.

2. The board may invest in real property mortgages or deeds of trust up to 80 percent of the appraised value of the real property if the mortgage or deed of trust is secured by a first lien on the property.

3. The board may enter into contracts as it deems necessary to execute and manage investments made pursuant to this chapter. Reimbursements to employees for their expenses incurred in evaluations of real estate investments must be paid from commitment fees or service charges paid to the system by borrowers.

4. The board shall keep applications under this section **confidential** until it finally approves the investment. Documents related to the investment then become public records, except for:

(a) Wills and trust agreements;

(b) Financial statements and copies or excerpts of income tax returns;

(c) Legal and financial evaluations; and

(d) Such other documents as the board determines contain information whose **disclosure** would invade the legitimate personal or financial privacy of the applicant.

(Added to NRS by 1975, 1062; A 1979, 759; 1981, 458; 1983, 490)

PROGRAMS FOR PUBLIC EMPLOYEES

**Sec. 70. 287.0438 Records of the plan [plan of self-insurance] are public records; exception.** Except for the files of individual members and former members, the correspondence, files, minutes and books of the plan [plan of self-insurance] are **public records.**

(Added to NRS by 1987, 326)

ELECTIONS

**Sec. 71. 293.315 Limitation on time to apply for absent ballot; inspection of applications; issuance of absent ballot.**

1. A registered voter referred to in NRS 293.313 may, at any time before 5 p.m. on the Tuesday preceding any election, make an application to that clerk [the clerk in the voter's precinct or district] for an absent voter's ballot. The application is not available for **public inspection** except by:

(a) The voter named in the application;

(b) A candidate whose name appears on the ballot for that election; or

(c) The candidate's official designee who possesses a letter signed under penalty of perjury which states that the person is the representative of the candidate.

When the voter, candidate or candidate's official designee, as the case may be, has identified himself to the satisfaction of the clerk, he is entitled to inspect the application.

2. When the voter has identified himself to the satisfaction of the clerk, he is entitled to receive the appropriate ballot or ballots, but only for his own use.

(Added to NRS by 1960, 256; A 1961, 289; 1967, 849; 1987, 342; 1989, 2166)

MECHANICAL VOTING SYSTEMS

**Sec. 72. 293B.135 Filing before election; inspection.**

1. A copy of each election computer program certified by the accuracy certification board for an election in the state must be filed with the secretary of state at least 1 week before the election. Copies of any subsequent alterations in the program must be filed in the same manner before the election.

2. The copies of the programs filed pursuant to subsection 1 are not public records and are not available for inspection by the public.

3. A copy of a program may be inspected:

(a) By the judge, body or board before whom an election is being contested;

(b) Jointly by the parties to the contest if ordered by the judge, body or board; or

(c) By any other person who is authorized by a court of competent jurisdiction.

(Added to NRS by 1975, 1523; A 1989, 2171)

LANDS UNDER CAREY ACT

**Sec. 73. 324.050 Report of state registrar of lands under Carey Act; pending proceedings not made public.**

1. Before September 1 of each even-numbered year, for the biennium ending June 30 of such year, the state registrar of lands under the Carey Act shall prepare a detailed report of the transactions concerning Carey Act lands and file one copy of the report with the secretary of state.

2. All pending proceedings before the division [division of state lands of the State Department of Conservation and Natural Resources] and the state engineer, except applications for permits for water rights, must not be made public or be open to **public inspection** until the application for segregation is filed in the Bureau of Land Management.

[29:76:1911; RL § 3092; NCL § 5503]--(NRS A 1969, 1456; 1975, 108; 1977, 1193; 1979, 228)

PURCHASING: STATE

**Sec. 74. 333.335 Proposals: Factors to be considered before making an award; relative weight of factors.**

1. After receiving proposals and before making an award, the chief [chief of purchasing division] shall consider:

(a) The best interests of the State of Nevada;

(b) The experience and financial stability of the person submitting a proposal;

(c) Whether the proposal conforms with the terms of the request for proposals;

(d) The price of the proposal; and

(e) Any other factor **disclosed** in the request for proposals.

2. The chief shall determine the relative weight of each factor before a request for proposals is advertised. The weight of each factor must not be **disclosed** before the date proposals are required to be submitted to the purchasing division.

(Added to NRS by 1991, 619)

**Sec. 75. 333.350 Contracts for separate items or portions or groups of items or for portions or groups of portions of a project; rejection of all bids or proposals; necessary open market purchases; withdrawal of bid or proposal; records of bids and proposals.**

1. A contract may be awarded for separate items or portions or groups of items, or for separate portions or groups of portions of a project, as the best interest of the state requires.

2. If, in the judgment of the chief, [chief of the purchasing division] no satisfactory:

(a) Bid has been received, he may reject all bids and shall promptly advertise for new bids as provided in this chapter. Until a satisfactory contract is awarded, he may make as many open market purchases of the commodities involved as are urgently needed to meet the requirements.

(b) Proposal has been received, he may reject all proposals and may advertise for new proposals as provided in this chapter.

3. The chief may allow a person to withdraw his bid or proposal without penalty if:

(a) The chief believes that an obvious error has been made by the person which would cause him financial hardship; and

(b) The contract has not yet been awarded.

4. Each bid or proposal and the name of the person making the bid or proposal must be entered on a record. The record, with the name of the successful bidder or proposer indicated thereon, must, after the award of the contract, be open to **public inspection**.

[24:333:1951]--(NRS A 1963, 1057; 1985, 44; 1991, 622)

REGISTRATION OF PUBLIC SECURITIES

**Sec. 76. 348.420 Records of transferees and pledgees not subject to inspection or copying as public record; maintenance of records of issuer.**

1. Records of the transferees and pledgees of public securities and their addresses are not subject to inspection or copying under any law of this state relating to the inspection or copying of public records.

2. Registration records of the issuer may be maintained at such locations within or without the state as the issuer determines.

(Added to NRS by 1983, 609)

STATE OBLIGATIONS

**Sec. 77. 349.775 Confidentiality of information concerning exporter.** Any information submitted to or compiled by the director [director of the Department of Commerce] regarding the identity, background, finances, marketing plans, trade secrets or any other commercially sensitive affairs of the exporter is **confidential**, unless the exporter consents to its **disclosure.**

(Added to NRS by 1985, 2016)

STATE FINANCIAL ADMINISTRATION

**Sec. 78. 353.205 Parts of state budget.** The state budget for each fiscal year must be set up in three parts:

1. Part 1 must consist of a budget message by the governor which outlines the financial policy of the executive department of the state government for the next 2 fiscal years, describing in connection therewith the important features of the financial plan. It must also embrace a general budget summary setting forth the aggregate figures of the budget in such a manner as to show the balanced relations between the total proposed expenditures and the total anticipated revenues, together with the other means of financing the budget for the next 2 fiscal years, contrasted with the corresponding figures for the last completed fiscal year and fiscal year in progress. The general budget summary must be supported by explanatory schedules or statements, classifying the expenditures contained therein by organizational units, objects and funds, and the income by organizational units, sources and funds.

2. Part 2 must embrace the detailed budget estimates both of expenditures and revenues as provided in NRS 353.150 to 353.246, inclusive. The information must be presented in a manner which sets forth separately the cost of continuing each program at the same level of service as the current year and the cost, by budget issue, of any recommendations to enhance or reduce that level of service. Revenues must be summarized by type and expenditures must be summarized by category of expense. Part 2 must include a mission statement and measurement indicators for each program. It must also include statements of the bonded indebtedness of the state government, showing the requirements for redemption of debt, the debt authorized and unissued, and the condition of the sinking funds, and any statements relative to the financial plan which the governor may deem desirable, or which may be required by the legislature.

3. Part 3 must include the general appropriation bill authorizing, by departments, institutions and agencies, and by funds, all expenditures of the executive department of the state government for the next 2 fiscal years, and may include complete drafts of such other bills as may be required to provide the income necessary to finance the budget and to give legal sanction to the financial plan if adopted by the legislature.

As soon as each part is prepared, a copy of the part must be transmitted to the fiscal analysis division of the legislative counsel bureau for **confidential** examination and retention.

[10:299:1949; 1943 NCL § 6995.10]--(NRS A 1959, 210; 1961, 389; 1963, 491; 1973, 1857; 1977, 347; 1979, 609; 1987, 1323, 1325; 1991, 2443)

PROPERTY TAX

**Sec. 79. 361.877 Disclosure of personal or confidential information prohibited.** No person may publish, disclose or use any personal or confidential information contained in a claim except for purposes connected with the administration of the Senior Citizens' Property Tax Assistance Act.

(Added to NRS by 1973, 1333; A 1975, 491)

BUSINESS TAX

**Sec. 80. 364A.100 Confidentiality of records and files of department.**

1. Except as otherwise provided in subsection 2, the records and files of the department [Department of Taxation] concerning the administration of this chapter are confidential and privileged. The department, and any employee engaged in the administration of this chapter, or charged with the custody of any such records or files, shall not disclose any information obtained from the department's records or files or from any examination, investigation or hearing authorized by the provisions of this chapter. Neither the department nor any employee of the department may be required to produce any of the records, files and information for the inspection of any person or for use in any action or proceeding.

2. The records and files of the department concerning the administration of this chapter are not confidential and privileged in the following cases:

(a) Testimony by a member or employee of the department and production of records, files and information on behalf of the department or a taxpayer in any action or proceeding pursuant to the provisions of this chapter if that testimony or the records, files or information, or the facts shown thereby are directly involved in the action or proceeding.

(b) Delivery to a taxpayer or his authorized representative of a copy of any return or other document filed by the taxpayer pursuant to this chapter.

(c) Publication of statistics so classified as to prevent the identification of a particular business or document.

(d) Exchanges of information with the Internal Revenue Service in accordance with compacts made and provided for in such cases.

(e) Disclosure in confidence to the governor or his agent in the exercise of the governor's general supervisory powers, or to any person authorized to audit the accounts of the department in pursuance of an audit, or to the attorney general or other legal representative of the state in connection with an action or proceeding pursuant to this chapter or to any agency of this or any other state charged with the administration or enforcement of laws relating to workers' compensation, unemployment compensation, public assistance, taxation, labor or gaming.

(Added to NRS by 1991, 2455)

TAX ON SPECIAL FUEL

**Sec. 81. 366.160 Public and confidential records.**

1. All records of mileage operated, origin and destination points within this state, equipment operated in this state, gallons or cubic feet consumed, and tax paid must at all reasonable times be open to the public.

2. All supporting schedules, invoices and other pertinent papers relative to the business affairs and operations of any special fuel dealer or special fuel user, and any information obtained by an investigation of the records and equipment of any special fuel dealer or special fuel user, shall be deemed confidential and must not be revealed in whole or in part to anyone except in the necessary administration of this chapter or as otherwise provided by law.

[25:364:1953]--(NRS A 1987, 1388)

**Sec. 82. 366.180 Unlawful disclosure of information; penalty.**

1. It shall be unlawful for the department [Department of Motor Vehicles and Public Safety] or any person having an administrative duty under this chapter to divulge or to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records of any person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof set forth or disclosed in any report, or to permit any report or copy thereof to be seen or examined by any person except as provided by NRS 366.160 and 366.170.

2. Any violation of the provisions of this section shall be a gross misdemeanor.

[27:364:1953]--(NRS A 1957, 601; 1967, 562)

SALES AND USE TAXES

**Sec. 83. 372.750 Disclosure of information unlawful; exceptions.**

1. Except as otherwise provided in this section, it is a misdemeanor for any member of the Nevada tax commission or officer or employee of the department [Department of Taxation] to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and equipment of any retailer or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular of them, set forth or **disclosed** in any return, or to permit any return or copy of a return, or any book containing any abstract or particulars of it to be seen or examined by any person not connected with the department.

2. The commission [Nevada tax commission] may agree with any county fair and recreation board or the governing body of any county, city or town for the continuing exchange of information concerning taxpayers.

3. The governor may, by general or special order, authorize examination of the records maintained by the department under this chapter by other state officers, by tax officers of another state, by the Federal Government, if a reciprocal arrangement exists, or by any other person. The information so obtained may not be made public except to the extent and in the manner that the order may authorize that it be made public.

4. Successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest and penalties.

5. Relevant information may be **disclosed** as evidence in an appeal by the taxpayer from a determination of tax due.

6. At any time after a determination, decision or order of the executive director [executive director of the Department of Taxation] or other officer of the department imposing upon a person a penalty pursuant to NRS 372.420 or 372.450 for fraud or intent to evade the tax imposed by this chapter on the sale, storage, use or other consumption of any vehicle, vessel or aircraft becomes final or is affirmed by the tax commission, any member of the tax commission or officer or employee of the department may publicly **disclose** the identity of that person and the amount of tax assessed and penalties imposed against him.

(Added to NRS by 1979, 430; A 1983, 316, 763; 1989, 1160)

TAX ON CONTROLLED SUBSTANCES

**Sec. 84. 372A.080 Information and records concerning dealer confidential; limitations on use and admissibility of information; penalty for disclosure.**

1. All information which is submitted to the department [Department of Taxation] by or on behalf of a dealer in controlled substances pursuant to this chapter and all records of the department which contain the name, address or any other identifying information concerning a dealer are **confidential**.

2. No criminal prosecution may be initiated on the basis of:

(a) Information which was submitted to the department; or

(b) Evidence derived from information submitted to the department, pursuant to this chapter or any regulation adopted pursuant thereto.

3. No information described in paragraph (a) or (b) of subsection 2 is admissible in a criminal prosecution, unless the prosecution shows that the information:

(a) Was independently discovered; or

(b) Inevitably would have been discovered based on independent information.

4. This section does not prohibit the department from publishing statistics that do not **disclose** the identity of a dealer or the contents of a particular return or report submitted to the department by a dealer.

5. Any person who releases or reveals **confidential** information in violation of this section is guilty of a gross misdemeanor.

(Added to NRS by 1987, 1738)

**Sec. 85. 374.755 Disclosure of information unlawful; exceptions.**

1. Except as otherwise provided in this section, it is a misdemeanor for any member of the Nevada tax commission or official or employee of the department [Department of Taxation] to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and equipment of any retailer or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or **disclosed** in any return, or to permit any return or copy thereof, or any book containing any abstract or particulars thereof to be seen or examined by any person not connected with the department.

2. The commission [Nevada tax commission] may agree with any county fair and recreation board or the governing body of any county, city or town for the continuing exchange of information concerning taxpayers.

3. The governor may, however, by general or special order, authorize examination of the records maintained by the department under this chapter by other state officers, by tax officers of another state, by the Federal Government, if a reciprocal arrangement exists, or by any other person. The information so obtained pursuant to the order of the governor may not be made public except to the extent and in the manner that the order may authorize that it be made public.

4. Successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest and penalties.

5. Relevant information may be **disclosed** as evidence in an appeal by the taxpayer from a determination of tax due.

6. At any time after a determination, decision or order of the executive director [executive director of the Department of Taxation] or other officer of the department imposing upon a person a penalty pursuant to NRS 374.425 or 374.455 for fraud or intent to evade the tax imposed by this chapter on the sale, storage, use or other consumption of any vehicle, vessel or aircraft becomes final or is affirmed by the tax commission, any member of the tax commission or officer or employee of the department may publicly **disclose** the identity of that person and the amount of tax assessed and penalties imposed against him.

(Added to NRS by 1967, 919; A 1975, 1738; 1983, 317, 764; 1989, 1161)

TAX ON ESTATES

**Sec. 86. 375A.835 Information and records confidential; disclosure prohibited.** All information and records acquired by the department [Department of Taxation] or any of its employees pursuant to this chapter are **confidential** in nature, and except insofar as may be necessary for the enforcement of this chapter or as may be permitted by this chapter, must not be **disclosed.**

(Added to NRS by 1987, 2110)

GENERATION-SKIPPING TRANSFER TAX

**Sec. 87. 375B.450 Confidentiality of information and records; exceptions.** All information and records acquired from the Internal Revenue Service of the United States Department of the Treasury by the Nevada tax commission, the department [Department of Taxation] or any of their employees pursuant to this chapter are **confidential** in nature and, except insofar as may be necessary for the enforcement of this chapter, as an employee of the department has a need to know the information or as may be permitted by this chapter, must not be **disclosed.**

(Added to NRS by 1989, 1500)

**Sec. 88. 378.290 Records of governor's office: Transfer to division before governor leaves office; availability for public inspection.**

1. The records of the governor's office, which include correspondence sent or received by the governor or employees of his office in the performance of governmental duties, are the property of the State of Nevada and must be transferred to the division before the governor leaves office.

2. The division shall make the records of a former governor available for inspection, except:

(a) If that correspondence identifies or can be readily associated with the identity of any person other than a public officer or employee acting in his official capacity, the name and facts which identify that person must be deleted before the correspondence is **disclosed**, unless the person so named or identified is deceased or gives his prior written permission for the **disclosure**.

(b) Any agreement between a former governor and the division made before the passage of this act which provides for a period of **confidentiality**, is unaffected by the provisions of this section.

(c) Records of the governor's office which are transferred to the division during the governor's term of office remain in the custody of the governor and are not subject to the provisions of subsection 2 until after he leaves office.

(Added to NRS by 1983, 1302)

## STATE ADMINISTRATIVE ORGANIZATION

**Sec. 89. 385.355 Tests of general educational development: Disclosure of questions and answers prohibited; exceptions.** It is unlawful to **disclose** the questions contained in tests of general educational development and the approved answers used for grading the tests except:

1. To the extent that **disclosure** is required in the department's [Department of Education] administration of the tests.

2. That a **disclosure** may be made to a state officer who is a member of the executive or legislative branch to the extent that it is related to the performance of that officer's duties.

(Added to NRS by 1983, 768)

## COURSES OF STUDY

**Sec. 90. 389.015 Achievement and proficiency examinations: Requirements; effect of failure to demonstrate adequate achievement or to pass; disclosure of questions and answers prohibited; exceptions.**

1. The board of trustees of each school district shall administer examinations in all public schools within its district to determine the achievement and proficiency of pupils in:

(a) Reading;

(b) Writing; and

(c) Mathematics.

The examinations must be administered before the completion of grades 3, 6, 9 and 12.

2. Different standards of proficiency may be adopted for pupils with diagnosed learning disabilities.

3. If a pupil fails to demonstrate adequate achievement on the examination administered before the completion of grade 3, 6 or 9, he may be promoted to the next higher grade, but the results of his examination must be evaluated to determine what remedial study is appropriate. If a pupil fails to pass the high school proficiency examination administered before the completion of grade 11, he must not be graduated until he is able, through remedial study, to pass the high school proficiency examination, but he may be given a certificate of attendance, in place of a diploma, if he has reached the age of 17 years.

4. The state board [state board of education] shall prescribe standard examinations of achievement and proficiency to be administered pursuant to subsection 1. The questions contained in the examinations and the approved answers used for grading them are **confidential**, and **disclosure** is unlawful except:

(a) To the extent necessary for administering and evaluating the examinations.

(b) That a **disclosure** may be made to a state officer who is a member of the executive or legislative branch to the extent that it is related to the performance of that officer's duties.

(Added to NRS by 1977, 474; A 1983, 769; 1987, 616)

PERSONNEL (Education)

**Sec. 91. 391.035 Confidentiality of application.**

1. An application to the superintendent of public instruction for a license as a teacher or to perform other educational functions and all documents in the department's [Department of Education] file relating to the application, including:

(a) The applicant's health records;

(b) His fingerprints and any report from the Federal Bureau of Investigation;

(c) Transcripts of his record at colleges or other educational institutions;

(d) His scores on the examinations administered pursuant to the regulations adopted by the commission;

(e) Any correspondence concerning the application; and

(f) Any other personal information,

are **confidential**.

2. It is unlawful to **disclose** or release the information in an application or any related document except pursuant to the applicant's written authorization.

3. The department shall, upon request, make available the applicant's file for his inspection during regular business hours.

(Added to NRS by 1983, 769; A 1987, 998)

PUPILS

**Sec. 92. 392.468 Provision of information to certain employees regarding unlawful conduct of pupil.**

1. The board of trustees of a county school district, or its designee, shall inform each employee of the district, including teachers, other licensed employees, drivers of school buses, instructional aides and office managers, who may have consistent contact with a pupil if that pupil has, within the preceding 3 years, unlawfully caused or attempted to cause serious bodily injury to any person. The district shall provide this information based upon any written records that the district maintains or which it receives from a law enforcement agency. The district need not initiate a request for such information from any source.

2. A school district and the members of its board of trustees are not liable for failure strictly to comply with this section if a good faith effort to comply is made.

3. Any information received by an employee pursuant to this section is **confidential** and must not be further disseminated by the employee.

(Added to NRS by 1991, 981)

PRIVATE EDUCATIONAL INSTITUTIONS
AND ESTABLISHMENTS

**Sec. 93. 394.447 Accreditation as evidence of compliance with minimum standards.** Accreditation may be accepted as evidence of compliance with the minimum standards established by the commission, [commission on postsecondary education] or the administrator [administrator of the commission of the postsecondary education] may require further evidence and make further investigation as in his judgment or the judgment of the commission are necessary. Accreditation may be accepted as evidence of compliance only as to the portion or program of an institution accredited by the agency if the institution as a whole is not accredited. Upon request by the administrator, the institution shall submit copies of all written materials in its possession relating to its accreditation. The administrator shall keep the materials **confidential**.

(Added to NRS by 1985, 989; A 1989, 1460)

**Sec. 94. 394.460 License: Application; issuance; provisional license; term; change in ownership or location; addition to facilities; renewal.**

1. Each person required to be licensed as a postsecondary educational institution by the commission or each postsecondary educational institution requesting to add a new program or degree or to renew a license must apply to the administrator, upon forms provided by him. The application must be accompanied by the required fees. The institution's curriculum and financial statement are **confidential** unless, in the opinion of the commission, they militate against the issuance of a license.

2. After review of the application, any other information required by the administrator and the report of the panel of evaluators, and an investigation of the applicant if necessary, the commission shall grant or deny a license or grant a provisional license for a term specified by the commission. Before the expiration of a provisional license, the administrator shall inspect the institution, or the commission may require the appointment of a panel of evaluators to inspect the institution, and recommend whether to revoke or continue the provisional license or to grant an unqualified license. The commission may accept or reject the recommendation.

3. The license must state at least the following information:

(a) The date of issuance, effective date and term of the license.

(b) The correct name, address and owner of the institution.

(c) The approved degrees or occupational subjects.

(d) Any limitation considered necessary by the commission.

4. The term for which a license is given must not exceed 2 years. The license must be posted in a conspicuous place.

5. The license must be issued to the owner or governing body of the institution and is nontransferable. If a change in ownership of the institution occurs, the owner to whom the license was issued shall inform the administrator, and the new owner or governing body must, within 10 days after the change in ownership, apply for an approval of the change of ownership. If it fails to do so, the license terminates.

6. Within 10 days after a change of location or an addition of buildings or other facilities, the institution must file a notice of the change with the administrator.

7. At least 60 days before the expiration of a license, the institution must complete and file with the administrator an application for renewal of its license.

(Added to NRS by 1975, 1511; A 1977, 126; 1979, 1631; 1985, 996; 1989, 1462)

**Sec. 95. 394.465 Certification or investigation of certain employees and agents of postsecondary educational institution.**

1. Except as otherwise provided in subsection 4, before a postsecondary educational institution employs or contracts with a person to occupy:

(a) An instructional position or to act as an agent for the institution, the applicant must arrange with the sheriff of the county in which the institution is located for an investigation of the applicant's background, limited to a photograph, history of residences, employment, education and criminal history, and the submission of his fingerprints to the central repository for Nevada records of criminal history and the Federal Bureau of Investigation.

(b) An administrative or financial position, including a position as school director, personnel officer, counselor, admission representative, solicitor, canvasser, surveyor, financial aid officer or any similar position, the applicant must arrange with the sheriff of the county in which the institution is located for an investigation of the applicant's background, including but not limited to, the items set forth in paragraph (a) of this subsection.

2. The sheriff shall retain one copy of the application and results of the investigation and forward one copy to the administrator. The administrator shall keep the results of the investigation **confidential**, except that if the investigation **discloses** that the applicant has been convicted of any felony, the administrator shall notify the applicant and the hiring institution of the conviction and the nature of the offense.

3. The applicant shall pay the cost of the investigation.

4. An applicant is not required to arrange for an investigation of his background if he is:

(a) Licensed by the superintendent of public instruction;

(b) An employee of the United States Department of Defense; or

(c) A member of the faculty of an accredited postsecondary educational institution in another state who is domiciled in a state other than Nevada and is present in Nevada for a temporary period to teach at a branch of that accredited institution.

(Added to NRS by 1985, 987; A 1987, 409, 1013, 1441; 1989, 1463)

UNIVERSITY OF NEVADA SYSTEM

**Sec. 96. 396.100 Meetings; records open to public inspection.**

1. The board of regents may hold at least four regular meetings in each year, and may hold special meetings at the call of the chairman of the board.

2. At all times, the records of all proceedings of the board are open to **public inspection** except records of a closed meeting which have not become public.

[Part 4:37:1887; C § 1393; RL § 4642; NCL § 7729] + [5:37:1887; C § 1394; RL § 4643; NCL § 7730] + [1:244:1947; 1943 NCL § 7737.01]--(NRS A 1960, 27; 1977, 1102; 1981, 898; 1983, 1442)

**Sec. 97. 396.525 Genetics program: Confidentiality of records and information.**

1. Except as otherwise provided in subsection 2, the records of the genetics program concerning the clients and families of clients are **confidential.**

2. The genetics program may share information in its possession with the University of Nevada School of Medicine and the health division of the department of human resources, if the **confidentiality** of the information is otherwise maintained in accordance with the terms and conditions required by law.

(Added to NRS by 1991, 2066)

HIGHWAYS AND ROADS

**Sec. 98. 408.215 Duties of director: Records; index of deeds; regulations.**

1. The director [of the department of transportation] has charge of all the records of the department, keeping records of all proceedings pertaining to the department and keeping on file information, plans, specifications, estimates, statistics and records prepared by the department, except those financial statements described in NRS 408.333, which must not become matters of public record.

2. The director may photograph, microphotograph or film or dispose of the records of the department referred to in subsection 1 as provided in NRS 239.051, 239.080 and 239.085.

3. The director shall maintain an index or record of deeds or other references of title or interests in and to all lands or interests in land owned or acquired by the department.

4. The director shall adopt such regulations as may be necessary to carry out and enforce the provisions of this chapter.

(Added to NRS by 1957, 669; A 1959, 490; 1963, 576; 1979, 1768; 1981, 602)

EMERGENCIES CONCERNING WATER OR ENERGY

**Sec. 99. 416.070 Confidentiality of information furnished at request of governor; protective order; penalty for disclosure.**

1. Any information furnished under NRS 416.040 [this provision gives the governor the authority to request information concerning the use, supply, source, allocation or distribution of water or energy] and designated as **confidential** by the person providing the information shall be maintained as **confidential** by the governor and any other person who obtains information which he knows to be **confidential** under this section.

2. The governor shall not make known in any manner any particulars of the information to any person other than those he designates in writing as having a need to know such information.

3. No subpena or other judicial order may be issued compelling the governor or any other person to divulge or make known the **confidential** information, except when the information is relevant to proceedings under subsection 6.

4. Nothing in this section prohibits use of **confidential** information to prepare statistics or other general data for publication in such a manner that the identity of particular persons or business establishments is protected.

5. Any person or business establishment who is served with a subpena to give oral testimony or to produce any book, paper, correspondence, memorandum, account, agreements or other document or record pursuant to this chapter may apply to any district court for a protective order as provided by Rule 26 of the Nevada Rules of Civil Procedure.

6. In addition to any other penalties provided by law, a person who willfully discloses **confidential** information in violation of this section is subject to removal from office or immediate dismissal from public employment.

(Added to NRS by 1977, 550)

STATE WELFARE ADMINISTRATION

**Sec. 100. 422.290 Custody, use, preservation and confidentiality of records, files and communications concerning applicants for and recipients of public assistance and services for children.**

1. For the purpose of restricting the use or disclosure of any information concerning applicants for and recipients of public assistance or child welfare services to purposes directly connected to the administration of this chapter, and to provide safeguards therefor, under the applicable provisions of the Social Security Act, the welfare division [welfare division of the Department of Human Resources] shall establish and enforce reasonable rules and regulations governing the custody, use and preservation of the records, files and communications filed with the welfare division.

2. Wherever, under provisions of law or regulations of the welfare division, names and addresses of, or information concerning, applicants for and recipients of assistance are furnished to or held by any other agency or department of government, such agency or department of government is bound by the rules and regulations of the department [Department of Human Resources] prohibiting the publication of lists and records thereof or their use for purposes not directly connected with the administration of this chapter.

3. Except for purposes directly connected with the administration of this chapter, no person may publish, disclose or use, or permit or cause to be published, disclosed or used, any **confidential** information pertaining to a recipient of assistance under the provisions of this chapter.

[12:327:1949; 1943 NCL § 5146.12]--(NRS A 1959, 518; 1963, 906; 1991, 1052)

**Sec. 101. 422.2993 Information obtained in investigation of provider of services under plan for assistance to medically indigent confidential; exception.**

1. Except as otherwise provided in NRS 288.410 and 422.2345 and subsection 2 of this section, any information obtained by the welfare division in an investigation of a provider of services under the plan for assistance to the medically indigent is **confidential**.

2. The information presented as evidence at a hearing:

(a) To enforce the provisions of NRS 422.450 to 422.580, inclusive; or

(b) To review an action by the welfare division against a provider of services under the plan for assistance to the medically indigent,is not **confidential**, except for the identity of any recipient of the assistance.

(Added to NRS by 1987, 1670; A 1991, 1053)

BENEFITS AND PRIVILEGES FOR HANDICAPPED PERSONS

**Sec. 102. 426.573 Disclosure of information concerning applicant for or recipient of services to blind.** Information with respect to any individual applying for or receiving services to the blind shall not be disclosed by the bureau [bureau of services to the blind in the rehabilitation division of the Department of Human Resources] or any of its employees to any person, association or body unless such disclosure is related directly to carrying out the provisions of NRS 426.520 to 426.610, inclusive, or upon written permission of the applicant or recipient.

(Added to NRS by 1967, 805; A 1973, 1390)

SERVICES TO AGING PERSONS

**Sec. 103. 427A.1236 Confidentiality of records.** All records in the possession of the specialist for the rights of elderly persons relating to his counseling or representation of an elderly person are **confidential** and must not be released to any other person except upon order of a court of competent jurisdiction.

(Added to NRS by 1989, 1485)

PUBLIC SERVICES FOR CHILDREN

**Sec. 104. 432.120 Release of information in registries; expunging information and sealing records; regulations.**

1. Information contained in the central or regional registries or obtained for these registries must not be released unless the right of the applicant to the information is confirmed and the released information discloses the nature of the disposition of the case or its current status.

2. Unless an investigation of a report, conducted pursuant to NRS 432.100 to 432.130, inclusive, and 432B.010 to 432B.400, inclusive, reveals some credible evidence of alleged abuse or neglect of a child, all information identifying the subject of a report must be expunged from the central and regional registries at the conclusion of the investigation or within 60 days after the report is filed, whichever occurs first. In all other cases, the record of the substantiated reports contained in the central or regional registries must be sealed no later than 10 years after the child who is the subject of the report reaches the age of 18.

3. The welfare division shall adopt regulations to carry out the provisions of this section.

(Added to NRS by 1975, 790; A 1977, 738; 1985, 1386)

PROTECTION OF CHILDREN FROM ABUSE AND NEGLECT

**Sec. 105. 432B.280 Confidentiality of reports and records of reports and investigations.**

1. Reports made pursuant to this chapter, as well as all records concerning these reports and investigations thereof, are **confidential**.

2. Any person, law enforcement agency or public agency, institution or facility who willfully releases data or information concerning such reports and investigations, except:

(a) Pursuant to a criminal prosecution relating to abuse or neglect of a child; and

(b) To persons or agencies enumerated in NRS 432B.290,

is guilty of a misdemeanor.

(Added to NRS by 1985, 1373)

**Sec. 106. 432B.290 Release of data or information concerning reports and investigations; penalty.**

1. Data or information concerning reports and investigations thereof made pursuant to this chapter may be made available only to:

(a) A physician who has before him a child who he reasonably believes may have been abused or neglected;

(b) A person authorized to place a child in protective custody if he has before him a child who he reasonably believes may have been abused or neglected and he requires the information to determine whether to place the child in protective custody;

(c) An agency, including an agency in another jurisdiction, responsible for or authorized to undertake the care, treatment or supervision of:

(1) The child; or

(2) The person responsible for the child's welfare;

(d) A district attorney or other law enforcement officer who requires the information in connection with an investigation or prosecution of abuse or neglect of a child;

(e) Any court, for in camera inspection only, unless the court determines that public disclosure of the information is necessary for the determination of an issue before it;

(f) A person engaged in bona fide research or an audit, but any information identifying the subjects of a report must not be made available to him;

(g) The child's guardian ad litem;

(h) A grand jury upon its determination that access to these records is necessary in the conduct of its official business;

(i) An agency which provides protective services or which is authorized to receive, investigate and evaluate reports of abuse or neglect of a child;

(j) A team organized for the protection of a child pursuant to NRS 432B.350;

(k) A parent or legal guardian of the child, if the identity of the person responsible for reporting the alleged abuse or neglect of the child to a public agency is kept **confidential**;

(l) The person named in the report as allegedly being abused or neglected, if he is not a minor or otherwise legally incompetent;

(m) An agency which is authorized by law to license foster homes or facilities for children or to investigate persons applying for approval to adopt a child, if the agency has before it an application for that license or is investigating an applicant to adopt a child; or

(n) Upon written consent of the parent, any officer of this state or a city or county thereof or legislator authorized, by the agency or department having jurisdiction or by the legislature, acting within its jurisdiction, to investigate the activities or programs of an agency which provides protective services if:

(1) The identity of the person making the report is kept **confidential**; and

(2) The officer, legislator or a member of his family is not the person alleged to have committed the abuse or neglect.

2. Any person, except for the subject of a report or a district attorney or other law enforcement officer initiating legal proceedings, who is given access, pursuant to subsection 1, to information identifying the subjects of a report who makes this information public is guilty of a misdemeanor.

3. The welfare division shall adopt regulations to carry out the provisions of this section.

(Added to NRS by 1985, 1374)

MENTALLY ILL PERSONS

**Sec. 107. 433A.360 Clinical records: Contents; confidentiality.**

1. A clinical record for each client must be diligently maintained by any division [mental hygiene and mental retardation division of the Department of Human Resources] facility or private institution or facility offering mental health services. The record must include information pertaining to the client's admission, legal status, treatment and individualized plan for habilitation. The clinical record is not a public record and no part of it may be released, except:

(a) The record must be released to physicians, attorneys and social agencies as specifically authorized in writing by the client, his parent, guardian or attorney.

(b) The record must be released to persons authorized by the order of a court of competent jurisdiction.

(c) The record or any part thereof may be disclosed to a qualified member of the staff of a division facility, an employee of the division or a member of the staff of an agency in Nevada which has been established pursuant to the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. §§ 6041 et seq.) or the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. §§ 10801 et seq.) when the administrator [administrator of the mental hygiene and mental retardation division] deems it necessary for the proper care of the client.

(d) Information from the clinical records may be used for statistical and evaluative purposes if the information is abstracted in such a way as to protect the identity of individual clients.

(e) To the extent necessary for a client to make a claim, or for a claim to be made on behalf of a client for aid, insurance or medical assistance to which he may be entitled, information from the records may be released with the written authorization of the client or his guardian.

(f) The record must be released without charge to any member of the staff of an agency in Nevada which has been established pursuant to 42 U.S.C. §§ 6041 et seq. or 42 U.S.C. §§ 10801 et seq. if:

(1) The client is a client of that office and he or his legal representative or guardian authorizes the release of the record; or

(2) A complaint regarding a client was received by the office or there is probable cause to believe that the client has been abused or neglected and the client:

(I) Is unable to authorize the release of the record because of his mental or physical condition; and

(II) Does not have a guardian or other legal representative or is a ward of the state.

(g) The record must be released as provided in NRS 433.332 and in chapter 629 of NRS.

2. As used in this section, "client" includes any person who seeks, on his own or others' initiative, and can benefit from care, treatment and training in a private institution or facility offering mental health services.

(Added to NRS by 1975, 1611; A 1987, 746, 1197; 1989, 2056; 1991, 2351)

**433A.703 Right to petition for sealing of records.** Any person who is admitted to a public or private hospital or mental health facility in this state either voluntarily or as the result of a noncriminal proceeding, and who has been released as recovered or with his illness in substantial remission, may file a verified petition for the **sealing** of all court and clinical records relating to his admission and treatment.

(Added to NRS by 1987, 745)

ADMINISTRATION OF PUBLIC HEALTH

**Sec. 108. 439.270 Physician to report to health division name, age and address of person diagnosed as epileptic.**

1. The state board of health shall define epilepsy for the purposes of the reports hereinafter referred to in this section.

2. All physicians shall report immediately to the health division, [health division of the Department of Human Resources] in writing, the name, age and address of every person diagnosed as a case of epilepsy.

3. The health division shall report, in writing, to the department of motor vehicles and public safety the name, age and address of every person reported to it as a case of epilepsy.

4. The reports are for the information of the department of motor vehicles and public safety and must be kept **confidential** and used solely to determine the eligibility of any person to operate a vehicle on the streets and highways of this state.

5. A violation of this section is a misdemeanor.

[1:269:1953] + [2:269:1953] + [3:269:1953] + [4:269:1953] + [5:269:1953]--(NRS A 1957, 630; 1963, 941; 1985, 1990)

PLANNING FOR THE PROVISION OF HEALTH CARE

**Sec. 109. 439A.106 Department to prepare listing of hospitals and charges for services; disclosure of details of contracts; report to legislature on costs of health care.**

1. The department [Department of Human Resources] shall prepare quarterly and release for publication or other dissemination a listing of every hospital in the state and its charges for representative services. The listing must include information regarding each hospital's average and total contractual allowances to categories of payers who pay on the basis of alternative rates rather than billed charges.

2. The department shall not disclose or report the details of contracts entered into by a hospital, or disclose or report information pursuant to this section in a manner that would allow identification of an individual payer or other party to a contract with the hospital, except that the department may disclose to other state agencies the details of contracts between the hospital and a related entity. A state agency shall not disclose or report information disclosed to the agency by the department pursuant to this subsection in a manner that would allow identification of an individual payer or other party to a contract with the hospital.

3. The department shall report quarterly to the legislative committee on health care regarding the effects of legislation on the costs of health care and on the manner of its provision.

4. As used in this section, "related entity" means an affiliated person or subsidiary as those terms are defined in NRS 439B.430.

(Added to NRS by 1987, 873; A 1991, 2111, 2331)

**Sec. 110. 439B.420 Prohibited acts of hospitals and related entities; exceptions; submission of contracts to director; civil penalty.**

1. A hospital or related entity shall not establish a rental agreement with a physician or entity that employs physicians that requires any portion of his medical practice to be referred to the hospital or related entity.

2. No rent required of a physician or entity which employs physicians by a hospital or related entity may be less than 75 percent of the rent for comparable office space leased to another physician or other lessee in the building, or in a comparable building owned by the hospital or entity.

3. A hospital or related entity shall not pay any portion of the rent of a physician or entity which employs physicians within facilities not owned or operated by the hospital or related entity, unless the resulting rent is no lower than the highest rent for which the hospital or related entity rents comparable office space to other physicians.

4. No health facility may offer any provider of medical care any financial inducement, excluding rental agreements subject to the provisions of subsection 2 or 3, whether in the form of immediate, delayed, direct or indirect payment to induce the referral of a patient or group of patients to the health facility. This subsection does not prohibit bona fide gifts under $100, or reasonable promotional food or entertainment.

5. The provisions of subsections 1 to 4, inclusive, do not apply to hospitals in a county whose population is less than 35,000.

6. A hospital, if acting as a billing agent for a medical practitioner performing services in the hospital, must not add any charges to the practitioner's bill for services other than a charge related to the cost of processing the billing.

7. No hospital or related entity may offer any financial inducement to an officer, employee or agent of an insurer, a person acting as an insurer or self- insurer or a related entity. A person shall not accept such offers. This subsection does not prohibit bona fide gifts of under $100 in value, or reasonable promotional food or entertainment.

8. A hospital or related entity shall not sell goods or services to a physician unless the costs for such goods and services are at least equal to the cost for which the hospital or related entity pays for the goods and services.

9. A practitioner or health facility shall not refer a patient to a health facility or service in which the referring party has a financial interest unless the practitioner or health facility first discloses the interest.

10. The director [director of the Department of Human Resources] may, at reasonable intervals, require a hospital or related entity or other party to an agreement to submit copies of operative contracts subject to the provisions of this section after notification by registered mail. The contracts must be submitted within 30 days after receipt of the notice. Contracts submitted pursuant to this subsection are **confidential**, except in cases in which an action is brought pursuant to subsection 11.

11. A person who willfully violates any provision of this section is liable to the State of Nevada for:

(a) A civil penalty in an amount of not more than $5,000 per occurrence, or 100 percent of the value of the illegal transaction, whichever is greater.

(b) Any reasonable expenses incurred by the state in enforcing this section.

Any money recovered pursuant to this subsection as a civil penalty must be deposited in a separate account in the state general fund and used for projects intended to benefit the residents of this state with regard to health care. Money in the account may only be withdrawn by act of the legislature.

12. As used in this section, "related entity" means an affiliated person or subsidiary as those terms are defined in NRS 439B.430.

(Added to NRS by 1987, 870; A 1989, 1925)

VITAL STATISTICS

**Sec. 111. 440.170 Records open to inspection; use of data restricted.**

1. All certificates in the custody of the state registrar are open to inspection subject to the provisions of this chapter. It shall be unlawful for any employee of the state to disclose data contained in vital statistics, except as authorized by this chapter or by the board [state board of health].

2. Information in vital statistics indicating that a birth occurred out of wedlock shall not be disclosed except upon order of a court of competent jurisdiction.

3. The board may permit the use of data contained in vital statistics records for research purposes, but without identifying the persons to whom the records relate.

[Part 45:199:1911; added 1941, 381; 1931 NCL § 5268.14]--(NRS A 1967, 1107)

## COMMUNICABLE DISEASES

**Sec. 112. 441A.220 Confidentiality of information; permissible disclosure.** All information of a personal nature about any person provided by any other person reporting a case or suspected case of a communicable disease, or by any person who has a communicable disease, or as determined by investigation of the health authority, [district health officer, or if none, the state health officer] is **confidential** medical information and must not be disclosed to any person under any circumstances, including pursuant to any subpena, search warrant or discovery proceeding, except as follows:

1. For statistical purposes, provided that the identity of the person is not discernible from the information disclosed.
2. In a prosecution for a violation of this chapter.
3. In a proceeding for an injunction brought pursuant to this chapter.
4. In reporting the actual or suspected abuse or neglect of a child or elderly person.
5. To any person who has a medical need to know the information for his own protection or for the well-being of a patient or dependent person, as determined by the health authority in accordance with regulations of the board [state board of health].
6. If the person who is the subject of the information consents in writing to the disclosure.
7. Pursuant to subsection 2 of NRS 441A.320.
8. If the disclosure is made to the welfare division of the department of human resources and the person about whom the disclosure is made has been diagnosed as having acquired immunodeficiency syndrome or an illness related to the human immunodeficiency virus and is a recipient of or an applicant for assistance to the medically indigent.
9. To a fireman, police officer or person providing emergency medical services if the board has determined that the information relates to a communicable disease significantly related to that occupation. The information must be disclosed in the manner prescribed by the board.
10. If the disclosure is authorized or required by specific statute.

(Added to NRS by 1989, 299; A 1989, 1476)

**Sec. 113. 441A.230 Disclosure of personal information prohibited without consent.** Except as otherwise provided in this chapter, a person shall not make public the name of, or other personal identifying information about, a person infected with a communicable disease who has been investigated by the health authority pursuant to this chapter, without the consent of the person.

(Added to NRS by 1989, 300)

## MATERNAL AND CHILD HEALTH; ABORTION

**Sec. 114. 442.255 Notice to custodial parent or guardian; request for authorization for abortion; rules of civil procedure inapplicable.**

1. Unless in the judgment of the attending physician an abortion is immediately necessary to preserve the patient's life or health or an abortion is authorized pursuant to subsection 2 or NRS 442.2555, a physician shall not knowingly perform or induce an abortion upon an unmarried and unemancipated woman who is under the age of 18 years unless a custodial parent or guardian of the woman is personally notified before the abortion. If the custodial parent or guardian cannot be so notified after a reasonable effort, the physician shall delay performing the abortion until he has notified the parent or guardian by certified mail at his last known address.

2. An unmarried or unemancipated woman who is under the age of 18 years may request a district court to issue an order authorizing an abortion. If so requested, the court shall interview the woman at the earliest practicable time, which

must be not more than 2 judicial days after the request is made. If the court determines, from any information provided by the woman and any other evidence that the court may require, that:

(a) She is mature enough to make an intelligent and informed decision concerning the abortion;

(b) She is financially independent or is emancipated; or

(c) The notice required by subsection 1 would be detrimental to her best interests.

the court shall issue an order within 1 judicial day after the interview authorizing a physician to perform the abortion in accordance with the provisions of NRS 442.240 to 442.270, inclusive.

3. If the court does not find sufficient grounds to authorize a physician to perform the abortion, it shall enter an order to that effect within 1 judicial day after the interview. If the court does not enter an order either authorizing or denying the performance of the abortion within 1 judicial day after the interview, authorization shall be deemed to have been granted.

4. The court shall take the necessary steps to ensure that the interview and any other proceedings held pursuant to this subsection or NRS 442.2555 are **confidential**. The rules of civil procedure do not apply to any action taken pursuant to this subsection.

(Added to NRS by 1981, 1163; A 1985, 2309)

**Sec. 115. 442.2555 Procedure if district court denies request for authorization for abortion: Petition; hearing on merits; appeal.**

1. If the order is denied pursuant to NRS 442.255, the court shall, upon request by the minor if it appears that she is unable to employ counsel, appoint an attorney to represent her in the preparation of a petition, a hearing on the merits of the petition, and on an appeal, if necessary. The compensation and expenses of the attorney are a charge against the county as provided in the following schedule:

(a) For consultation, research and other time reasonably spent on the matter, except court appearances, $20 per hour.

(b) For court appearances, $30 per hour.

2. The petition must set forth the initials of the minor, the age of the minor, the estimated number of weeks elapsed from the probable time of conception, and whether maturity, emancipation, notification detrimental to the minor's best interests or a combination thereof are relied upon in avoidance of the notification required by NRS 442.255. The petition must be initialed by the minor.

3. A hearing on the merits of the petition, on the record, must be held as soon as possible and within 5 judicial days after the filing of the petition. At the hearing the court shall hear evidence relating to:

(a) The minor's emotional development, maturity, intellect and understanding;

(b) The minor's degree of financial independence and degree of emancipation from parental authority;

(c) The minor's best interests relative to parental involvement in the decision whether to undergo an abortion; and

(d) Any other evidence that the court may find useful in determining whether the minor is entitled to avoid parental notification.

4. In the decree, the court shall, for good cause:

(a) Grant the petition, and give judicial authorization to permit a physician to perform an abortion without the notification required in NRS 442.255; or

(b) Deny the petition, setting forth the grounds on which the petition is denied.

5. An appeal from an order issued under subsection 4 may be taken to the supreme court, which shall suspend the Nevada Rules of Appellate Procedure pursuant to N.R.A.P. 2 to provide for an expedited appeal. The notice of intent to appeal must be given within 1 judicial day after the issuance of the order. The record on appeal must be perfected within 5 judicial days after the filing of the notice of appeal and transmitted to the supreme court. The court, shall, by court order or rule, provide for a **confidential** and expedited appellate review of cases appealed under this section.

(Added to NRS by 1985, 2306)

WATER CONTROLS; AIR POLLUTION

**Sec. 116. 445.311 Public access to information; disclosure of confidential information.**

1. Any records, reports or information obtained under NRS 445.131 to 445.354, inclusive, must be available to the public for inspection and copying unless the director [director of the State Department of Conservation and Natural Resources]

considers the record, report or information or part thereof as **confidential** on a satisfactory showing that the information contained therein, other than information describing a discharge into the waters of the state or injection of contaminants through a well, is entitled to protection as a trade secret of the informant.

2. Any record, report or information treated as **confidential** may be disclosed or transmitted to other officers, employees or authorized representatives of this state or the United States who:

(a) Carry out the provisions of NRS 445.131 to 445.354, inclusive; or

(b) Consider the information relevant in any proceeding under NRS 445.131 to 445.354, inclusive, and the information is admissible under the rules of evidence.

(Added to NRS by 1973, 1716; A 1985, 769)

**Sec. 117. 445.576 Confidential information: Definition; limitations on use; penalty for unlawful disclosure or use.**

1. As used in this section, "**confidential** information" means information or records which:

(a) Relate to quantities or dollar amounts of production or sales;

(b) Relate to processes or production unique to the owner or operator; or

(c) If disclosed, would tend to affect adversely the competitive position of the owner or operator.

2. The emission of an air contaminant which has an ambient air quality standard or emission standard or has been designated as a hazardous air pollutant by the United States Environmental Protection Agency cannot be certified as being **confidential**.

3. Any information, except information on emission data, received by the commission [state environmental commission], the director or any local control authority which is certified to the recipient as **confidential** by the owner or operator disclosing the information shall, unless the owner expressly agrees to its publication or availability to the public, be used only:

(a) In the administration or formulation of air pollution controls;

(b) In compiling or publishing analyses or summaries relating to the condition of the outdoor atmosphere which do not identify any owner or operator or reveal any **confidential** information; or

(c) In complying with federal statutes, rules and regulations.

4. This section does not prohibit the use of **confidential** information in prosecution for the violation of any air pollution control statute, ordinance or regulation.

5. A person who discloses or knowingly uses **confidential** information in violation of this section is guilty of a misdemeanor, and shall be liable in tort for any damages which may result from such disclosure or use.

(Added to NRS by 1971, 1201; A 1973, 1821; 1975, 1405)

## MEDICAL AND OTHER RELATED FACILITIES

**Sec. 118. 449.245 Release of child from hospital; copies of written authorization and other information to be furnished to welfare division; penalties.**

1. No hospital licensed under the provisions of NRS 449.001 to 449.240, inclusive, may release from the hospital or otherwise surrender physical custody of any child under 6 months of age, whose living parent or guardian is known to the hospital, to any person other than a parent, guardian or relative by blood or marriage of that child, without a written authorization signed by a living parent, who must be the mother if unwed, or guardian specifying the particular person or agency to whom the child may be released and the permanent address of that person or agency.

2. Upon the release or other surrender of physical custody of the child, the hospital shall require from the person to whom the child is released such reasonable proof of identity as the hospital may deem necessary for compliance with the provisions of this section. The hospital shall furnish a true copy of the written authorization to the welfare division of the department of human resources before the release or other surrender by it of physical custody of the child. The copy must be furnished to the welfare division immediately upon receipt by the hospital.

3. Any person to whom any such child is released who thereafter surrenders physical custody of that child to any other person or agency shall, upon demand by the welfare division, disclose to the welfare division the name and permanent address of the person or agency to whom physical custody of the child was delivered.

4. All information received by the welfare division pursuant to the provisions of this section is **confidential** and must be protected from disclosure in the same manner that information concerning recipients of public assistance is protected under NRS 422.290.

5. Compliance with the provisions of this section is not a substitute for compliance with NRS 127.220 to 127.310, inclusive, governing placements for adoption and permanent free care.

6. A violation of any provision of this section is a misdemeanor.

(Added to NRS by 1957, 251; A 1961, 739; 1963, 962; 1967, 1172; 1973, 1286, 1406; 1981, 721)

**Sec. 119. 449.510 Director to prepare and file summaries, compilations or other reports; public inspection; disclosure of details of contracts or identification of party to contract prohibited.**

1. The director shall prepare and file such summaries, compilations or other supplementary reports based on the information filed with him pursuant to NRS 449.450 to 449.530, inclusive, as will advance the purposes of those sections. All such summaries, compilations and reports are open to public inspection, must be made available to requesting agencies and must be prepared within a reasonable time following the end of each institution's fiscal year or more frequently as specified by the director. The summaries, compilations and reports must include information regarding each hospital's average and total contractual allowances to categories of payers who pay on the basis of alternative rates rather than billed charges.

2. The director **shall not disclose** or report the details of contracts entered into by a hospital, or disclose or report information pursuant to this section in a manner that would allow identification of an individual payer or other party to a contract with the hospital, except that the director may disclose to other state agencies the details of contracts between the hospital and a related entity. A state agency shall not disclose or report information disclosed to the agency by the director pursuant to this subsection in a manner that would allow identification of an individual payer or other party to a contract with the hospital.

3. As used in this section, "related entity" means an affiliated person or subsidiary as those terms are defined in NRS 439B.430.

(Added to NRS by 1975, 704; A 1985, 1365; 1991, 2333)

**Sec. 120. 449.720 Specific rights: Care; refusal of treatment and experimentation; privacy; notice of appointments and need for care.** Every patient of a medical facility or facility for the dependent has the right to:

1. Receive considerate and respectful care.

2. Refuse treatment to the extent permitted by law and to be informed of the consequences of that refusal.

3. Refuse to participate in any medical experiments conducted at the facility.

4. Retain his privacy concerning his program of medical care. Discussions of a patient's care, consultation with other persons concerning the patient, examinations or treatments, and all communications and records concerning the patient, except as otherwise provided in NRS 108.640 and 449.705 and chapter 629 of NRS, are **confidential**. The patient must consent to the presence of any person who is not directly involved with his care during any examination, consultation or treatment.

5. Have any reasonable request for services reasonably satisfied by the facility considering its ability to do so.

6. Receive continuous care from the facility. The patient must be informed:

(a) Of his appointments for treatment and the names of the persons available at the facility for those treatments; and

(b) By his physician or an authorized representative of the physician, of his need for continuing care.

(Added to NRS by 1983, 821; A 1985, 1748; 1989, 2057; 1991, 2350)

CONTROLLED SUBSTANCES

**Sec. 121. 453.151 Cooperative arrangements; confidentiality of information.**

1. The board [state board of pharmacy] and the division [investigative division of the Department of Motor Vehicles and Public Safety] shall cooperate with federal and other state agencies in discharging their responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, the board and division may:

(a) Arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;

(b) Coordinate and cooperate in training programs concerning controlled substance law enforcement at local and state levels;

(c) Cooperate with the Drug Enforcement Administration by establishing a centralized unit to accept, catalog, file and collect statistics, including records of drug-dependent persons and other controlled substance law offenders within the state, and make the information available for federal, state and local law enforcement purposes. The board and the division shall not furnish the name or identity of a patient or research subject whose identity could not be obtained pursuant to NRS 453.157; and

(d) Conduct programs of eradication aimed at destroying the wild growth or illicit propagation of plant species from which controlled substances may be extracted.

2. Results, information and evidence received from the Drug Enforcement Administration relating to the regulatory functions of the provisions of NRS 453.011 to 453.552, inclusive, including results of inspections conducted by it, may be relied and acted upon by the board in the exercise of its regulatory functions pursuant to NRS 453.011 to 453.552, inclusive.

(Added to NRS by 1971, 2003; A 1973, 1204; 1991, 484, 1651)

**Sec. 122. 453.720 Confidential and privileged information.** Unless otherwise requested by a narcotic addict being treated, or a person who in the past was treated, under NRS 453.660, all information in possession of the health division of the department [Department of Human Resources], any rehabilitation clinic or any certified hospital concerning such person is **confidential** and privileged.

(Added to NRS by 1971, 652; A 1979, 1671)

## CANCER

**Sec. 123. 457.270 Consent required for disclosure of identity of patient, physician or hospital.** The health division shall not reveal the identity of any patient, physician or hospital which is involved in the reporting required by NRS 457.250 unless the patient, physician or hospital gives his or its prior written consent to such a disclosure.

(Added to NRS by 1983, 1678)

## ABUSE OF ALCOHOL AND DRUGS

**Sec. 124. 458.055 Confidential information.**

1. To preserve the **confidentiality** of any information concerning persons applying for or receiving any services under this chapter, the bureau [bureau of alcohol and drug abuse in the rehabilitation division of the Department of Human Resources] may establish and enforce rules governing the **confidential** nature, custody, use and preservation of the records, files and communications filed with the bureau.

2. Wherever information concerning persons applying for and receiving any services under this chapter is furnished to or held by any other government agency or a public or private institution, the use of such records by such agency or institution shall be bound by the **confidentiality** rules of the bureau.

3. Except as otherwise provided in NRS 449.705 and chapter 629 of NRS and except for purposes directly connected with the administration of this chapter, a person shall not disclose, use or permit to be disclosed, any **confidential** information concerning a person receiving services under the provisions of this chapter.

(Added to NRS by 1973, 1398; A 1991, 2350)

**Sec. 125. 458.280 Records of facility for treatment confidential; exceptions.**

1. Except as otherwise provided in subsection 2, NRS 449.705 and chapter 629 of NRS, the registration and other records of a treatment facility are **confidential** and must not be disclosed to any person not connected with the treatment facility without the consent of the patient.

2. The provisions of subsection 1 do not restrict the use of a patient's records for the purpose of research into the causes and treatment of alcoholism if such information is not published in a way that discloses the patient's name or other identifying information.

(Added to NRS by 1975, 1144; A 1989, 2057; 1991, 2351)

**Sec. 126. 459.050 Inspections.**

1. Any authorized representative of the health division may enter at any reasonable time upon any private or public property for the purpose of determining whether there is compliance with or violation of the provisions of NRS 459.010 to 459.290, inclusive, or of the rules and regulations promulgated under NRS 459.010 to 459.290, inclusive, and the owner, occupant or person in charge of such property shall permit such entry and inspection.

2. Entry into areas under the jurisdiction of the Federal Government shall be effected only with the concurrence of the Federal Government or its duly designated representative.

3. Any report of investigation or inspection, or any information concerning trade secrets or secret industrial processes obtained under NRS 459.010 to 459.290, inclusive, shall not be disclosed or opened to public inspection except as may be necessary for the performance of the functions of the state board of health.

(Added to NRS by 1963, 579; A 1975, 1330)

**Sec. 127. 459.3846 Report of assessment; severable addendum containing trade secrets; conditions for protection as trade secret. [Effective July 1, 1992.]**

1. The person who conducted the assessment shall prepare and provide to the division and the facility a written report of assessment of the risk through analysis of the hazard, which must use as its standard the best available technology for control and must include findings, conclusions and recommendations.

2. The report must be written in a format that will permit its publication. To the extent that any portion of the report requires discussion of trade secrets, that information must be contained in a severable addendum to the report. In writing the report, the person who conducted the assessment shall, while protecting trade secrets, include in the publishable portion of the report sufficient information, in clear and comprehensible nontechnical language, to enable a member of the public to understand the significance of the report's findings, conclusions and recommendations.

3. A trade secret is entitled to protection under this section only if:

(a) The registrant of the facility has not disclosed the information to any other person, other than a member of a local emergency planning committee, an officer or employee of the United States or a state or local government, an employee of such a person, or a person who is bound by an agreement of **confidentiality**, and the registrant has taken reasonable measures to protect the **confidentiality** of the information and intends to continue to take such measures;

(b) The information is not required to be disclosed, or otherwise made available, to the public under any other federal or state law;

(c) Disclosure of the information is likely to cause substantial harm to the competitive position of the registrant; and

(d) The chemical identity of a substance, if that is the trade secret, is not readily discoverable through analysis of the product containing it or scientific knowledge of how such a product must be made.

(Added to NRS by 1991, 2003, effective July 1, 1992)

**Sec. 128. 459.3866 Receipt of records and documents; subpena; informal inquiries; inspection of facility; attorney general is counsel for committee; authorization to make recommendations to reviewing authority. [Effective July 1, 1992.]**

1. After giving reasonable notice to the facility it oversees and after making arrangements to ensure that the normal operations of the facility will not be disrupted, a committee is entitled to receive from the facility such records and documents as the committee [a committee created by the governor to oversee the management of risks in a facility where an accident has occurred] demonstrates are required to carry out its duties. The committee is entitled to receive only those records and documents which cannot be obtained from the division.

2. A committee is entitled to receive from any governmental entity or agency records, documents and other materials relevant to the committee's review and evaluation of the facility to carry out its duties.

3. In carrying out its duties a committee and the attorney general may, by subpena, require the attendance and testimony of witnesses and the production of reports, papers, documents and other evidence which they deem necessary. Before obtaining such a subpena, the committee or the attorney general shall request the attendance of the witness or the production of the reports, papers, documents or other evidence. If the person to whom the request is made fails or refuses to attend or

produce the reports, documents or other evidence, the committee and the attorney general may obtain the subpena requiring him to do so.

4. In carrying out its duties, a committee may make informal inquiry of persons or entities with knowledge relevant to the committee's review and evaluation of the facility it oversees. Any committee which makes such informal inquiries shall advise the facility of those inquiries and of the results of the inquiries.

5. If the owner of a facility claims that the disclosure of information to a committee will reveal a trade secret or **confidential** information, the owner must specifically identify such information as **confidential**. When such an identification has been made, the provisions of NRS 459.3846 apply.

6. A committee or its authorized representative may, to carry out its duties enter and inspect the facility overseen, its records and other relevant materials. Before such an inspection is made, the committee shall provide reasonable notice to the facility. The inspection must be conducted in such a manner as to ensure that the operations of the facility will not be disrupted.

7. The attorney general is counsel and attorney to each committee for the purposes of carrying out its duties and powers.

8. The members of a committee may make public comment with regard to their review and evaluation of the facility it oversees. At least 24 hours before making any formal comment, the committee shall advise the facility of its intention to do so and provide the facility with a summary of the comments that will be made.

9. A committee may review and make recommendations to the reviewing authority as to any applications for permits to construct, substantially alter or operate submitted by a facility which has been the subject of the committee's review and evaluation.

(Added to NRS by 1991, 2007, effective July 1, 1992)

**Sec. 129. 459.555 Disclosure of public and confidential information.**

1. Except as otherwise provided in this section, information which the department [State Department of Conservation and Natural Resources] obtains in the course of the performance of its duties relating to hazardous waste is public information.

2. Any information which specifically relates to the trade secrets of any person, including any processes, operations, style of work or apparatus, is **confidential** whenever it is established to the satisfaction of the director that the information is entitled to protection as a trade secret. In determining whether the information is entitled to protection, the director [director of State Department of Conservation and Natural Resources] shall consider, among other things, whether the disclosure of that information would tend to affect adversely the competitive position of the information's owner.

3. Any information which is **confidential** under subsection 2 may be disclosed to any officer, employee or authorized representative of this state or the United States if:

(a) He is engaged in carrying out the provisions of NRS 459.400 to 459.600, inclusive, or the provisions of federal law relating to hazardous waste; or

(b) The information is relevant in any judicial proceeding or adversary administrative proceeding under NRS 459.400 to 459.600, inclusive, or under the provisions of federal law relating to hazardous waste, and is admissible under the rules of evidence.

4. The commission [state environmental commission] shall adopt regulations concerning the availability of information which satisfy the criteria established by the Federal Government for delegation to the state of federal programs concerning the management of, and the enforcement of laws relating to, hazardous waste.

(Added to NRS by 1981, 885; A 1983, 1121; 1985, 904; 1991, 908)

**Sec. 130. 459.846 Disclosure of information obtained by department.**

1. Except as otherwise provided in this section, information which the department obtains in the course of the performance of its duties relating to storage tanks is public information.

2. Any information which specifically relates to the trade secrets of any person is **confidential**. The following information shall be deemed a trade secret:

(a) Information concerning fuel additives. For the purposes of this paragraph, "fuel additives" are ingredients which are present in fuel compositions in amounts of less than 1 percent by weight, including detergents, dispersants, demulsifiers and dyes.

(b) Any other information considered to be a trade secret by the director. A trade secret may include a formula, composition, process, method of operation, compilation of information or apparatus which is used in a person's business and gives that person an opportunity to obtain an advantage over competitors. In determining whether information is a trade secret, the director shall consider whether the information is publicly available in written form and, if not, whether its disclosure would tend to affect adversely the competitive position of the owner of the information.

3. Any information which is **confidential** under subsection 2 may be disclosed to any officer, employee or authorized representative of this state or the United States if:

(a) He is engaged in carrying out the provisions of NRS 459.800 to 459.856, inclusive, or the provisions of federal law relating to storage tanks; or

(b) The information is relevant in any judicial proceeding or adversary administrative proceeding under NRS 459.800 to 459.856, inclusive, or under the provisions of federal law relating to storage tanks, and is admissible under the rules of evidence.

The disclosure must be made in a manner which preserves the status of the information as a trade secret.

(Added to NRS by 1989, 773)

## HUMAN BLOOD, BLOOD PRODUCTS AND BODY PARTS

**Sec. 131. 460.020 Identifying data concerning person with history of viral hepatitis may be furnished to blood bank; confidentiality and unlawful use of data; penalty.**

1. The state board of health, state health officer and any health authority, as defined in NRS 439.005, may disseminate to any blood bank in the State of Nevada identifying data concerning any person with a history of viral hepatitis.

2. The state board of health shall, pursuant to NRS 441A.120, adopt regulations specifying the identifying data to be disseminated to blood banks pursuant to subsection 1.

3. Any identifying data received by a blood bank pursuant to this section is **confidential** and may be used only for screening prospective blood donors.

4. Any person who has access to identifying data disseminated to a blood bank pursuant to this section and who divulges or uses such information in any manner except to screen prospective blood donors is guilty of a misdemeanor.

(Added to NRS by 1975, 128; A 1989, 300)

## LICENSING AND CONTROL OF GAMING

**Sec. 132. 463.120 Records of board and commission; report to legislature by board.**

1. The board [State Gaming Control Board] and the commission [Nevada Gaming Commission] shall cause to be made and kept a record of all proceedings at regular and special meetings of the board and the commission. These records are open to **public inspection.**

2. The board shall maintain a file of all applications for licenses under this chapter, together with a record of all action taken with respect to those applications. The file and record are open to **public inspection.**

3. The board and the commission may maintain such other files and records as they may deem desirable.

4. Except as provided in this subsection and subsection 5, all information and data:

(a) Required by the board or commission to be furnished to it under this chapter or which may be otherwise obtained relative to the finances, earnings or revenue of any applicant or licensee;

(b) Pertaining to an applicant's criminal record, antecedents and background which have been furnished to or obtained by the board or commission from any source;

(c) Provided to the members, agents or employees of the board or commission by a governmental agency or an informer or on the assurance that the information will be held in confidence and treated as **confidential**; and

(d) Obtained by the board from a manufacturer, distributor or operator relating to the manufacturing of gaming devices,

are **confidential** and may be revealed in whole or in part only in the course of the necessary administration of this chapter or upon the lawful order of a court of competent jurisdiction. The commission may reveal such information and data to an authorized agent of any agency of the United States Government, any state or any political subdivision of this state pursuant to regulations adopted by the commission.

5. Before the beginning of each legislative session, the board shall submit to the legislative commission for its review and for the use of the legislature a report on the gross revenue, net revenue and average depreciation of all licensees, categorized by class of licensee and geographical area and the assessed valuation of the property of all licensees, by category, as listed on the assessment rolls.

6. Notice of the content of any information or data furnished or released pursuant to subsection 4 may be given to any applicant or licensee in a manner prescribed by regulations adopted by the commission.

7. The files, records and reports of the board are open at all times to inspection by the commission and its authorized agents.

8. All files, records, reports and other information pertaining to gaming matters in the possession of the Nevada tax commission must be made available to the board and the Nevada gaming commission as is necessary to the administration of this chapter.

[12:429:1955]--(NRS A 1959, 433; 1971, 672; 1979, 773; 1981, 1075; 1985, 1553, 1862)

**Sec. 133. 463.335 Work permit required for gaming employee or independent agent; application; hearing and review; appointment of hearing examiner; confidential records; expiration.**

1. The legislature finds that, to protect and promote the health, safety, morals, good order and general welfare of the inhabitants of the State of Nevada and to carry out the policy declared in NRS 463.0129, it is necessary that the board:

(a) Ascertain and keep itself informed of the identity, prior activities and present location of all gaming employees and independent agents in the State of Nevada; and

(b) Maintain **confidential** records of such information.

2. A person may not be employed as a gaming employee or serve as an independent agent unless he is the holder of:

(a) A valid work permit issued in accordance with the applicable ordinances or regulations of the county or city in which his duties are performed and the provisions of this chapter; or

(b) A work permit issued by the board, if a work permit is not required by either the county or the city,

except that an independent agent is not required to hold a work permit if he is not a resident of this state and has registered with the board in accordance with the provisions of the regulations adopted by the commission.

3. A work permit issued to a gaming employee or an independent agent must have clearly imprinted thereon a statement that it is valid for gaming purposes only.

4. Whenever any person applies for the issuance or renewal of a work permit, the county or city officer or employee to whom the application is made shall within 24 hours mail or deliver a copy thereof to the board, and may at the discretion of the county or city licensing authority issue a temporary work permit. If within 90 days after receipt by the board of the copy of the application, the board has not notified the county or city licensing authority of any objection, the authority may issue, renew or deny a work permit to the applicant. A gaming employee who is issued a work permit must obtain renewal of the permit from the issuing agency within 10 days following any change of his place of employment. An independent agent who is issued a work permit must obtain renewal of the permit from the issuing agency within 10 days after executing an agreement to serve as an independent agent within the jurisdiction of the issuing agency.

5. If the board, within the 90-day period, notifies:

(a) The county or city licensing authority; and

(b) The applicant,

that the board objects to the granting of a work permit to the applicant, the authority shall deny the work permit and shall immediately revoke and repossess any temporary work permit which it may have issued. The notice of objection by the board which is sent to the applicant must include a statement of the facts upon which the board relied in making its objection.

6. Application for a work permit, valid wherever a work permit is not required by any county or city licensing authority, may be made to the board, and may be granted or denied for any cause deemed reasonable by the board. Whenever the board denies such an application, it shall include in its notice of the denial a statement of the facts upon which it relied in denying the application.

7. Any person whose application for a work permit has been denied because of an objection by the board or whose application has been denied by the board may, not later than 60 days after receiving notice of the denial or objection, apply to the board for a hearing. A failure of a person whose application has been denied to apply for a hearing within 60 days or his failure to appear at a hearing of the board conducted pursuant to this section shall be deemed to be an admission that the

denial or objection is well founded and precludes administrative or judicial review. At the hearing, the board shall take any testimony deemed necessary. After the hearing the board shall review the testimony taken and any other evidence, and shall within 45 days after the date of the hearing mail to the applicant its decision sustaining or reversing the denial of the work permit or the objection to the issuance of a work permit.

8. The board may object to the issuance of a work permit or may refuse to issue a work permit for any cause deemed reasonable by the board. The board may object or refuse if the applicant has:

(a) Failed to disclose or misstated information or otherwise attempted to mislead the board with respect to any material fact contained in the application for the issuance or renewal of a work permit;

(b) Knowingly failed to comply with the provisions of this chapter or chapter 463B, 464 or 465 of NRS or the regulations of the commission at a place of previous employment;

(c) Committed, attempted or conspired to commit any crime of moral turpitude, embezzlement or larceny or any violation of any law pertaining to gaming, or any crime which is inimical to the declared policy of this state concerning gaming;

(d) Committed, attempted or conspired to commit a crime which is a felony or gross misdemeanor in this state or an offense in another state or jurisdiction which would be a felony or gross misdemeanor if committed in this state;

(e) Been identified in the published reports of any federal or state legislative or executive body as being a member or associate of organized crime, or as being of notorious and unsavory reputation;

(f) Been placed and remains in the constructive custody of any federal, state or municipal law enforcement authority; or

(g) Had a work permit revoked or committed any act which is a ground for the revocation of a work permit or would have been a ground for revoking his work permit if he had then held a work permit.

If the board issues or does not object to the issuance of a work permit to an applicant who has been convicted of a crime which is a felony or gross misdemeanor, it may specially limit the period for which the permit is valid, limit the job classifications for which the holder of the permit may be employed and establish such individual conditions for the issuance, renewal and effectiveness of the permit as the board deems appropriate, including required submission to unscheduled tests for the presence of alcohol or controlled substances.

9. Any applicant aggrieved by the decision of the board may, within 15 days after the announcement of the decision, apply in writing to the commission for review of the decision. Review is limited to the record of the proceedings before the board. The commission may sustain or reverse the board's decision. The decision of the commission is subject to judicial review pursuant to NRS 463.315 to 463.318, inclusive.

10. Except as otherwise provided in this subsection, all records acquired or compiled by the board or commission relating to any application made pursuant to this section and all lists of persons to whom work permits have been issued or denied and all records of the names or identity of persons engaged in the gaming industry in this state are **confidential** and must not be disclosed except in the proper administration of this chapter or to an authorized law enforcement agency. Upon receipt of a request from the welfare division of the department of human resources pursuant to NRS 425.400 for information relating to a specific person who has applied for or holds a work permit, the board shall disclose to the division his social security number, residential address and current employer as that information is listed in the files and records of the board. Any record of the board or commission which shows that the applicant has been convicted of a crime in another state must show whether the crime was a misdemeanor, gross misdemeanor, felony or other class of crime as classified by the state in which the crime was committed. In a disclosure of the conviction, reference to the classification of the crime must be based on the classification in the state where it was committed.

11. A work permit expires unless renewed in accordance with subsection 4, or if the holder thereof is not employed as a gaming employee or does not serve as an independent agent within the jurisdiction of the issuing authority for more than 90 days.

12. The chairman of the board may designate a member of the board or the board may appoint a hearing examiner and authorize such person to perform on behalf of the board any of the following functions required of the board by this section concerning work permits:

(a) Conducting a hearing and taking testimony;

(b) Reviewing the testimony and evidence presented at the hearing;

(c) Making a recommendation to the board based upon the testimony and evidence or rendering a decision on behalf of the board to sustain or reverse the denial of a work permit or the objection to the issuance or renewal of a work permit; and

(d) Notifying the applicant of the decision.

13. Notice by the board as provided pursuant to this section is sufficient if it is mailed to the applicant's last known address as indicated on the application for a work permit, or the record of the hearing, as the case may be. The date of mailing may be proven by a certificate signed by an officer or employee of the board which specifies the time the notice was mailed. The notice shall be deemed to have been received by the applicant 5 days after it is deposited with the United States Postal Service with the postage thereon prepaid.

(Added to NRS by 1965, 758; A 1975, 686; 1977, 1434; 1979, 783; 1981, 548, 1084; 1983, 1563; 1989, 494; 1991, 589, 926, 1840, 1931)

**Sec. 134. 463.3403 Confidentiality of information relating to termination of employment of gaming employee or independent agent.** Any information obtained by the board from any licensee, his employer or agent relating to the termination of the employment of a gaming employee or the services of an independent agent is **confidential** and must not be disclosed except:

1. Such information obtained from the former employer of an applicant for a work permit must be disclosed to the applicant to the extent necessary to permit him to respond to any objection made by the board to his application for the permit;

2. In the necessary administration of this chapter; or

3. Upon the lawful order of a court of competent jurisdiction.

(Added to NRS by 1981, 1072; A 1991, 1844)

**Sec. 135. 463.3407 Absolute privilege of required communications and documents; restrictions on and protections against disclosure.**

1. Any communication or document of an applicant or licensee which is required by:

(a) Law or the regulations of the board or commission; or

(b) A subpena issued by the board or commission,

to be made or transmitted to the board or commission or any of their agents or employees is absolutely privileged and does not impose liability for defamation or constitute a ground for recovery in any civil action.

2. If such a document or communication contains any information which is privileged pursuant to chapter 49 of NRS, that privilege is not waived or lost because the document or communication is disclosed to the board or commission or any of its agents or employees.

3. Notwithstanding the provisions of subsection 4 of NRS 463.120:

(a) The board, commission and their agents and employees shall not release or disclose any information, documents or communications provided by an applicant or licensee which are privileged pursuant to chapter 49 of NRS, without the prior written consent of the applicant or licensee, or pursuant to a lawful court order after timely notice of the proceedings has been given to the applicant or licensee.

(b) The board and commission shall maintain all privileged information, documents and communications in a secure place accessible only to members of the board and commission and their authorized agents and employees.

(c) The board and commission shall adopt procedures and regulations to protect the privileged nature of information, documents and communications provided by an applicant or licensee.

(Added to NRS by 1981, 1072; A 1987, 1274)

## UNARMED COMBAT

**Sec. 136. 467.137 Promoter and network to file copy of contracts for television rights; records of accounts and other documents; assessment of fee for license; confidentiality of contract.**

1. A promoter and a broadcasting network for television shall each, at least 72 hours before a contest or exhibition of unarmed combat, or combination of those events is to be held, file with the commission's [Nevada Athletic Commission] executive director a copy of all contracts entered into for the sale, lease or other exploitation of television rights for the contest or exhibition.

2. The promoter shall keep detailed records of the accounts and other documents related to his receipts from the sale, lease or other exploitation on the television rights for a contest or exhibition. The commission, at any time, may inspect these accounts and documents to determine the amount of the total gross receipts received by the promoter from the television rights.

3. If a promoter or a network fails to comply with the requirements of this section, the commission may determine the amount of the total gross receipts from the sale, lease or other exploitation of television rights for the contest or exhibition and assess the appropriate license fee pursuant to paragraph (b) of subsection 1 of NRS 467.107.

4. Each contract filed with the commission pursuant to this section is **confidential** and is not a public record.

(Added to NRS by 1983, 927; A 1985, 942)

## ADMINISTRATION OF LAWS RELATING TO MOTOR VEHICLES

**Sec. 137. 481.063 Collection and deposit of fees for publications of department and private use of files and records of department; limitations on release and use of files and records; regulations.**

1. The director may charge and collect reasonable fees for official publications of the department and from persons making use of files and records of the department or its various divisions for a private purpose. All money so collected must be deposited in the state treasury for credit to the motor vehicle fund.

2. The director **shall not release,** in any files and records made available for the solicitation of another person to purchase a product or service, the Social Security number of any person.

3. The director **may deny any private use** of the files and records if he reasonably believes that the information taken may be used for:

(a) An illegal purpose; or

(b) An unwarranted invasion of a particular person's privacy.

4. The director shall adopt such regulations as he deems necessary to carry out the purposes of this section.

(Added to NRS by 1957, 611; A 1975, 210; 1979, 1118; 1981, 1590; 1985, 686; 1989, 473)

## DRIVERS' LICENSES; DRIVING SCHOOLS AND DRIVING INSTRUCTORS

**Sec. 138. 483.340 Issuance and contents of license; license for purposes of identification only issued to certain persons.**

1. The department [Department of Motor Vehicles and Public Safety] shall upon payment of the required fee issue to every qualified applicant a driver's license indicating the type or class of vehicles the licensee may drive. The license must bear a unique number assigned to the licensee pursuant to NRS 483.345, the licensee's social security number, if he has one, unless he requests that it not appear on the license, the full name, date of birth, mailing address, and a brief description of the licensee, and a space upon which the licensee shall write his usual signature in ink immediately upon receipt of the license. A license is not valid until it has been so signed by the licensee.

2. The department may issue a driver's license for purposes of identification only for use by officers of local police and sheriffs' departments, agents of the investigation division of the department while engaged in special undercover investigations relating to narcotics or prostitution or for other undercover investigations requiring the establishment of a fictitious identity and agents of the state gaming control board while engaged in investigations pursuant to NRS 463.140. No such license may be issued for use by any federal agent or investigator under any circumstances. An application for such a license must be made through the head of the police or sheriff's department, the chief of the investigation division [investigation division of the Department of Motor Vehicles and Public Safety] or the chairman of the state gaming control board. Such a license is exempt from the fees required by NRS 483.410. The department, by regulation, shall provide for the cancellation of any such driver's license upon the completion of the special investigation for which it was issued.

3. Information pertaining to the issuance of a driver's license pursuant to subsection 2 is **confidential.**

4. It is unlawful for any person to use a driver's license issued pursuant to subsection 2 for any purpose other than the special investigation for which it was issued.

5. At the time of the issuance of the driver's license, the department shall give the holder the opportunity to indicate on his driver's license that he wishes to be a donor of all or part of his body pursuant to NRS 451.500 to 451.590, inclusive, or that he refuses to make an anatomical gift of his body or part of his body.

[19:190:1941; A 1943, 268; 1943 NCL § 4442.18]--(NRS A 1963, 843; 1969, 544; 1975, 802; 1977, 449; 1981, 1106, 2007; 1985, 1938; 1987, 895; 1989, 437, 474, 1152; 1991, 487, 2171)

**Sec. 139. 483.800 Information to be furnished to department: establishment of registry; regulations: maintenance of file; confidential information; penalty.**

1. The following sources shall submit, within 30 days of learning such information, to the department the name, address, birth date, social security number, visual acuity and any other information which may be required by regulation of the department, of persons who are blind or night-blind or whose vision is severely impaired and shall designate whether the person is blind, night-blind or has severely impaired vision:

(a) Hospitals, medical clinics and similar institutions which treat persons who are blind, night-blind or whose vision is severely impaired; and

(b) Agencies of the state and political subdivisions which provide special tax consideration for blindness.

2. When any source described in subsection 1 learns that vision has been restored to any person whose name appears in the registry established pursuant to subsection 3, the fact of restoration of vision must be reported to the registry within 30 days after learning of that fact.

3. The department may establish a registry for the purposes of this section and adopt regulations governing reports to and operation of the registry.

4. The department shall maintain a file of the names, addresses, birth dates and social security numbers of persons who are blind or night-blind or whose vision is severely impaired.

5. All information learned by the department pursuant to this section is **confidential** and any person who, without the consent of the person concerned, reveals that information for purposes other than those specified in this section, or other than for administration of the program for supplemental security income, including state supplementary assistance and services to the aged, blind or disabled pursuant to chapter 422 of NRS, or services to the blind pursuant to NRS 426.520 to 426.610, inclusive, is guilty of a misdemeanor.

(Added to NRS by 1973, 1522; A 1975, 1013; 1981, 1912; 1985, 1941)

TRAFFIC LAWS

**Sec. 140. 484.229 Written report of accident to department by driver or owner; exceptions; confidentiality; use as evidence at trial.**

1. Except as provided in subsections 2, 3 and 4, the driver of a vehicle which is in any manner involved in an accident on a highway or on premises to which the public has access, if the accident results in bodily injury to or the death of any person or total damage to any vehicle or item of property to an apparent extent of $350 or more, shall, within 10 days after the accident, forward a written report of the accident to the department [Department of Motor Vehicles and Public Safety]. Whenever damage occurs to a motor vehicle, the operator shall attach to the accident report an estimate of repairs or a statement of the total loss from an established repair garage, an insurance adjuster employed by an insurer licensed to do business in this state, an adjuster licensed under chapter 684A of NRS or an appraiser licensed under chapter 684B of NRS. The department may require the driver or owner of the vehicle to file supplemental written reports whenever the original report is insufficient in the opinion of the department.

2. A report is not required from any person if the accident was investigated by a law enforcement agency and the report of the investigating officer contains:

(a) The name and address of the insurance company providing coverage to each person involved in the accident;

(b) The number of each policy; and

(c) The dates on which the coverage begins and ends.

3. The driver of a vehicle subject to the jurisdiction of the Interstate Commerce Commission or the public service commission of Nevada need not submit in his report the information requested pursuant to subsection 3 of NRS 484.247 until the 10th day of the month following the month in which the accident occurred.

4. A written accident report is not required under this chapter from any person who is physically incapable of making a report, during the period of his incapacity. Whenever the driver is physically incapable of making a written report of an accident as required in this section and he is not the owner of the vehicle, the owner shall within 10 days after knowledge of the accident make the report not made by the driver.

5. All written reports required in this section to be forwarded to the department by drivers or owners of vehicles involved in accidents are without prejudice to the person so reporting and are for the **confidential** use of the department or other state agencies having use of the records for accident prevention, except that the department may disclose to a person involved in an accident or to his insurer the identity of another person involved in the accident when his identity is not otherwise known or when he denies his presence at the accident. The department may also disclose the name of his insurer and the number of his policy.

6. No written report forwarded under the provisions of this section may be used as evidence in any trial, civil or criminal, arising out of an accident except that the department shall furnish upon demand of any party to such a trial, or upon demand of any court, a certificate showing that a specified accident report has or has not been made to the department in compliance with law, and, if the report has been made, the date, time and location of the accident, the names and addresses of the drivers, the owners of the vehicles involved and the investigating officers. The report may be used as evidence when necessary to prosecute charges filed in connection with a violation of NRS 484.236.

(Added to NRS by 1969, 1484; A 1981, 1126, 1865; 1983, 1067; 1985, 1174, 1943)

## FINANCIAL RESPONSIBILITY FOR LIABILITY

**Sec. 141. 485.300 Matters not to be evidence in civil suits.** Any action taken by the division pursuant to NRS 485.185 to 485.300, inclusive, the findings, if any, of the division [drives' license division of the Department of Motor Vehicles and Public Safety] upon which the action is based, and the security filed as provided in NRS 485.185 to 485.300, inclusive, are privileged against disclosure at the trial of any action at law to recover damages.

[10:127:1949; 1943 NCL § 4439.10]--(NRS A 1961, 144; 1971, 809; 1981, 1129)

## MOBILE HOMES AND SIMILAR VEHICLES; MANUFACTURED HOMES

**Sec. 142. 489.801 Manufacture or sale of noncomplying unit; sale without certificate or label of compliance; false certification; notification of defects; failure to permit access; disclosure of contents of examination; use of unsafe unit.**

1. It is unlawful for any person to manufacture any manufactured home, mobile home, travel trailer or commercial coach unless the manufactured home, mobile home, travel trailer or commercial coach and its components and systems are constructed and assembled according to the standards prescribed pursuant to the provisions of this chapter.

2. It is unlawful for any person knowingly to sell or offer for sale any manufactured home which has been constructed on or after June 15, 1976, unless the manufactured home and its components and systems have been constructed and assembled according to the standards prescribed pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. §§ 5401 et seq.).

3. Any person who knowingly sells or offers to sell in this state any manufactured home, mobile home or commercial coach for which a certificate or label of compliance is required under this chapter, which does not bear a certificate or label of compliance, is liable for the penalties provided in NRS 489.811 and 489.821.

4. It is unlawful for any person to issue a certification which states that a manufactured home conforms to all applicable federal standards for safety and construction if that person, in the exercise of due care, has reason to know that the certification is false or misleading in any material respect.

5. It is unlawful for a manufacturer to fail to furnish notification of defects relating to construction or safety, as required by the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C. § 5414).

6. It is unlawful for any person to fail or refuse to permit access by the administrator [administrator is chief of the manufactured housing division] to the documentary materials set forth in NRS 489.231.

7. It is unlawful for any person, without authorization from the division [manufactured housing division of the Department of Commerce], to disclose or obtain the contents of an examination given by the division.

8. It is unlawful for any person to use a manufactured home or mobile home as living quarters or for human occupancy, respectively, if the manufactured home or mobile home violates a standard of safety set forth in regulations adopted pursuant to subsection 1 of NRS 489.251, concerning installation, tie down, and support of manufactured homes and mobile homes.

(Added to NRS by 1979, 1207; A 1981, 1194; 1983, 796, 797)

OIL AND GAS: CONSERVATION

**Sec. 143. 522.040 Powers and duties of department.**

1. The department [Department of Minerals] has jurisdiction and authority over all persons and property, public and private, necessary to effectuate the purposes and intent of this chapter.

2. The department shall make investigation to determine whether waste exists or is imminent, or whether other facts exist which justify or require action by it.

3. The department shall adopt regulations, make orders and take other appropriate action to effectuate the purposes of this chapter.

4. The department may:

(a) Require:

(1) Identification or ownership of wells, producing leases, tanks, plants and drilling structures.

(2) The making and filing of reports, well logs and directional surveys. Logs of exploratory or "wildcat" wells marked "**confidential**" must be kept **confidential** for 6 months after the filing thereof, unless the owner gives written permission to release those logs at an earlier date.

(3) The drilling, casing and plugging of wells in such a manner as to prevent the escape of oil or gas out of one stratum into another, the intrusion of water into an oil or gas stratum, the pollution of fresh water supplies by oil, gas or salt water, and to prevent blowouts, cavings, seepages and fires.

(4) The furnishing of a reasonable bond with good and sufficient surety conditioned for the performance of the duty to plug each dry or abandoned well or the repair of wells causing waste.

(5) The operation of wells with efficient gas-oil and water-oil ratios, and to fix these ratios.

(6) The gauging or other measuring of oil and gas to determine the quality and quantity thereof.

(7) That every person who produces oil or gas in this state keep and maintain for a period of 5 years within this state complete and accurate record of the quantities thereof, which must be available for examination by the department or its agents at all reasonable times.

(b) Regulate, for conservation purposes:

(1) The drilling, producing and plugging of wells.

(2) The shooting and chemical treatment of wells.

(3) The spacing of wells.

(4) The disposal of salt water, nonpotable water and oil field wastes.

(5) The contamination or waste of underground water.

(c) Classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter.

[4:202:1953]--(NRS A 1977, 1151; 1981, 86; 1983, 2079)

GEOTHERMAL RESOURCES

**Sec. 144. 534A.031 Exploration and subsurface information: Filing with department of minerals; confidentiality; release to state engineer or other agency.** Exploration and subsurface information obtained as a result of a geothermal project must be filed with the department of minerals within 30 days after it is accumulated. The information is **confidential** for a period of 5 years after the date of filing and may not be disclosed during that time without the express written consent of the operator of the project, except that it must be made available by the department to the state engineer or any other agency of the state upon request. The state engineer or other agency shall keep the information **confidential**.

(Added to NRS by 1977, 383; A 1985, 1303)

PUBLIC WEIGHMASTERS

**Sec. 145. 582.120 Records of public weighmaster: Contents; inspection; preservation.** All public weighmasters shall keep and preserve correct and accurate records of all public weighings, measurings or countings. The records shall at all times be open for inspection by the state sealer of weights and measures or his deputy. The records shall be kept in a safe place for 4 years, after which time the weighmasters may destroy or otherwise dispose of the records.

[3:92:1923; NCL § 8309]--(NRS A 1971, 242; 1977, 616)

DAIRY PRODUCTS AND SUBSTITUTES

**Sec. 146. 584.573 Restrictions on sale of substitute dairy products by distributor.**

1. A distributor shall not sell a substitute dairy product, as defined in NRS 584.176, below its cost to him.

2. A distributor who sells or distributes a substitute dairy product shall file with the commission [state dairy commission] a statement of the cost of the substitute dairy product to him. The statement must be supplemented periodically as required by regulations adopted by the state dairy commission. The commission shall keep all statements **confidential** except when used in a judicial proceeding or an administrative proceeding relating to the provisions of this chapter.

(Added to NRS by 1981, 680)

**Sec. 147. 584.583 Sale of milk, cream, butter or fresh dairy products below cost.**

1. No distributor or retailer may sell fluid milk, fluid cream, butter or any fresh dairy product below cost.

2. In determining the cost for a distributor who processes or manufactures fluid milk, fluid cream, butter or any fresh dairy product, the following factors, in addition to any other factor acceptable to the commission, must be considered:

(a) Cost of raw products based on actual cost or on current and prospective supplies of fluid milk and fluid cream in relation to current and prospective demands for fluid milk and fluid cream.

(b) Cost of production.

(c) Reasonable return on capital investment.

(d) Producer's costs for transportation.

(e) Cost of compliance with health regulations.

(f) Overhead.

3. In determining the cost for a peddler- distributor or retailer, the following factors, in addition to any other factor acceptable to the commission, must be considered:

(a) Purchase price of the product.

(b) Overhead for handling.

(c) Reasonable return on capital investment.

4. For the purposes of subsections 2 and 3:

(a) Reasonable return on capital investment must be calculated per unit of production by dividing the product of:

(1) The net capital investment; and

(2) The reasonable rate of return on capital investment,

by the total sales per unit of production. "Net capital investment" includes land, buildings, equipment and any other capital asset used as a rate base. A reasonable rate of return on capital investment shall be deemed to be the rate fixed for 6- month United States treasury bills at the auction in the first week of the month of January or July immediately preceding the date that the reasonable return on capital investment is calculated.

(b) Costs for overhead must be determined according to generally accepted principles of accounting and allocated proportionately to each unit of production. Costs for overhead include salaries for executives and officers of the company, all other costs of labor, including indirect costs, rent, depreciation, costs for maintenance, costs incurred in delivering the product, fees for licenses, taxes and insurance, cost of materials, costs for repairs, the cost of electricity and other public utilities and all other costs that relate to the sale and distribution of the product. Any expense incurred in the marketing of a finished or manufactured dairy product which cannot be attributed directly to a particular product must be apportioned to the product on a basis consistent with generally accepted principles of accounting relating to costs.

5. Each distributor who processes or manufactures fluid milk, fluid cream, butter or any fresh dairy product and each peddler-distributor shall file with the commission a statement of costs, listing separately, and as applicable, the items set forth in subsection 2 or 3 of this section and any other applicable factors relating to cost. The statements must be kept current as prescribed by regulations adopted by the commission. All statements must be kept **confidential** by the commission except when used in judicial or administrative proceedings pursuant to NRS 584.325 to 584.690, inclusive.

6. Each distributor who processes or manufactures fluid milk, fluid cream, butter or any fresh dairy product and each peddler-distributor shall file with the commission lists of wholesale prices and of minimum retail, distributor and dock prices. No distributor may sell at wholesale prices other than, or at retail, distributor or dock prices less than, those contained in the appropriate list, except in the case of bids to departments or agencies of federal, state and local governments. In no case may the distributor sell or offer to sell below cost.

(Added to NRS by 1959, 900; A 1975, 1495; 1979, 1311; 1983, 1239; 1987, 155)

**Sec. 148. 584.655 Confidentiality of records and reports.** Any record or report made to the commission pursuant to the provisions of NRS 584.650 to 584.665, inclusive, shall be **confidential** and shall not be divulged except when necessary for the proper determination of any court proceedings or hearing before the commission.

[71:387:1955]

## PESTICIDES; DANGEROUS CAUSTIC OR CORROSIVE SUBSTANCES

**Sec. 149. 586.410 Disclosure of information relative to formulas unlawful; exceptions.** It shall be unlawful for any person to use for his own advantage, or to reveal, other than to the executive director [executive director of the State Department of Agriculture] or proper officials or employees of the state, or to the courts of this state in response to a subpena, or to physicians, or in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of NRS 586.280.

[Part 3:269:1955]--(NRS A 1961, 570)

## COMMERCIAL FERTILIZERS AND AGRICULTURAL MINERALS

**Sec. 150. 588.270 Reports of executive director concerning sale, production and analyses of fertilizers and agricultural minerals: Form; nondisclosure of information concerning operation of business.**

1. At least annually, the executive director [executive director of the State Department of Agriculture] shall publish, in such form as he may deem proper:

(a) Information concerning the sales of commercial fertilizers and agricultural minerals, together with such data on their production and use as he may consider advisable.

(b) A report of the results of the analyses based on official samples of commercial fertilizers or agricultural minerals sold within the state as compared with the analyses guaranteed under NRS 588.170 to 588.200, inclusive.

2. The information concerning production and use of commercial fertilizers or agricultural minerals shall be shown separately for the periods of July 1 to December 31 and January 1 to June 30 of each year.

3. No disclosure shall be made of the operations of any person.

[11:203:1951]--(NRS A 1961, 579)

## MISCELLANEOUS TRADE REGULATIONS, DECEPTIVE TRADE PRACTICES AND PROHIBITED ACTS

**Sec. 151. 598.540 Restraining orders; injunctions; assurances of discontinuance.**

1. Notwithstanding the requirement of knowledge as an element of a deceptive trade practice, when the commissioner [commissioner of consumer affairs] or director [director of the Department of Commerce] has cause to believe that a person has engaged or is engaging in any deceptive trade practice, knowingly or otherwise, he may request in writing that the

attorney general represent him in instituting an appropriate legal proceeding, including, without limitation, an application for an injunction or temporary restraining order prohibiting the person from continuing the practices. The court may make orders or judgments necessary to prevent the use by the person of any such deceptive trade practice or to restore to any other person any money or property which may have been acquired by the deceptive trade practice.

2. Where the commissioner or director has the authority to institute a civil action or other proceeding, in lieu thereof or as a part thereof, he may accept an assurance of discontinuance of any deceptive trade practice. This assurance may include a stipulation for the payment by the alleged violator of the costs of investigation and the costs of instituting the action or proceeding and for the restitution of any money or property acquired by any deceptive trade practice. Except as provided in this subsection, any assurance of discontinuance accepted by the commissioner or director and any stipulation filed with the court is **confidential** to the parties to the action or proceeding and to the court and its employees. Upon final judgment by the court that an injunction or a temporary restraining order, issued as provided in subsection 1 of this section, has been violated, an assurance of discontinuance has been violated or a person has engaged in the same deceptive trade practice as had previously been enjoined, the assurance of discontinuance or stipulation becomes a public record. Proof by a preponderance of evidence of a violation of an assurance constitutes prima facie evidence of a deceptive trade practice for the purpose of any civil action or proceeding brought thereafter by the commissioner or director, whether a new action or a subsequent motion or petition in any pending action or proceeding.

(Added to NRS by 1973, 1485; A 1983, 884; 1985, 1480, 2258)

**Sec. 152. 598.550 Disclosure of information by commissioner or director.**

1. NRS 598.360 to 598.640, inclusive, do not prohibit the commissioner or director from disclosing to the attorney general, any district attorney or any law enforcement officer the fact that a crime has been committed by any person, if this fact has become known as a result of any investigation conducted pursuant to the provisions of NRS 598.360 to 598.640, inclusive.

2. Subject to the provisions of subsection 2 of NRS 598.540, the commissioner or director may not make public the name of any person alleged to have committed a deceptive trade practice. This subsection does not prevent the commissioner or director from issuing public statements describing or warning of any course of conduct which constitutes a deceptive trade practice.

(Added to NRS by 1973, 1486; A 1983, 884; 1985, 1481)

UNFAIR TRADE PRACTICES

**Sec. 153. 598A.110 Investigative demands: Confidentiality.** Any procedure, testimony taken, document or other tangible evidence produced, or answer made under NRS 598A.100 shall be kept **confidential** by the attorney general prior to the institution of an action brought under this chapter for the alleged violation of the provisions of this chapter under investigation, unless:

1. **Confidentiality** is waived by the person upon whom the written investigative demand is made;
2. Disclosure is authorized by the district court; or
3. Disclosure is made pursuant to NRS 598A.080.

(Added to NRS by 1975, 947)

SOLICITATION BY TELEPHONE

**Sec. 154. 599B.090 Seller's license: Application; organizational information; security; fee.**

1. An applicant for a license as a seller must submit to the division [consumer affairs division of the Department of Commerce], in such form as it prescribes, a written application for the license. The application must:

(a) Set forth the name of the applicant, including each name under which he intends to do business;

(b) Set forth the name of any parent or affiliated entity that:

(1) Will engage in a business transaction with the purchaser relating to any sale solicited by the applicant; or

(2) Accepts responsibility for any statement or act of the applicant relating to any sale solicited by the applicant;

(c) Set forth the complete street address of each location, designating the principal location, from which the applicant will be doing business;

(d) Contain a list of all telephone numbers to be used by the applicant, with the address where each telephone using these numbers will be located;

(e) Set forth the name and address of each:

(1) Principal officer, director, trustee, shareholder, owner or partner of the applicant, and of each other person responsible for the management of the business of the applicant;

(2) Person responsible for a location from which the applicant will do business; and

(3) Salesman to be employed by the applicant; and

(f) Be accompanied by a copy of any:

(1) Script, outline or presentation the applicant will require a salesman to use when soliciting or, if no such document is used, a statement to that effect;

(2) Sales information or literature to be provided by the applicant to a salesman, or of which the applicant will inform the salesman; and

(3) Sales information or literature to be provided by the applicant to a purchaser in connection with any solicitation.

2. The information provided pursuant to paragraph (f) of subsection 1 by an applicant for a license as a seller is **confidential** and may only be released to a law enforcement agency, to a court of competent jurisdiction or by order of a court of competent jurisdiction.

3. If the applicant is other than a natural person, or if any parent or affiliated entity is identified pursuant to paragraph (b) of subsection 1, the applicant must, for itself and any such entity, identify its place of organization and:

(a) In the case of a partnership, provide a copy of any written partnership agreement; or

(b) In the case of a corporation, provide a copy of its articles of incorporation and bylaws.

4. An application filed pursuant to this section must be verified and accompanied by:

(a) A bond, letter of credit or certificate of deposit satisfying the requirements of NRS 599B.100;

(b) A fee for licensing in the amount of $5,000; and

(c) If subsection 5 applies, the additional bond, letter of credit or certificate of deposit and the additional fee required by that subsection.

5. If an applicant intends to do business under any assumed or fictitious name, he must, for each such name:

(a) File an additional bond, letter of credit or certificate of deposit satisfying the requirements of NRS 599B.100; and

(b) Pay an additional fee for licensing in the amount of $5,000.

(Added to NRS by 1989, 1382; A 1991, 984)

## TRADE SECRETS (Uniform Act)

**Sec. 155. 600A.070 Preservation of secrecy.** In an action under this chapter, the court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding hearings in camera, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without previous court approval.

(Added to NRS by 1987, 21)

## COMPUTERS

**Sec. 156. 603.070 Use by governmental agency of proprietary program or data.** A governmental agency which obtains a proprietary program or the data stored in a computer must keep the program or data **confidential**. The governmental agency may only use the program or data for the purpose for which it was obtained, and may not release the program or data without the prior written consent of the owner.

(Added to NRS by 1983, 1350)

**Sec. 157. 612.265 Disclosure of information by employment security department.**

1. Except as otherwise provided in this section, information obtained from any employing unit or person pursuant to the administration of this chapter and any determination as to the benefit rights of any person is **confidential** and may not be disclosed or be open to **public inspection** in any manner which would reveal the person's or employing unit's identity.

2. Any claimant or his legal representative is entitled to information from the records of the employment security department, to the extent necessary for the proper presentation of his claim in any proceeding pursuant to this chapter. A claimant or an employing unit is not entitled to information from the records of the employment security department for any other purpose.

3. Subject to such restrictions as the executive director [executive director of the Employment Security Department] may by regulation prescribe, such information may be made available to:

(a) Any agency of this or any other state or any federal agency charged with the administration or enforcement of an unemployment compensation law, public assistance law, workman's compensation or labor law, or the maintenance of a system of public employment offices;

(b) Any state or local agency for the enforcement of child support; or

(c) The Internal Revenue Service of the Department of the Treasury.

Information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service or a public assistance program.

4. The executive director may provide information on the names of employers, their geographic locations, their type or class of business or industry, and the approximate number of employees employed by each employer to the commission on economic development for its use in developing and diversifying the economic interests of this state.

5. Upon request therefor the executive director shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and the recipient's rights to further benefits pursuant to this chapter.

6. To further a current criminal investigation, the chief executive officer of any law enforcement agency of this state may submit a written request to the executive director that he furnish, from the records of the employment security department, the name, address and place of employment of any person listed in the records of employment of the department. The request must set forth the social security number of the person about whom the request is made and contain a statement signed by the chief executive officer certifying that the request is made to further a criminal investigation currently being conducted by the agency. Upon receipt of such a request, the executive director shall furnish the information requested. He may charge a reasonable fee to cover any related administrative expenses.

7. The executive director shall provide lists containing the names and addresses of employers, the number of employees employed by each employer and the total wages paid by each employer to the department of taxation, upon request, for use in verifying returns for the business tax. The executive director may charge a reasonable fee to cover any related administrative expenses.

8. The manager of the state industrial insurance system may submit to the executive director a list of each person who received benefits pursuant to chapter 616 or 617 of NRS during the preceding month and request that he compare the information so provided with the records of the employment security department regarding persons claiming benefits pursuant to chapter 612 of NRS for the same period. The information submitted by the manager must be in a form determined by the executive director and must contain the social security number of each such person. Upon receipt of such a request, the executive director shall make such a comparison and provide to the manager a list of the name, address and social security number of each person who appears, from the information submitted, to be simultaneously claiming benefits under chapter 612 of NRS and under chapter 616 or 617 of NRS. The executive director shall charge a reasonable fee to cover any related administrative expenses. The manager shall use the information obtained pursuant to this subsection only to further a current investigation. The manager shall not disclose the information for any other purpose.

9. The executive director may request the Comptroller of the Currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered pursuant to the provisions of this

chapter, and may in connection with the request transmit any such report or return to the Comptroller of the Currency of the United States as provided in Section 3305(c) of the Internal Revenue Code of 1954.

10. If any employee or member of the board of review or the executive director or any employee of the executive director, in violation of the provisions of this section, discloses information obtained from any employing unit or person in the administration of this chapter, or if any person who has obtained a list of applicants for work, or of claimants or recipients of benefits pursuant to this chapter uses or permits the use of the list for any political purpose, he is guilty of a gross misdemeanor.

11. All letters, reports or communications of any kind, oral or written, from the employer or employee to each other or to the employment security department or any of its agents, representatives or employees are privileged and must not be the subject matter or basis for any lawsuit if the letter, report or communication is written, sent, delivered or prepared pursuant to the requirements of this chapter.

[Part 4:59:1941; A 1945, 119; 1955, 518]--(NRS A 1965, 115; 1967, 627; 1971, 749; 1983, 409, 858; 1987, 1463; 1989, 1170; 1991, 351, 2464, 2466)

EMPLOYMENT PRACTICES

**Sec. 158. 613.075 Inspection of records of employer or referring labor organization by employee or person referred for employment relating to his qualifications or employment; limitations; correction.**

1. Any person or governmental entity who employs and has under his direction and control any person for wages or under a contract of hire, or any labor organization referring a person to an employer for employment, shall, upon the request of that employee or person referred:

(a) Give him a reasonable opportunity, during the usual hours of business, to inspect any records kept by that employer or labor organization containing information used:

(1) By the employer or labor organization to determine the qualifications of that employee and any disciplinary action taken against him, including termination from that employment; or

(2) By the labor organization with respect to that person's position on its list concerning past, present and future referrals for employment; and

(b) Subject to the provisions of subsection 5, furnish him with a copy of those records.

The records to be made available do not include **confidential** reports from previous employers or investigative agencies or information concerning the investigation, arrest or conviction of that person for a violation of any law.

2. Upon termination of employment, the employer shall allow the employee to inspect those records within 60 days after his termination of employment and, subject to the provisions of subsection 5, shall, if requested by that former employee within that period, furnish him with a copy of those records.

3. The employer or labor organization may only charge that person an amount equal to the actual cost of providing access to and copies of those records.

4. The employee or person referred shall, if he contends that any information contained in the records is inaccurate or incomplete, notify his employer or the labor organization in writing of his contention. If the employer or organization finds that the contention of that employee or person is correct, it shall change the information accordingly.

5. No copies may be furnished to an employee or former employee under this section unless he has been or was employed for more than 60 days.

(Added to NRS by 1985, 1080, 1081)

VOCATIONAL REHABILITATION

**Sec. 159. 615.290 Misuse of lists or records.** It is unlawful, except for purposes directly connected with the administration of the vocational rehabilitation program [bureau of vocational rehabilitation in the rehabilitation division of the Department of Human Resources] or any other arrangements, agreements or plans pursuant to this chapter, and in accordance with regulations of the bureau, for any person to solicit, disclose, receive or make use of, or authorize, knowingly permit, participate in or acquiesce in the use of any list of, or names of, or any information concerning, persons applying for

or receiving any services under this chapter, directly or indirectly derived from the records, papers, files or communications of the bureau, or acquired in the course of the performance of its official duties.

(Added to NRS by 1967, 832; A 1973, 1406)

INDUSTRIAL INSURANCE

**Sec. 160. 616.1701 Creation; purpose; status as public agency; executive and legislative review; state services; classification of employees; public records.**

1. The state industrial insurance system is hereby established as an independent actuarially funded system for the purpose of insuring employers against liability for injuries and occupational diseases for which their employees may be entitled to benefits under this chapter or chapter 617 of NRS, and the federal Longshoremen's and Harbor Workers' Compensation Act.

2. The system is a public agency which administers and is supported by the state insurance fund. The executive and legislative departments of the state government shall regularly review the system.

3. The system is entitled to use any services provided to state agencies, and must use the services of the purchasing division of the department of general services. The system is not required to use any other service. Except as otherwise provided for specified positions, its employees are in the classified service of the state.

4. The official correspondence and records, other than the files of individual claimants and policyholders, and the minutes and books of the system are public records and must be available for **public inspection.**

(Added to NRS by 1981, 1449)

**Sec. 161. 616.192 Confidentiality and disclosure of information; penalty for use of information for political purposes; privileged communications.**

1. Except as otherwise provided in this section and in NRS 616.193 and 616.550, information obtained from any employer or employee is **confidential** and may not be disclosed or be open to **public inspection** in any manner which would reveal the person's identity.

2. Any claimant or his legal representative is entitled to information from the records of the insurer, to the extent necessary for the proper presentation of a claim in any proceeding under this chapter.

3. The department [Department of Industrial Relations] and administrator [administrator of the division of industrial insurance regulation of the Department of Industrial Relations] are entitled to information from the records of the insurer which is necessary for the performance of their duties. The manager [manager of the State Industrial Insurance System] may, by regulation, prescribe the manner in which otherwise **confidential** information may be made available to:

(a) Any agency of this or any other state charged with the administration or enforcement of workers' compensation law, unemployment compensation law, public assistance law or labor law;

(b) Any state or local agency for the enforcement of child support; or

(c) The Internal Revenue Service of the Department of the Treasury.

Information obtained in connection with the administration of a workers' compensation program may be made available to persons or agencies for purposes appropriate to the operation of a workers' compensation program.

4. To further a current criminal investigation, the chief executive officer of any law enforcement agency of this state may submit a written request to the manager that he furnish from the records of the insurer, the name, address and place of employment of any person listed in the records of the insurer. The request must set forth the social security number of the person about whom the request is made and contain a statement signed by the chief executive officer certifying that the request is made to further a criminal investigation currently being conducted by the agency. Upon receipt of a request, the manager shall furnish the information requested. He may charge a reasonable fee to cover any related administrative expenses.

5. The manager shall provide lists containing the names and addresses of employers, the number of employees employed by each employer and the total wages paid by each employer to the department of taxation, upon request, for its use in verifying returns for the business tax. The manager may charge a reasonable fee to cover any related administrative expenses.

6. If any employee or member of the board of directors [board of directors of the State Industrial Insurance Commission] or manager or any employee of the manager, in violation of this section, discloses information obtained from files of

claimants or policyholders, or if any person who has obtained a list of claimants or policyholders under this chapter uses or permits the use of the list for any political purposes, he is guilty of a gross misdemeanor.

7. All letters, reports or communications of any kind, oral or written, from the insurer, or any of its agents, representatives or employees are privileged and must not be the subject matter or basis for any lawsuit if the letter, report or communication is written, sent, delivered or prepared pursuant to the requirements of this chapter.

(Added to NRS by 1989, 1189; A 1991, 2465)

**Sec. 162. 616.2935 Notification of change in ownership or control of self-insured employer; automatic termination of certification; extension.** A self-insured employer shall notify the commissioner [Commissioner of Insurance] not less than 60 days before any change in ownership or control of the employer. The certification of the self-insured employer terminates automatically on the date of the change unless the commissioner extends the certification. The commissioner, upon request, may declare as **confidential** any documents which are submitted in support of a request for such an extension.

(Added to NRS by 1985, 582)

## OCCUPATIONAL SAFETY AND HEALTH

**Sec. 163. 618.341 Records of division: Public inspection; copying; confidentiality.**

1. Except as otherwise provided in this section, the public may inspect all records of the division [division of enforcement of industrial safety and health of the Department of Industrial Relations] which contain information regarding:

(a) An oral or written complaint filed by an employee or a representative of employees alleging the existence of an imminent danger or a violation of a safety or health standard that threatens physical harm;

(b) The manner in which the division acted on any such complaint;

(c) Any citation issued by the division to an employer and the reason for its issuance; and

(d) Any penalty imposed by the division on an employer and the reason therefor.

2. The division shall, upon oral or written request and payment of any applicable charges, provide to any person a copy of any record of the division which is open to **public inspection** pursuant to subsection 1. The first six pages reproduced pursuant to each such request must be provided without charge. The charge for each additional page copied must not exceed the cost of reproduction.

3. The division shall keep **confidential**:

(a) The name of any employee who filed any complaint against an employer or who made any statement to the division concerning an employer; and

(b) Any information which is part of a current investigation by the division, but the fact that an investigation is being conducted is public information.

For the purposes of this subsection, "current investigation" means any investigation conducted before the issuance of a citation or notice of violation or, if no citation or notice of violation is issued, an investigation which is not closed.

(Added to NRS by 1989, 468)

**Sec. 164. 618.365 Scope of chapter; limited disclosure of information of division; protection of trade secrets.**

1. This chapter does not supersede or in any manner affect the Nevada Industrial Insurance Act, the Nevada Occupational Diseases Act or enlarge, diminish or affect in any other manner the common law or statutory rights, duties or liabilities of employers and employees under the laws of this state with respect to injuries, occupational or other, diseases or death of employees arising out of or in the course of employment.

2. Statements, reports and information obtained or received by the division in connection with an investigation under, or the administration or enforcement of, the provisions of this chapter must not be admitted as evidence in any civil action other than an action for enforcement, variance hearing or review under this chapter.

3. Any report of investigation or inspection or any information concerning trade secrets or secret industrial processes obtained under this chapter must not be disclosed or open to **public inspection** except as such information may be disclosed to other officers or employees concerned with carrying out this chapter or when relevant in any court proceeding under this chapter.

4. The division, the courts, and where applicable, the review board may issue such orders as may be appropriate to protect the **confidentiality** of trade secrets.

(Added to NRS by 1973, 1021; A 1975, 769; 1981, 1510; 1989, 469)

ARCHITECTS

**Sec. 165. 623.131 Confidentiality of certain records of board; exception.**

1. Except as otherwise provided in subsection 2, the records of the board [state board of architects] which relate to:

(a) An employee of the board;

(b) An examination given by the board; or

(c) Complaints and charges filed with the board and the material compiled as a result of its investigation of those complaints and charges,

are **confidential.**

2. The board may report to other related professional boards and organizations an applicant's score on an examination given by the board.

(Added to NRS by 1985, 1454)

CONTRACTORS

**Sec. 166. 624.110 Offices; maintenance, inspection and confidentiality of records and reports.**

1. The board [state contractors' board] may maintain offices in as many localities in the state as it finds necessary to carry out the provisions of this chapter, but it shall maintain one office in which there must be at all times open to **public inspection** a complete record of applications, licenses issued, licenses renewed and all revocations, cancellations and suspensions of licenses.

2. Credit reports, references, investigative memoranda, financial information and data pertaining to a licensee's net worth are **confidential** and not open to **public inspection.**

[1:Art. V:186:1941; 1931 NCL § 1474.27]--(NRS A 1963, 145; 1967, 1592; 1987, 1138)

PROFESSIONAL ENGINEERS AND SURVEYORS

**Sec. 167. 625.425 Confidentiality of information regarding investigation.**

1. Any information obtained during the course of an investigation by the board and any record of an investigation is **confidential** until the investigation is completed. If no disciplinary action is taken against a registrant, the information in any investigative file remains confidential. If a formal complaint is filed, all pleadings and evidence introduced at hearing are public records.

2. The provisions of this section do not prohibit the board or its employees from communicating and cooperating with another licensing board or any other agency that is investigating a registrant.

(Added to NRS by 1991, 2237)

HEALING ARTS GENERALLY

**Sec. 168. 629.061 Health care records: Inspection; use in public hearing; immunity of certain persons from civil action for disclosure.**

1. Each provider of health care shall make the health care records of a patient available for physical inspection by:

(a) The patient or a representative with written authorization from the patient;

(b) An investigator for the attorney general or a grand jury investigating an alleged violation of NRS 422.540 to 422.570, inclusive; or

(c) Any authorized representative or investigator of a state licensing board during the course of any investigation authorized by law.

The records must be made available at a place within the depository convenient for physical inspection, and inspection must be permitted at all reasonable office hours and for a reasonable length of time. The provider of health care shall also furnish a copy of the records to each person described in paragraphs (a) and (c) of this subsection who requests it and pays the actual cost of postage, if any, the costs of making the copy, not to exceed 60 cents per page for photocopies and a reasonable cost for copies of X-ray photographs and other health and care records produced by similar processes. No administrative fee or additional service fee of any kind may be charged for furnishing such a copy.

2. Each person who owns or operates an ambulance in this state shall make his records regarding a sick or injured patient available for physical inspection by:

(a) The patient or a representative with written authorization from the patient; or

(b) Any authorized representative or investigator of a state licensing board during the course of any investigation authorized by law.

The records must be made available at a place within the depository convenient for physical inspection, and inspection must be permitted at all reasonable office hours and for a reasonable length of time. The person who owns or operates an ambulance shall also furnish a copy of the records to each person described in paragraphs (a) and (b) of this subsection who requests it and pays the actual cost of postage, if any, and the costs of making the copy, not to exceed 60 cents per page for photocopies. No administrative fee or additional service fee of any kind may be charged for furnishing a copy of the records.

3. Records made available to a representative or investigator must not be used at any public hearing unless:

(a) The patient named in the records has consented in writing to their use; or

(b) Appropriate procedures are utilized to protect the identity of the patient from public disclosure.

This subsection does not prohibit a state licensing board from providing to a provider of health care or owner or operator of an ambulance against whom a complaint or written allegation has been filed, or to his attorney, information on the identity of a patient whose records may be used in a public hearing relating to the complaint or allegation, but the provider of health care or owner or operator of an ambulance and his attorney shall keep the information **confidential**.

4. A provider of health care or owner or operator of an ambulance, his agents and employees are immune from any civil action for any disclosures made in accordance with the provisions of this section or any consequential damages.

(Added to NRS by 1977, 1313; A 1985, 2246; 1987, 728, 1040; 1989, 2049; 1991, 1055, 1947)

PHYSICIANS AND ASSISTANTS

**Sec. 169. 630.336 Confidentiality of certain proceedings, records and information of board; exceptions.**

1. Any proceeding of a committee of the board [board of medical examiners] investigating complaints is not subject to the requirements of NRS 241.020, unless the licensee under investigation requests that the proceeding be subject to those requirements. Any deliberations conducted or vote taken by:

(a) The board or panel regarding its decision; or

(b) The board or any investigative committee of the board regarding its ordering of a physician to undergo a physical or mental examination or any other examination designated to assist the board or committee in determining the fitness of a physician,

are not subject to the requirements of NRS 241.020.

2. Except as otherwise provided in subsection 3, all applications for a license to practice medicine, any charges filed by the board, financial records of the board, formal hearings on any charges heard by the board or a panel selected by the board, records of such hearings and any order or decision of the board or panel must be open to the public.

3. Except as otherwise provided in NRS 630.352 and 630.368, the following may be kept **confidential**:

(a) Any statement, evidence, credential or other proof submitted in support of or to verify the contents of an application;

(b) All investigations and records of investigations;

(c) Any report concerning the fitness of any person to receive or hold a license to practice medicine;

(d) Any communication between:

(1) The board and any of its committees or panels; and

(2) The board or its staff, investigators, experts, committees, panels, hearing officers, advisory members or consultants and counsel for the board; and

(e) Any other information or records in the possession of the board.

4. This section does not prevent or prohibit the board from communicating or cooperating with any other licensing board or agency or any agency which is investigating a licensee, including a law enforcement agency. Such cooperation may include providing the board or agency with minutes of a closed meeting, transcripts of oral examinations and the results of oral examinations.

(Added to NRS by 1977, 826; A 1985, 2241; 1987, 201; 1989, 664)

OSTEOPATHIC MEDICINE

**Sec. 170. 633.611 Confidentiality of proceedings.** All proceedings subsequent to the filing of a complaint are **confidential**, except to the extent necessary for the conduct of an examination, until the board [state board of osteopathic medicine] determines to proceed with disciplinary action. If the board dismisses the complaint, the proceedings remain **confidential**. If the board proceeds with disciplinary action, **confidentiality** concerning the proceedings is no longer required.

(Added to NRS by 1977, 951)

CHIROPRACTIC

**Sec. 171. 634.212 Records of proceedings relating to licensing and disciplinary action; confidentiality of information; notice of disclosure of contents.**

1. The board [state board of chiropractic examiners] shall keep a record of its proceedings relating to licensing and disciplinary actions. These records must be open to **public inspection** at all reasonable times and must contain the name, known place of business and residence, and the date and number of the license of every chiropractor licensed under this chapter. The board may keep such other records as it deems desirable.

2. Except as provided in this subsection, all information pertaining to the personal background, medical history or financial affairs of an applicant or licensee which the board requires to be furnished to it under this chapter, or which it otherwise obtains, is **confidential** and may be disclosed in whole or in part only as necessary in the course of administering this chapter or upon the order of a court of competent jurisdiction. The board may, under procedures established by regulation, permit the disclosure of this information to any agent of the Federal Government, of another state or of any political subdivision of this state who is authorized to receive it.

3. Notice of the disclosure and the contents of the information disclosed pursuant to subsection 2 must be given to the applicant or licensee who is the subject of that information.

(Added to NRS by 1983, 419)

DISPENSING OPTICIANS

**Sec. 172. 637.085 Records open to public; limitations.**

1. Except as otherwise provided in subsection 2, all applications for licensure, any charges filed by the board [board of dispensing opticians], financial records of the board, formal hearings on any charges heard by the board or a panel selected by the board, records of the hearings and any order or decision of the board or panel must be open to the public.

2. The following may be kept **confidential**:

(a) Any statement, evidence, credential or other proof submitted in support of or to verify the contents of an application.

(b) All investigations and records of investigations.

(c) Any report concerning the fitness of any person to receive or hold a license to practice ophthalmic dispensing.

(d) Any communication between:

(1) The board and any of its committees or panels; and

(2) The board or its staff, investigators, experts, committees, panels, hearing officers, advisory members or consultants and counsel for the board.

(e) Any other information or records in the possession of the board.

3. This section does not prohibit the board from communicating or cooperating with any other licensing board or agency or any agency which is investigating a licensee, including a law enforcement agency.

(Added to NRS by 1987, 602)

**Sec. 173. 638.089 Confidentiality of information; limitations; notice of disclosure of contents.**

1. Except as provided in this section, all information received by the board [state board of veterinary medical examiners] concerning an applicant for a license or a licensee, including the results of an investigation, is **confidential**.

2. If the board takes disciplinary action against an applicant or licensee, the complaint and the action taken are no longer required to be **confidential**.

3. If the board conducts any proceeding other than a disciplinary action regarding an applicant or licensee, its statement of findings and any order issued relating thereto are no longer required to be **confidential**.

4. Information concerning an applicant or a licensee may be disclosed, pursuant to procedures established by regulation of the board, to a court or an agency of the Federal Government, any state or any political subdivision of this state. Notice of the disclosure and the contents of the information must be given to the applicant or licensee within 3 business days before the disclosure.

(Added to NRS by 1985, 1246)

PHARMACISTS AND PHARMACY

**639.238 Prescriptions not public records; pharmacists not to divulge contents; exceptions.**

1. Prescriptions filled and on file in a pharmacy **are not a public record.** A pharmacist **shall not divulge** the contents of any prescription or provide a copy of any prescription, except to:

(a) The patient for whom the original prescription was issued;

(b) The practitioner who originally issued the prescription;

(c) A practitioner who is then treating the patient;

(d) A member, inspector or investigator of the board or an inspector of the Food and Drug Administration or an agent of the investigation division of the department of motor vehicles and public safety;

(e) An agency of state government charged with the responsibility of providing medical care for the patient;

(f) An insurance carrier, on receipt of written authorization signed by the patient or his legal guardian, authorizing the release of such information; or

(g) Any person authorized by an order of a district court.

2. Any copy of a prescription for a controlled substance or a dangerous drug as defined in chapter 454 of NRS, issued to a person authorized by this section to receive such a copy, must contain all of the information appearing on the original prescription and be clearly marked on its face, "Copy, Not Refillable--For Reference Purposes Only"; and such a copy must bear the name or initials of the registered pharmacist who prepared the copy.

3. If a copy of a prescription for any controlled substance or a dangerous drug as defined in chapter 454 of NRS is furnished to the customer, the original prescription must be voided and notations made thereon showing the date and the name of the person to whom the copy was furnished.

4. If, at the express request of a customer, a copy of a prescription for any controlled substance or dangerous drug is furnished to another pharmacist, the original prescription must be voided and notations made thereon showing the date and the name of the pharmacist to whom the copy was furnished. The pharmacist receiving the copy shall call the prescribing practitioner for a new prescription.

(Added to NRS by 1967, 1662; A 1971, 2043; 1973, 781; 1977, 1281; 1979, 1693; 1981, 2015; 1985, 1998; 1987, 1568)

**Sec. 174. 639.2485 Confidentiality of records and information obtained during investigation; limitations on disclosure.**

1. Any records or information obtained during the course of an investigation by the board and any record of the investigation are **confidential** until the investigation is completed. Upon completion of the investigation the information and records are public records, only if:

(a) Disciplinary action is imposed by the board as a result of the investigation; or

(b) The person regarding whom the investigation was made submits a written request to the board asking that the information and records be made public records.

2. The board may disclose to a practitioner and a law enforcement agency information concerning a person who procures or attempts to procure any dangerous drug or controlled substance in violation of NRS 453.391 or 454.311.

(Added to NRS by 1989, 1568; A 1991, 1952)

PHYSICAL THERAPISTS

**Sec. 175. 640.075 Confidentiality of information obtained during investigation and record of investigation.**

1. Any records or information obtained during the course of an investigation by the board [state board of physical therapy examiners] and any record of the investigation are **confidential** until the investigation is completed. Upon completion of the investigation the information and records are public records, only if:

(a) Disciplinary action is imposed by the board as a result of the investigation; or

(b) The person regarding whom the investigation was made submits a written request to the board asking that the information and records be made public records.

2. This section does not prevent or prohibit the board from communicating or cooperating with another licensing board or any agency that is investigating a licensee, including a law enforcement agency.

(Added to NRS by 1989, 1574)

OCCUPATIONAL THERAPISTS

**Sec. 176. 640A.220 Investigations: Confidentiality of records and information.** Any records or information obtained during the course of an investigation by the board are **confidential** until the investigation is completed. Upon completion of the investigation, the records and information are public records if:

1. Disciplinary action is imposed by the board as a result of the investigation; or

2. The person under investigation submits a written request to the board asking that the information and records be made public records.

(Added to NRS by 1991, 991)

PSYCHOLOGISTS

**Sec. 177. 641.090 Duties of secretary-treasurer; custody and inspection of records of board; confidentiality.**

1. The secretary-treasurer shall make and keep on behalf of the board [board of psychological examiners]:

(a) A record of all its meetings and proceedings.

(b) A record of all violations and prosecutions under the provisions of this chapter.

(c) A record of all examinations of applicants.

(d) A register of all licenses.

(e) A register of all holders of licenses.

(f) An inventory of the property of the board and of the state in the board's possession.

2. These records must be kept in the office of the board and are subject to **public inspection** during normal working hours upon reasonable notice.

3. The board may keep the personnel records of applicants **confidential.**

(Added to NRS by 1963, 188; A 1979, 1352; 1989, 1540)

**Sec. 178. 641.255 Confidentiality of complaint.** All complaints filed with the board are **confidential**, except to the extent necessary for the conduct of an investigation, until the board determines whether to proceed with any action authorized under this chapter. If the board dismisses the complaint, it remains **confidential.** If the board proceeds with any action, **confidentiality** is no longer required.

(Added to NRS by 1985, 1909)

**Sec. 179. 641.272 Mental or physical examination required by board; consent to examination; confidentiality of reports; immediate suspension for failure to submit to examination.**

1. If the board determines that a complaint is not frivolous, it may require the person named in the complaint to submit to a mental examination conducted by a panel of three psychologists designated by the board or a physical examination conducted by a physician designated by the board.

2. Every psychologist licensed under this chapter who accepts the privilege of practicing psychology in this state shall be deemed to have given his consent to submit to a mental or physical examination when directed to do so in writing by the board. The testimony or reports of the examining psychologists or physician are privileged communications, except as to proceedings conducted pursuant to this chapter.

3. Except in extraordinary circumstances, as determined by the board, the failure of a psychologist to submit to an examination as provided in this section constitutes grounds for the immediate suspension of his license.

(Added to NRS by 1985, 1907; A 1989, 1544)

MARRIAGE AND FAMILY THERAPISTS

**Sec. 180. 641A.191 Confidentiality of information obtained during investigation and record of investigation.**

1. Any records or information obtained during the course of an investigation by the board [board of examiners for marriage and family therapists] and any record of the investigation are **confidential** until the investigation is completed. Except as otherwise provided in NRS 641A.315, upon completion of the investigation the information and records are public records, only if:

(a) Disciplinary action is imposed by the board as a result of the investigation; or

(b) The person regarding whom the investigation was made submits a written request to the board asking that the information and records be made public records.

2. This section does not prohibit the board from communicating or cooperating with any other licensing board or agency or any agency which is investigating a licensee, including a law enforcement agency.

(Added to NRS by 1989, 1569)

COSMETOLOGY

**Sec. 181. 644.130 Record of licenses; disclosure of information.**

1. The board shall keep a record containing the name, known place of business and the date and number of the license of every manicurist, electrologist, aesthetician and cosmetologist, together with the names and addresses of all cosmetological establishments and schools of cosmetology licensed pursuant to this chapter. The record must also contain the facts which the applicants claimed in their applications to justify their licensure.

2. The board may disclose the information contained in the record kept pursuant to subsection 1 to:

(a) Any other licensing board or agency that is investigating a licensee.

(b) A member of the general public, **except information** concerning the address and telephone number of a licensee.

[Part 4:218:1931; A 1933, 237; 1931 NCL § 1862.03]--(NRS A 1981, 1351; 1985, 1629; 1991, 2056)

REAL ESTATE BROKERS AND SALESMEN

**Sec. 182. 645.180 Real estate division: Seal; records; certified copies of records as evidence.**

1. The division [real estate division of the Department of Commerce] shall adopt a seal by which it shall authenticate its proceedings.

2. Records kept in the office of the division under authority of this chapter are open to **public inspection** under regulations adopted by the real estate division, except that the division may refuse to make public, unless ordered to do so by a court:

(a) Real estate brokers' and real estate salesmen's examinations;

(b) Files compiled by the division while investigating possible violations of this chapter or chapter 119 of NRS; and

(c) The criminal and financial records of licensees, applicants for licenses and owner-developers.

3. Copies of all records and papers in the office of the division, certified and authenticated by the seal of the division, must be received in evidence in all courts equally and with like effect as the originals.

[Part 6:150:1947; A 1949, 433; 1955, 131]--(NRS A 1963, 665; 1975, 1541; 1979, 1537)

## ESCROW AGENCIES AND AGENTS

**Sec. 183. 645A.050 Duties of commissioner.**

1. Subject to the administrative control of the director of the department of commerce, the commissioner [commissioner of financial institutions] shall exercise general supervision and control over escrow agents and agencies doing business in the State of Nevada.

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

(a) Adopt such regulations as may be necessary for making this chapter effective.

(b) Conduct or cause to be conducted each year an examination of each escrow agency licensed pursuant to this chapter.

(c) Conduct such investigations as may be necessary to determine whether any person has violated any provision of this chapter.

(d) Conduct such examinations, investigations and hearings, in addition to those specifically provided for by law, as may be necessary and proper for the efficient administration of the laws of this state relating to escrow.

(e) Classify as **confidential** the financial statements of an escrow agency and those records and information obtained by the division which:

(1) Are obtained from a governmental agency upon the express condition that they remain **confidential**.

(2) Consist of information compiled by the division in the investigation of possible violations of this chapter.

This paragraph does not limit examination by the legislative auditor or any other person pursuant to a court order.

3. An escrow agency may engage a certified public accountant to perform such an examination in lieu of the division. In such a case, the examination must be equivalent to the type of examination made by the division and the expense must be borne by the escrow agency being examined.

4. The commissioner shall determine whether an examination performed by an accountant pursuant to subsection 3 is equivalent to an examination conducted by the division. The commissioner may examine any area of the operation of an escrow agency if the commissioner determines that the examination of that area is not equivalent to an examination conducted by division.

(Added to NRS by 1973, 1308; A 1973, 1669; 1985, 1812; 1991, 1850)

**Sec. 184. 645A.080 Information open to public inspection; exception.** Except as otherwise provided by law, all papers, documents, reports and other written instruments filed with the commissioner pursuant to this chapter are open to **public inspection**, except that the commissioner may withhold from **public inspection** for such time as he considers necessary any information which in his judgment the public welfare or the welfare of any escrow agent or agency requires to be so withheld.

(Added to NRS by 1973, 1312; A 1985, 1813; 1991, 1852)

## MORTGAGE COMPANIES

**Sec. 185. 645B.060 Duties of commissioner.**

1. Subject to the administrative control of the director of the department of commerce, the commissioner [commissioner of financial institutions] shall exercise general supervision and control over mortgage companies doing business in this state.

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

(a) Adopt reasonable regulations as may be necessary for making effective this chapter, except as to loan brokerage fees.

(b) Conduct such investigations as may be necessary to determine whether any person has violated any provision of this chapter.

(c) Conduct such examinations, periodic or special audits, investigations and hearings, in addition to those specifically provided for by law, as may be necessary and proper for the efficient administration of the laws of this state regarding mortgage companies.

(d) Classify as **confidential** certain records and information obtained by the division when those matters are obtained from a governmental agency upon the express condition that they remain **confidential**. This paragraph does not limit examination by the legislative auditor.

(e) Conduct such examinations and investigations as are necessary to ensure that mortgage companies meet the requirements of this chapter for obtaining a license, both at the time of the application for a license and thereafter on a continuing basis.

3. For each special audit, investigation or examination a mortgage company shall pay a fee based on the rate established pursuant to NRS 658.101.

(Added to NRS by 1973, 1538; A 1973, 1669; 1981, 1789; 1983, 1380, 1703; 1987, 1878, 2224)

**Sec. 186. 645B.090 Information open to public inspection; exception.** Except as otherwise provided by law, all papers, documents, reports and other written instruments filed with the commissioner under this chapter are open to **public inspection**, except that the commissioner may withhold from **public inspection** for such time as he considers necessary any information which in his judgment the public welfare or the welfare of any mortgage company requires to be so withheld.

(Added to NRS by 1973, 1543; A 1983, 1704; 1987, 1880)

## APPRAISERS OF REAL ESTATE

**Sec. 187. 645C.220 Maintenance of records; availability of records for inspection.**

1. The division [real estate division of the Department of Commerce] shall maintain a record of:

(a) Persons whose applications for a certificate, license or registration card have been denied;

(b) Investigations conducted by it which result in the initiation of formal disciplinary proceedings;

(c) Formal disciplinary proceedings; and

(d) Rulings or decisions upon complaints filed with it.

2. Except as otherwise provided in this section, records kept in the office of the division pursuant to this chapter are open to the public for inspection pursuant to regulations adopted by the commission. The division may keep **confidential**, unless otherwise ordered by a court:

(a) Examinations for a certificate or license;

(b) Information obtained by the division while investigating alleged violations of this chapter; and

(c) The criminal and financial records of an appraiser or intern, or an applicant for a certificate, license or registration card.

(Added to NRS by 1989, 825; A 1991, 888)

## PRIVATE INVESTIGATORS, PRIVATE PATROLMEN, POLYGRAPHIC EXAMINERS, REPOSSESSORS AND DOG HANDLERS

**Sec. 188. 648.033 Public records of board; confidential information; release.**

1. The board [private investigator's licensing board] shall maintain a public record of:

(a) The business it transacts at its regular and special meetings; and

(b) The applications received by it together with the record of the disposition of each application.

2. Information obtained by the board from other than public sources concerning the:

(a) Financial condition; or

(b) Criminal record,

of an applicant or a licensee is **confidential** and may be revealed only to the extent necessary for the proper administration of the provisions of this chapter.

3. The board may release information described in subsection 2 to an agency of the Federal Government, of a state or of a political subdivision of this state.

4. The board shall adopt by regulation a procedure for notifying the applicant or licensee of the release of **confidential** information pursuant to subsections 2 and 3. The board shall release information described in subsection 2 concerning an applicant or licensee to the applicant or licensee upon request.

(Added to NRS by 1985, 1330)

**Sec. 189. 648.197 Chronological log; polygraph charts; records; release of results of polygraphic examination.**

1. Each examiner or intern shall maintain a chronological log of all polygraphic examinations which he administers. The log must include the date of each examination, the name of the person examined, and an identifying case or file number.

2. All polygraphic charts must be identified with the name of the person examined, the date of the examination, an identifying case or file number and the signature or initials of the examiner or intern.

3. The records of a polygraphic examination, including the written consent of the person examined, the questions asked, notes and charts obtained during the examination, must be maintained in a manner which protects their **confidentiality** by the examiner or intern or his employer, for a period of not less than 3 years.

4. Except when ordered to do so by a court of competent jurisdiction, or as otherwise provided by law, a person who possesses the results of a polygraphic examination or information obtained during a polygraphic examination shall not release the results or the information obtained without the written consent of the person examined.

(Added to NRS by 1985, 1332)

**Sec. 190. 648.199 Availability of charts and records of examination to other polygraphic examiners.** An examiner or intern may make charts and other records of an examination available to another polygraphic examiner or intern or group of polygraphic examiners or interns, including the board and its representatives, for the purpose of consultation or review under conditions which ensure the **confidentiality** of the examination and its results.

(Added to NRS by 1985, 1332)

## COLLECTION AGENCIES

**Sec. 191. 649.065 Records of commissioner: Contents; inspection.**

1. The commissioner [commissioner of financial institutions] shall keep in his office, in a suitable record provided for the purpose, all applications for certificates, licenses and all bonds required to be filed under this chapter. The record must state the date of issuance or denial of the license or certificate and the date and nature of any action taken against any of them.

2. All licenses and certificates issued must be sufficiently identified in the record.

3. All renewals must be recorded in the same manner as originals, except that, in addition, the number of the preceding license or certificate issued must be recorded.

4. Except for **confidential** information contained therein, the record must be open for inspection as a public record in the office of the commissioner.

[12:237:1931; 1931 NCL § 1420.11]--(NRS A 1959, 828; 1969, 841; 1983, 1711; 1985, 314, 376; 1987, 1888)

## EXAMINATIONS AND REPORTS (Banking)

**Sec. 192. 665.075 Report furnished bank for confidential use of directors; disclosure of contents prohibited; exception.**

1. The report of examination made by an examiner of the division of financial institutions is designed for use in the supervision of the bank. The bank's copy of the report is the property of the commissioner and is furnished to the bank solely for its **confidential** use.

2. The bank's directors, in keeping with their responsibilities both to depositors and to stockholders, shall thoroughly review the report. Under no circumstances may the bank, or any of its directors, officers or employees disclose or make public in any manner the report or any portion thereof. The report must not be made available to other banking institutions in connection with proposed transactions such as mergers and consolidations. The report must not be made available to a clearing house association, but a bank may voluntarily disclose information concerning its affairs to a clearing house association where a disclosure is through reports prepared by the bank or by others at the request of the bank.

(Added to NRS by 1971, 995; A 1983, 1745; 1987, 1921)

**Sec. 193. 665.130 Receipt and certification of reports; disclosure of reports and other information; public records.**

1. The commissioner shall receive and place on file in his office all reports required by law and shall certify all reports required to be published. The reports filed with or prepared by the division of financial institutions and other information obtained from a depository institution are not public records and **may not be disclosed** except as provided in this section and NRS 665.133.

2. The following records and information are open to the public:

(a) Information contained in an application filed pursuant to NRS 666.225 to 666.375, inclusive, unless the applicant requests confidentiality and the commissioner grants the request; and

(b) Any other information which by specific statute is made generally available to the public.

(Added to NRS by 1985, 2148; A 1987, 1922)

PROHIBITED PRACTICES AND PENALTIES (Banking)

**Sec. 194. 668.085 Unauthorized disclosure of confidential information; penalty.** If any person fails to keep secret the facts and information obtained in the course of, or as a result of, an examination of a bank, except when the duty of such examiner or employee requires him to report upon or take official action regarding the affairs of such bank, he is guilty of a misdemeanor.

(Added to NRS by 1971, 1007)

ISSUERS OF INSTRUMENTS FOR
TRANSMISSION OR PAYMENT OF MONEY

**Sec. 195. 671.170 Investigations and hearings; confidential communications.**

1. The commissioner [commissioner of financial institutions] may conduct any necessary investigations and hearings to determine whether any licensee or other person has violated any of the provisions of this chapter or whether any licensee has conducted himself in a manner which requires the suspension, revocation or denial of renewal of his license.

2. In conducting any investigation or hearing pursuant to this chapter, the commissioner, or any person designated by him, may require the attendance and testimony of any person and compel the production of all relevant books, records, accounts and other documents. The cost of any examination or investigation, not to exceed $10 an hour, must be borne by the licensee.

3. The commissioner may require any licensee to submit such reports concerning his business as the commissioner deems necessary for the enforcement of this chapter.

4. All reports of investigations and examinations and other reports rendered pursuant to this section, and all correspondence and memoranda relating to or arising therefrom, including any authenticated copies thereof in the possession of any licensee or the commissioner, are **confidential** communications, are not subject to any subpena, and must not be made public unless the commissioner determines that justice and the public advantage will be served by their publication. This subsection does not preclude any party to an administrative or judicial proceeding from introducing into evidence any information or document otherwise available or admissible.

(Added to NRS by 1977, 1087; A 1983, 1769; 1987, 1954)

**Sec. 196. 673.430 Annual reports: Filing; form and contents; fees; penalty.**

1. Each association doing business in this state shall file annually with the commissioner [commission of financial institutions] on or before March 1, a sworn statement in two sections.

2. One section of the annual report must contain, in such form and detail as the commissioner may prescribe, the following:

(a) The amount of authorized capital by classes and the par value of each class of stock.

(b) A statement of its assets, liabilities and capital accounts as of the immediately preceding December 31.

(c) Any other facts which the commissioner requires.

This section must be furnished in duplicate, one certified copy to be returned for publication at least two times in a newspaper having a general circulation in each county in which the association maintains an office. Publication must be completed on or before May 1, and proof of publication must be filed in the office of the commissioner.

3. One section of the annual report must contain such other information as the commissioner may require to be furnished. This section need not be published and must be treated as **confidential** by the commissioner.

4. The commissioner may impose and collect a penalty of $5 for each day the annual report is overdue, up to a maximum of $500. Every association shall pay to the commissioner for supervision and examination a fee based on the rate established pursuant to NRS 658.101.

5. All sums so received by the commissioner must be delivered to the state treasurer and paid into the state general fund.

[Part 21:51:1931; 1931 NCL § 970.20]--(NRS A 1957, 757; 1961, 773; 1963, 470; 1965, 1139; 1967, 979; 1969, 978; 1973, 728; 1977, 499; 1979, 1296; 1983, 1792; 1987, 1975, 2226; 1989, 921)

THRIFT COMPANIES

**Sec. 197. 677.243 Records of employees; confidentiality.**

1. Each licensee must maintain a record that includes for each employee:

(a) His full name;

(b) The address of each place at which he has resided during the previous 10 years;

(c) The name and address of each employer during the previous 10 years;

(d) A recent photograph of the employee measuring 3 by 5 inches; and

(e) Any alias used by the employee.

2. The information contained in this record must be provided to the commissioner [commissioner of financial institutions] upon his request but is otherwise **confidential**.

(Added to NRS by 1985, 2193; A 1987, 2000)

COMMISSIONER OF INSURANCE

**Sec. 198. 679B.152 Review of fees for medical or dental care determined to be usual and customary; plans limiting selection of dentist.**

1. Every insurer or organization for dental care which pays claims on the basis of fees for medical or dental care which are "usual and customary" shall submit to the commissioner a complete description of the method it uses to determine those fees. This information must be kept **confidential** by the commissioner. The fees determined by the insurer or organization to be the usual and customary fees for that care are subject to the approval of the commissioner as being the usual and customary fees in that locality.

2. Any contract for group, blanket or individual health insurance and any contract issued by a nonprofit hospital, medical or dental service corporation or organization for dental care, which provides a plan for dental care to its insureds or members which limits their choice of a dentist, under the plan to those in a preselected group, must offer its insureds or members the option of selecting a plan of benefits which does not restrict the choice of a dentist. The selection of that option does not entitle the insured or member to any increase in contributions by his employer or other organization toward the premium or cost of the optional plan over that contributed under the restricted plan.

(Added to NRS by 1983, 2028; A 1985, 1148)

**Sec. 199. 679B.159 Report of violation to commissioner; confidentiality of report.**

1. Every insurer, agent, solicitor, broker, administrator or other person who has knowledge of a violation of any provision of this code shall promptly report the facts and circumstances pertaining to the violation to the commissioner.

2. If a person who submits information pursuant to subsection 1 so requests, the commissioner shall keep the person's name and the information **confidential**.

(Added to NRS by 1985, 1063)

**Sec. 200. 679B.190 Records: Inspection; confidentiality; destruction.**

1. The commissioner shall carefully preserve in the department and in permanent form all papers and records relating to the business and transactions of the department and shall hand them over to his successor in office.

2. Except as otherwise provided by subsections 3 and 5 and other provisions of this code, the papers and records must be open to public inspection.

3. Any records or information related to the investigation of a fraudulent claim by the commissioner are **confidential** unless:

(a) The commissioner releases the records or information for public inspection after determining that the release of the records or information will not harm his investigation or the person who is being investigated; or

(b) A court orders the release of the records or information after determining that the production of the records or information will not damage any investigation being conducted by the commissioner.

4. The commissioner may destroy unneeded or obsolete records and filings in the department in accordance with provisions and procedures applicable in general to administrative agencies of this state.

5. The commissioner may classify as **confidential** certain records and information obtained from a governmental agency or other sources upon the express condition that they remain confidential, or be deemed confidential by the commissioner. No filing required to be made with the commissioner under this code shall be deemed confidential unless expressly provided by law.

(Added to NRS by 1971, 1565; A 1983, 1386; 1991, 1617)

**Sec. 201. 679B.280 Report of examination: Distribution; hearing.**

1. The commissioner shall deliver a copy of the examination report to the person examined, together with a notice affording the person 10 days or such additional reasonable period as the commissioner for good cause may allow within which to review the report and recommend changes therein.

2. If so requested by the person examined, within the period allowed under subsection 1, or if deemed advisable by the commissioner without such request, the commissioner shall hold a hearing relative to the report and shall not file the report in the department for public inspection until after such hearing and his order thereon.

3. If no such hearing has been requested or held, the examination report, with such modifications, if any, thereof as the commissioner deems proper, must be accepted by the commissioner and filed in the department for public inspection upon expiration of the review period provided for in subsection 1. The report must in any event be so accepted and filed within 6 months after final hearing thereon, except that the commissioner **may withhold from public inspection** any examination report for so long as he deems such withholding to be necessary for the protection of the person examined against unwarranted injury or to be in the public interest.

4. The commissioner shall forward to the person examined a copy of the examination report as filed for public inspection, together with any recommendations or statements relating thereto which he deems proper.

5. If the report concerns the examination of a domestic insurer, a copy of the report, or a summary thereof approved by the commissioner, when filed for public inspection, or if withheld from public inspection under subsection 3, together with the recommendations or statements of the commissioner or his examiner, must be presented by the insurer's chief executive officer to the insurer's board of directors or similar governing body at a meeting thereof which must be held within 30 days next following receipt of the report in final form by the insurer. A copy of the report must also be furnished by the secretary of the insurer, if incorporated, or by the attorney-in-fact if a reciprocal insurer, to each member of the insurer's board of directors or board of governors, if a reciprocal insurer, and the certificate of the secretary or attorney-in-fact that a copy of the examination report has been so furnished shall be deemed to constitute knowledge of the contents of the report by each such member.

(Added to NRS by 1971, 1569; A 1991, 1618)

ADMINISTRATORS, AGENTS, BROKERS
AND SOLICITORS (Insurance)

**Sec. 202. 683A.290 Termination of appointment of agent; termination of employment of solicitor.**

1. Subject to an agent's contract rights, if any, an insurer may terminate the agent's appointment, resident or nonresident, at any time. The insurer shall promptly give written notice of termination and the effective date thereof to the commissioner, on forms furnished by the commissioner, and to the agent if reasonably possible. The commissioner may require of the insurer reasonable proof that the insurer has also given such a notice to the agent if reasonably possible.

2. Accompanying the notice of termination given the commissioner, the insurer shall, upon written request of the commissioner, file with him a statement of the cause, if any, for each termination. Any information or document so disclosed or furnished to the commissioner shall be deemed a **qualifiedly privileged communication** and is not admissible as evidence in any action or proceeding unless so permitted by the insurer in writing.

3. An agent or broker terminating the employment and license of a solicitor shall give like notice of termination and proof to the commissioner, like information as to the reasons for termination, with like status as a privileged communication unless the privilege is waived in writing by the agent or broker.

4. No agreement between an insurer and agent, or between an employing agent or broker and a licensed solicitor, affects the commissioner's termination of the appointment or license if so requested by the insurer or by the agent or broker, as the case may be.

(Added to NRS by 1971, 1648; A 1971, 1938; 1981, 1805)

TRADE PRACTICES AND FRAUDS:
FINANCING OF PREMIUMS (Insurance)

**Sec. 203. 686A.289 Fraudulent claims: Insurer entitled to receive information concerning claim; confidentiality of information.**

1. Any insurer giving information to the commissioner [commissioner of insurance] or any investigative or law enforcement agency concerning an alleged fraudulent claim is entitled to receive, upon completion of the investigation or prosecution of the claim, whichever occurs later, any relevant information concerning the claim.

2. The commissioner or any investigative or law enforcement agency receiving information from another person, agency or insurer shall:

(a) Keep the information **confidential** and not release the information except pursuant to subsection 1;

(b) Provide information concerning its investigation of the claim to the insurer reporting the claim upon the completion of its investigation or a criminal prosecution, whichever occurs later; and

(c) Provide any documents necessary or allow its employees or agents to testify in any action by or against the insurer if the insurer or its insured furnished the information for the investigation or a criminal prosecution.

(Added to NRS by 1983, 1388)

**Sec. 204. 686B.170 Examination of service organizations.**

1. Whenever he deems it necessary in order to inform himself about any matter related to the enforcement of the insurance laws, the commissioner [commissioner of insurance] may examine the affairs and condition of any rate service organization under subsection 1 of NRS 686B.130. So far as reasonably necessary for an examination under this subsection, the commissioner may examine the accounts, records, documents or evidences of transactions, so far as they relate to the examinee, of any officer, manager, general agent, employee, person who has executive authority over or is in charge of any segment of the examinee's affairs, person controlling or having a contract under which he has the right to control the examinee whether exclusively or with others, person who is under the control of the examinee, or any person who is under the control of a person who controls or has a right to control the examinee whether exclusively or with others. On demand every examinee under this subsection shall make available to the commissioner for examination any of its own accounts, records, documents or evidences of transactions and any of those of the persons listed in this subsection.

2. The commissioner shall examine every licensed rate service organization at intervals to be established by rule.

3. In lieu of all or part of an examination under subsections 1 and 2, or in addition to it, the commissioner may order an independent audit by certified public accountants or actuarial evaluation by actuaries approved by him of any person subject to the examination requirement. Any accountant or actuary selected shall be subject to rules respecting conflicts of interest promulgated by the commissioner. Any audit or evaluation under this subsection shall be subject to subsections 6 to 15, inclusive, so far as appropriate.

4. In lieu of all or part of an examination under this section, the commissioner may accept the report of an audit already made by certified public accountants or actuarial evaluation by actuaries approved by him, or the report of an examination made by the insurance department of another state.

5. An examination may but need not cover comprehensively all aspects of the examinee's affairs and condition. The commissioner shall determine the exact nature and scope of each examination, and in doing so shall take into account all relevant factors, including but not limited to the length of time the examinee has been operating, the length of time he has been licensed in this state, the nature of the services provided, the nature of the accounting records available and the nature of examinations performed elsewhere.

6. For each examination under this section, the commissioner shall issue an order stating the scope of the examination and designating the examiner in charge. Upon demand a copy of the order shall be exhibited to the examinee.

7. Any examiner authorized by the commissioner shall, so far as necessary to the purposes of the examination, have access at all reasonable hours to the premises and to any books, records, files, securities, documents or property of the examinee and to those of persons under subsection 1 so far as they relate to the affairs of the examinee.

8. The officer, employees and agents of the examinee and of persons under subsection 1 shall comply with every reasonable request of the examiners for assistance in any matter relating to the examination. A person shall not obstruct or interfere with the examination in any way other than by legal process.

9. If the commissioner finds the accounts or records to be inadequate for proper examination of the condition and affairs of the examinee or improperly kept or posted, he may employ experts to rewrite, post or balance them at the expense of the examinee.

10. The examiner in charge of an examination shall make a proposed report of the examination which shall include such information and analysis as is ordered in subsection 6, together with the examiner's recommendations. Preparation of the proposed report may include conferences with the examinee or his representatives at the option of the examiner in charge. The proposed report shall remain **confidential** until filed under subsection 11.

11. The commissioner shall serve a copy of the proposed report upon the examinee. Within 20 days after service, the examinee may serve upon the commissioner a written demand for a hearing on the contents of the report. If a hearing is demanded, the commissioner shall give notice and hold a hearing under NRS 679B.310 to 679B.370, inclusive, except that on demand by the examinee the hearing shall be private. Within 60 days after the hearing or if no hearing is demanded then within 60 days after the last day on which the examinee might have demanded a hearing, the commissioner shall adopt the report with any necessary modifications and file it for **public inspection**, or he shall order a new examination.

12. The commissioner shall forward a copy of the examination report to the examinee immediately upon adoption, except that if the proposed report is adopted without change, the commissioner need only so notify the examinee.

13. The examinee shall forthwith furnish copies of the adopted report to each member of its board of directors or other governing board.

14. The commissioner may furnish, without cost or at a price to be determined by him, a copy of the adopted report to the insurance commissioner of each state in the United States and of each foreign jurisdiction in which the examinee is licensed and to any other interested person in this state or elsewhere.

15. In any proceeding by or against the examinee or any officer or agent thereof the examination report as adopted by the commissioner shall be admissible as evidence of the facts stated therein. In any proceeding by or against the examinee, the facts asserted in any report properly admitted in evidence shall be presumed to be true in the absence of contrary evidence.

16. The reasonable costs of an examination under this section shall be paid by the examinee except as provided in subsection 19. The costs shall include the salary and expenses of each examiner and any other expenses which may be directly apportioned to the examination.

17. The amount payable under subsection 16 shall become due 10 days after the examinee has been served a detailed account of the costs.

18. The commissioner may require any examinee, before or from time to time during an examination to deposit with the state treasurer such deposits as the commissioner deems necessary to pay the costs of the examination. Any deposit and any payment made under subsections 16 and 17 shall be deposited in the insurance examination fund.

19. On the examinee's request or on his own motion, the commissioner may pay all or part of the costs of an examination, whenever he finds that, because of the frequency of examinations or other factors, imposition of the costs would place an unreasonable burden on the examinee. The commissioner shall include in his annual report information about any instance in which he applied this subsection.

20. Deposits and payments under subsections 16 to 19, inclusive, shall not be deemed to be a tax or license fee within the meaning of any statute. If any other state charges a per diem fee for examination of examinees domiciled in this state, any examinee domiciled in that other state shall be required to pay the same fee when examined by the commissioner of insurance of this state.

(Added to NRS by 1971, 1704; A 1977, 811)

## NEVADA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION

**Sec. 205. 686C.310 Detection and prevention of impairment or insolvency of insurers.** To aid in the detection and prevention of the impairment or insolvency of insurers:

1. The board shall, upon majority vote, notify the commissioner of any information indicating any member insurer may be impaired or insolvent. The commissioner shall report to the board when he has reasonable cause to believe from any examination, whether or not completed, that any member insurer may be impaired or insolvent.

2. The board may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be impaired or insolvent. The commissioner shall begin the examination within 30 days after receiving the request. The examination may be conducted by the National Association of Insurance Commissioners or by such persons as the commissioner designates. The cost of the examination must be paid by the association and the report treated as are other reports of examinations. The report must not be released to the board before its release to the public, but this does not excuse the commissioner from his obligation to comply with subsection 1. The commissioner shall notify the board when the examination is completed. The request for an examination must be kept on file by the commissioner but it is **not open to public inspection** before the release of the report of the examination to the public and may be released at that time only if the examination discloses that the examined insurer is impaired or insolvent.

3. The board may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer or germane to the solvency of any person seeking admission to transact insurance in this state. These reports and recommendations are not open to public inspection.

4. The commissioner may seek the advice and recommendations of the board concerning any matter affecting his duties and responsibilities regarding the financial condition of member insurers and of persons seeking admission to transact insurance in this state.

5. The board may, upon majority vote, make recommendations to the commissioner for the detection and prevention of the insolvency of insurers.

(Added to NRS by 1973, 310; A 1991, 880)

INSURANCE GUARANTY ASSOCIATION

**Sec. 206. 687A.110 Detection and prevention of insolvency: Powers and duties of board of directors.** To aid in the detection and prevention of insurer insolvencies:

1. The board of directors [board of directors of insurance guaranty association] shall, upon majority vote, notify the commissioner [commissioner of insurance] of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.

2. The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within 30 days of the receipt of such request, the commissioner shall begin such examination. The examination may be conducted as a national association of insurance commissioners' examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. Except as permitted by paragraph (c) of subsection 1 of NRS 687A.115, the commissioner shall not release an examination report to the board of directors prior to its release to the public. The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner, but it shall not be open to **public inspection** prior to the release of the examination report to the public.

3. The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations are not public documents.

4. The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

5. The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association, and submit such report to the commissioner.

(Added to NRS by 1971, 1948; A 1977, 437)

**Sec. 207. 687A.115 Detection and prevention of insolvency: Powers of commissioner.** To aid in the detection and prevention of insurer insolvencies:

1. The commissioner may:

(a) Notify the insurance commissioners of the other states and territories of the United States and of the District of Columbia when he revokes or suspends a license, or when he makes any formal order that a company restrict its writing of insurance, obtain additional contributions to surplus, withdraw from the state or reinsure any part of its business or any other account for the security of policyholders or creditors.

(b) Report to the board of directors any action set forth in paragraph (a) and the receipt of a report from another insurance commissioner indicating that the action has been taken elsewhere. The report shall contain all significant details of the action taken or the report received.

(c) Report to the board of directors when he has reasonable cause to believe from any examination of any member insurer, whether completed or in process, that the member insurer may be insolvent or in a financial condition hazardous to the interests of policyholders or the public.

(d) Furnish to the board of directors the early warning tests developed by the National Association of Insurance Commissioners. The board may use the information furnished to carry out its duties. The report and the information contained therein is not a public record and shall be kept **confidential** by the board of directors until it is made public by the commissioner or other lawful authority.

2. The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting his duties and responsibilities relating to the financial condition of member insurers and of insurers seeking admission to transact business in this state.

(Added to NRS by 1977, 433)

## TITLE INSURANCE

**Sec. 208. 692A.117 Confidential records.**

1. The commissioner shall classify as **confidential** the financial statements of a title agent, escrow officer and title insurer and those records and information obtained by the department which:

(a) Are obtained from a governmental agency upon the express condition that they remain confidential.

(b) Consist of information compiled by the department in the investigation of possible violations of this chapter. This paragraph does not limit examination by the legislative auditor or any other person pursuant to a court order.

2. The contents of the file for an escrow are confidential and, subject to the rights to discover the contents by subpena or other lawful process, must not be disclosed without the express written consent of one party of the escrow other than the holder of the escrow.

(Added to NRS by 1985, 1825; A 1991, 1633)

## HOLDING COMPANIES

**Sec. 209. 692C.420 Confidentiality of disclosed information; exception.** All information, documents and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to NRS 692C.410, and all information reported pursuant to NRS 692C.260 to 692C.350, inclusive, shall be given confidential treatment and shall not be subject to subpena and shall not be made public by the commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard, determines that the interests of policyholders, shareholders or the public will be served by the publication thereof, in which event he may publish all or any part thereof in such manner as he may deem appropriate.

(Added to NRS by 1973, 1048)

## DELINQUENT INSURERS

**696B.550 Summary proceedings: Conduct of administrative and judicial hearings.**

1. The commissioner [of insurance] shall hold all hearings in summary proceedings privately unless the insurer requests a public hearing, in which case the hearing must be public.

2. The court may hold all hearings in summary proceedings and judicial reviews thereof privately in chambers, and shall do so on request of the insurer proceeded against.

3. In all summary proceedings and judicial reviews thereof, all records of the insurer, other documents and all department files and court records and papers, so far as they pertain to or are part of the record of the summary proceedings, are **confidential** except as necessary to obtain compliance therewith, unless the court after hearing arguments by the parties in chambers, orders otherwise, or unless the insurer requests that the matter be made public. Until the court otherwise orders, all papers filed with the clerk of the court must be held by him in a confidential file.

4. If at any time it appears to the court that any person whose interest is or will be substantially affected by an order did not appear at the hearing and has not been served, the court may order that notice be given and the proceedings be adjourned to give the person an opportunity to appear, on such terms as may be reasonable and just.

(Added to NRS by 1971, 1904; A 1991, 1635)

**Sec. 210. 697.250 Termination of appointment.**

1. An insurer may terminate an appointment at any time. The insurer shall promptly give written notice of termination and the effective date thereof to the commissioner [of insurance], on forms furnished by the commissioner, and to the bail agent if reasonably possible. The commissioner may require of the insurer reasonable proof that the insurer has also given such a notice to the agent if reasonably possible.

2. Accompanying each notice of termination given to the commissioner, the insurer shall file with him a statement of the cause, if any, for the termination. Any information or documents so disclosed to the commissioner shall be deemed an **absolutely privileged communication**, and the information or documents are not admissible as evidence in any action or proceedings unless their use as evidence is permitted by the insurer in writing.

3. A bail bondsman terminating the appointment and license as such of a bail solicitor shall give like notice of termination, with like status as a privileged communication unless the privilege is waived in writing by the bail agent.

4. No agreement between an insurer and a bail agent or between an employing bail bondsman and a licensed bail solicitor affects the commissioner's termination of the appointment or license if the termination is requested by the insurer or the employing bail agent, as the case may be.

(Added to NRS by 1971, 1912; A 1981, 1812)

REGULATION OF PUBLIC UTILITIES GENERALLY

**Sec. 211. 704.190 Report and investigation of accident; regulations; confidentiality of reports.**

1. Every public utility operating in this state shall, whenever an accident occurs in the conduct of its operation causing death, give prompt notice thereof to the commission, [Public Service Commission of Nevada] in such manner and within such time as the commission may prescribe. If in its judgment the public interest requires it, the commission may cause an investigation to be made forthwith of any accident, at such place and in such manner as the commission shall deem best.

2. Every such public utility shall report to the commission, at the time, in the manner and on such forms as the commission shall by its printed rules and regulations prescribe, all accidents happening in this state and occurring in, on or about the premises, plant, instrumentality or facility used by any such utility in the conduct of its business.

3. The commission shall promulgate and adopt all reasonable rules and regulations necessary for the administration and enforcement of this section. Such rules and regulations shall in any event require that all accidents required to be reported herein shall be reported to the commission at least once every calendar month by such officer or officers of the utility as the commission shall direct.

4. The commission shall adopt and utilize all accident report forms, which forms shall be so designed as to provide a concise and accurate report of the accident and which report shall in any event show the true cause of the accident. The accident report forms adopted for the reporting of railroad accidents shall be the same in design as near as may be as the railroad accident report forms provided and used by the Interstate Commerce Commission.

5. If any accident reported to the commission shall be reported by the utility as being caused by or through the negligence of an employee and thereafter such employee is absolved from such negligence by the utility and found not to be responsible for the accident, such fact shall be reported by the utility to the commission.

6. All accident reports herein required shall be filed in the office of the commission and there preserved. Notwithstanding any other provisions of law, neither any accident report made as required by this chapter, nor any report of the commission made pursuant to any accident investigation made by it, shall be open to **public inspection** or disclosed to any person, except upon order of the commission, nor shall either or any of the reports, or any portion thereof, be admitted as evidence or used for any purpose in any suit or action for damages growing out of any matter mentioned in the accident report or report of any such investigation.

[34:109:1919; A 1937, 404; 1931 NCL § 6134]--(NRS A 1967, 1384)

**Sec. 212. 706.251 Report of accident: Requirements; preservation; confidentiality.**

1. Every person operating a vehicle used by any motor carrier under the jurisdiction of the commission [Public Service Commission of Nevada] shall forthwith report each accident occurring on the public highway, wherein the vehicle may have injured the person or property of some person other than the person or property carried by the vehicle, to the sheriff or other peace officer of the county where the accident occurred. If the accident immediately or proximately causes death, the person in charge of the vehicle, or any officer investigating the accident, shall furnish to the commission such detailed report thereof as required by the commission.

2. All accident reports required in this section must be filed in the office of the commission and there preserved. An accident report made as required by this chapter, or any report of the commission made pursuant to any accident investigation made by it, is not open to **public inspection** and must not be disclosed to any person, except upon order of the commission. The reports must not be admitted as evidence or used for any purpose in any action for damages growing out of any matter mentioned in the accident report or report of any such investigation.

(Added to NRS by 1971, 694; A 1979, 1750; 1987, 736)

OIL PIPELINES

**Sec. 213. 708.080 Publication of tariffs; reports; investigation of books; limitation on disclosure of reports by commission; hearings and enforcement of orders.**

1. Such common carriers of crude oil or petroleum shall make and publish their tariffs under such rules and regulations as may be prescribed by the commission.

2. The commission shall require such common carriers to make reports, and may investigate their books and records kept in connection with such business, but **no publicity** shall be given by the commission to the reports as to the stock of crude oil or petroleum on hand of any particular pipeline. In its discretion, the commission may make public the aggregate amounts held by all the pipelines making such reports, and of their aggregate storage capacity.

3. The commission shall have the power and authority:

(a) To hear and determine complaints.

(b) To require attendance of witnesses and pay their expenses.

(c) To institute suits and sue out such writs and process as may be necessary for the enforcement of its orders.

[6:227:1921; NCL § 4950]--NRS A 1971, 225)

# PRELIMINARY LIST OF SECTIONS OF ADMINISTRATIVE AGENCY REGULATIONS (NAC) ENACTED TO CARRY OUT THE STATUTES WHICH DECLARE RECORDS CONFIDENTIAL:

Explanation--Matter included in brackets [ ] is for informational purposes only.

## STATE PERSONNEL SYSTEM

**Section 1. 284.346 Review of examination.**

1. Within 10 working days after the date of the postmark on a notification of a grade pertaining to a written or oral examination, a candidate or a representative he has designated by a signed authorization card may review the results of the candidate's examination as follows:

(a) If the examination was written:

(1) The department of personnel will review with the candidate or his representative the cover sheet of his examination which lists both the areas of subject matter included in the written examination and the number of correct and incorrect responses in those areas.

(2) The candidate or his representative may also review a copy of the questions which he answered incorrectly with the correct answers. This does not apply to written examinations which are copyrighted, standardized, on loan from other jurisdictions, used for more than one class or used on a continuous basis.

(b) If the examination was oral, the department of personnel will review with the candidate or his representative the taped record of the candidate's oral examination. The candidate or his representative may also review general areas of the oral examination in which he gave incorrect answers, the oral questions and the procedures or methods of examination.

2. Items which are reviewed by the department of personnel and found to be incorrect must be revised or eliminated.

3. In the case of an oral examination, answers suggested as a guideline and board members' remarks and individual ratings are **confidential** and may not be reviewed by the applicant or his representative.

4. If the candidate disagrees with and wishes to appeal the results of his examination, he must submit a written grievance to the department of personnel within 10 working days after the review. The grievance must contain the information required in subsection 2 of NAC 284.678. If the candidate is not satisfied with the department of personnel's response, and if he is a state employee, he may file an appeal with the committee.

[Personnel Div., Rule IV § N, eff. 8-11-73]--(NAC A by Dep't of Personnel, 8-26-83; 10-26-84; 8-28-85; 9-30-88)

**Sec. 2. 284.714 Official roster open to inspection.**

1. The official roster of employees in the public service maintained by the department of personnel is a public record and will be **open to inspection** under reasonable conditions during business hours in the department's offices or the offices where the records are kept.

2. Except as provided in subsection 3, the roster must contain, for each employee:

(a) His name;

(b) The class title of the position he holds;

(c) His salary or pay;

(d) Any change in his class title, pay or status; and

(e) Other pertinent data as determined by the director.

3. For **public inspection** purposes, the roster may exclude the actual names of employees who are in sensitive law enforcement positions where public access to the employees' identities could jeopardize their personal safety or job performance, in which case the employee will be shown on the roster as an unidentified employee.

[Personnel Div., Rule XVI § B , eff. 8-11-73]--(NAC A by Dep't of Personnel, 10-26-84)

**Sec. 3. 284.718 Confidential records.**

1. The following types of information, which are maintained by the department of personnel or the personnel office of an agency, are **confidential**:

(a) Information relating to salaries paid in other than governmental employment which is furnished to the department of personnel on the condition that the source remain **confidential**;

(b) Any document which is used by the department of personnel or an agency in negotiations with employees or their representatives which has not been made public by mutual agreement;

(c) The rating and remarks concerning an applicant by the individual members of the board;

(d) Materials used in examinations, including suggested answers for oral examinations;

(e) Reports by employers, appointing authorities or law enforcement officials concerning the hiring, promotion or background of applicants, eligible persons or employees;

(f) The class title and agency of an employee whose name is excluded from the official roster, as provided in subsection 3 of NAC 284.714, when an inquiry concerning the employee is received;

(g) Any information contained on a person's application or relating to his status as an eligible person; and

(h) Information in an employee's file or record of employment which relates to his:

(1) Performance;

(2) Conduct, including any disciplinary actions taken against him;

(3) Race, ethnic identity or affiliation, sex or handicap; or

(4) Home telephone number.

2. If the employee has requested that his personal mailing address be listed as **confidential**, his file must be so designated and list his business address.

3. The name of any beneficiary of an employee contained in the payroll document must not be released to anyone unless:

(a) The employee dies; or

(b) The employee signs a release.

[Personnel Div., Rule XVI part § C, eff. 8-11-73]--(NAC A by Dep't of Personnel, 8-28-85; 7-21-89)

**Sec. 4. 284.726 Access to confidential records.**

1. Except as otherwise provided in this subsection, access to materials for an examination and information relating to an applicant or eligible person which are relevant to an appointing authority's decision to hire that person is limited to the appointing authority or his designated representative. If the name of the applicant is not disclosed and the information is used for the purposes of paragraph (b) of subsection 1 of NAC 284.204, information relating to the education and experience of an applicant may be made available to any affected applicant, employee, or the designated representative of either.

2. Access to an employee's file of employment containing any of the items listed in paragraphs (e) to (h), inclusive, of subsection 1 of NAC 284.718 is limited to:

(a) The employee;

(b) The employee's representative when a signed authorization from the employee is presented or is in his employment file;

(c) The appointing authority or a designated representative of the agency by which the employee is employed;

(d) The director of the department of personnel or his designated representative;

(e) An appointing authority, or his designated representative, who is considering the employee for employment in his agency; and

(f) Persons who are authorized pursuant to any state or federal law or an order of a court.

3. Upon request, the department of personnel will provide the personal mailing address of any employee on file with the department to the state controller's office and the Internal Revenue Service.

4. The director [of the Department of Personnel] or the appointing authority, or his designated representative, shall authorize the release of any **confidential** records under his control which are requested by the committee, a hearings officer, the commission, [Personnel Commission of the Department of Personnel] the Nevada equal rights commission or a court. If the director or his designated representative determines that the release of any **confidential** record is not necessary for those purposes, the decision may be appealed.

[Personnel Div., Rule XVI part § C, eff. 8-11-73]--(NAC A by Dep't of Personnel, 8-28-85; 9-30-88; 7-21-89; 8-14-90)

PROGRAMS OF INSTRUCTION FOR
EXCEPTIONAL PUPILS

**Sec. 5. 388.289 Confidentiality of records.**

1. Each school district shall:

(a) Protect the **confidentiality** of personally identifiable information at its collection, storage, disclosure and destruction;

(b) Appoint one official to assume responsibility for ensuring the **confidentiality** of any personally identifiable information;

(c) Train or instruct all persons collecting or using personally identifiable information regarding these policies and procedures; and

(d) Maintain a current listing for public inspection of the names and positions of those employees within the district who may have access to personally identifiable information.

2. Each school district shall:

(a) Inform the parents when the personally identifiable information is no longer needed to provide educational services to the minor; and

(b) Maintain a permanent record of the minor's name, address, telephone number, grades, attendance, classes he attended, grades he completed and the year he completed them.

3. A school district shall not disclose any **confidential** information on a minor contained in educational files to any person who is not employed by the school district, department [Department of Education] or other authorized agency without first obtaining the consent of the parents in writing.

(Added to NAC by Bd. of Education, eff. 2-7-83; A 7-14-88)

PRIVATE EDUCATIONAL INSTITUTIONS
AND ESTABLISHMENTS

**Sec. 6. 394.685 Confidentiality of sheriffs' investigations; allowance or termination of employment.**

1. If an institution employs a person in violation of NRS 394.465, the administrator [of the Commission on Postsecondary Education] shall order the institution to terminate immediately the employment of that person.

2. All sheriffs' investigations are **confidential.** If the administrator finds that a person who is required to be certified or investigated has been convicted within the last 10 years of a felony or a crime involving moral turpitude or has ever been denied a work permit, the administrator shall notify the institution and applicant. If the institution still desires to employ the person, the application will be reviewed by the commission in a closed meeting to determine whether the person may be employed by the institution. The commission will vote on the determination in an open meeting.

3. If the administrator finds that a person who is required to be certified or investigated was convicted more than 10 years ago of a felony or a crime involving moral turpitude, the administrator shall notify the institution and applicant. If the institution still desires to employ the applicant and the applicant is able to demonstrate to the satisfaction of the administrator that he is qualified for that employment, the administrator may allow the institution to employ the applicant.

4. Before an institution:

(a) Employs a person; or

(b) Reemploys a person who has been discharged or voluntarily left employment for 1 year, who is required to be certified or investigated,

the institution shall furnish the administrator with his name, social security number and, if applicable, the number of his certificate and its date of expiration. If the person does not have a valid certificate or if the sheriff's investigation has not been received by the administrator within 90 days after the institution furnishes the administrator with the required information and the applicant has not requested a certificate or investigation, the administrator shall order the institution to terminate immediately the person's employment.

(Added to NAC by Comm'n on Postsecondary Educ., eff. 6-23-86; A 12-17-87; 4-2-90)

EDUCATION OF HANDICAPPED PERSONS

**Sec. 7. 395.090 Confidentiality of records by department of education.** The department of education will keep **confidential** all records of transactions pertaining to the handicapped person. All information which can be identified as related to the handicapped person will be treated in a secure and **confidential** manner.

[Bd. of Education, Handicapped Persons § 16, eff. 2-12-81]

BENEFITS AND PRIVILEGES FOR BLIND AND DEAF PERSONS

**Sec. 8. 426.095 Confidentiality of information.** Information furnished to the members of the Nevada committee of blind vendors to enable them to carry out their official responsibilities may be used only for that purpose. The members shall not release information about an applicant for a license, a licensee or an operator without his consent.

[Bur. of Services to the Blind, § 6, eff. 10-14-82]

SERVICES AND FACILITIES FOR CARE OF CHILDREN

**Sec. 9. 432A.360 Limitation on disclosure of information pertaining to child.**

1. The licensee of a facility **shall not disclose** to any person who is not a member of the staff of the facility or a member of the licensing staff of the bureau information pertaining to any child, unless:

(a) The parent has given written permission for the **disclosure**; or

(b) There is an emergency as determined by the director or the member of the staff who is in charge at the time of the emergency.

2. The licensee of a facility shall have available forms which allow a parent to release information pertaining to his child.

[Bd. for Child Care, Child Care Facilities Reg. §§ 5.5 & 5.6, eff. 2-28-80]

**Sec. 10. 432A.460 Institutions: Records.**

1. Each licensee of an institution shall maintain an individual record for each child accepted for care. The record is **confidential** and must be protected from examination by unauthorized persons.

2. Every record must contain the following:

(a) The child's full name, birthplace and date of birth;

(b) The religion of the child and his parents;

(c) Both parents' full names;

(d) If the child's parents are deceased, the date, place and cause of death;

(e) If the child's parents are divorced or separated, the date and place of the divorce or separation;

(f) The names, addresses and dates of birth of other children in the family;

(g) The names and addresses of close relatives;

(h) The name of a person to whom the child may be referred for care;

(i) The date and reason for placement of the child;

(j) The financial terms of the placement;

(k) The report of the original study and investigation of the child, including:

(1) All information concerning the educational, economic and cultural background of the child's family; and

(2) All personal information about the child, including his:

(I) History of development and health;

(II) Personality;

(III) Placement and adjustment in school;

(IV) Previous placements in institutions; and

(V) Relationships with his family.

(l) Any available documents pertaining to the current legal custody of the child;

(m) Every written contract between the licensee of an institution and the child's parents, except an authorization to provide medical care, which must be kept in the records of the health of the child;

(n) Reports and records of schools attended by the child, including his grades, progress and adjustment;

(o) Records or summarized reports of the child's progress and development while under care, the work done with the child's family, and plans for care and supervision of the child after discharge;

(p) If members of the staff of another agency or institution are also working with the child, the licensee of an institution mainly providing care to the child shall periodically provide the staff members of the other agency or institution with summary reports of the services it is providing and shall formulate plans for continuing the services, for maintaining an appropriate staff and for arranging conferences with other agencies and institutions who are also providing care for the child; and

(q) Reports of the staff of the institution concerning the child's adjustment to the institutional setting.

[Bd. for Child Care, Child Care Facilities Reg. § 18.6, eff. 2-28-80]

## RETARDED PERSONS

**Sec. 11. 435.340 Confidentiality of records.** The center must maintain the enrollee's records in a manner which ensures **confidentiality.** Information may only be released to persons with authority to examine the information or others who have been designated in a signed release.

[Men. Hygiene & Men. Retardation Div., Training Centers Art. IX subart. B, eff. 5-6-82]

**Sec. 12. 435.700 Confidentiality of records.**

1. All information and records obtained in the course of providing services to any resident are **confidential.**

2. Any person employed in a residence shall respect the **confidentiality** of such information and records, however received, and may release such information or records only upon the written consent of the person or his representative, except as otherwise provided in subsection 3.

3. The operator of a residence shall inform each resident that officers and employees of the department of human resources may examine his records without prior permission.

[Men. Hygiene & Men. Retardation Div., Residences § 43, eff. 2-5-82]

## RESTRAINING COSTS OF HEALTH CARE

**Sec. 13. 439B.470 Procedure to determine whether prohibited contract between hospital and practitioner exists.**

1. The division [division repealed now the Department of Human Resources] shall:

(a) Establish a schedule for the submission of copies of the contracts between a hospital and practitioners for review by the division.

(b) Request by registered mail the submission of those copies from hospitals pursuant to that schedule. Each hospital which receives such a request shall submit the copies within 30 days after receipt of the written request.

(c) Within 60 days after receipt of the copies from a hospital:

(1) Review the information to determine if a violation of NRS 439B.420 has occurred;

(2) Forward to the director any information which would support a determination that a violation of NRS 439B.420 has occurred; and

(3) Inform the hospital in writing of its determinations concerning all copies of the documents submitted.

2. Within 30 days after receiving from the division information which would support a determination that a violation of NRS 439B.420 has occurred, the director shall allow the hospital or any other party to an agreement with the hospital who is under investigation to provide additional information. The hospital shall provide that information within 30 days after receipt of the written notice from the director informing the hospital or party that it may provide such additional information.

3. Within 30 days after receipt of the additional information or after the period for submitting the information has expired, the director shall:

(a) If he determines that there is reason to believe a violation of NRS 439B.420 has occurred, schedule and hold a hearing pursuant to NAC 439B.520; or

(b) If he determines that there is not a sufficient reason to believe that a violation of NRS 439B.420 has occurred, notify the hospital in writing of his determination.

4. The failure of the director to take action within the periods specified in subsection 2 or 3 of this section shall not be deemed an abandonment of the action or a determination that no violation occurred.

5. Unless a public hearing is held pursuant to subsection 3, all information submitted pursuant to this section is **confidential.** The division or department [Department of Human Resources] shall not disclose that information to any person.

(Added to NAC by Dep't of Human Resources, eff. 4-13-88)

**Sec. 14. 439B.490 Preliminary procedure to determine whether prohibited transaction between hospital and related entity has occurred.**

1. The division [division repealed now the department of Human Resources] shall:

(a) Establish a schedule for the submission and review of the copies of the contracts, agreements and records concerning transactions between the hospitals and related entities pursuant to NRS 439B.430. The schedule must require the submission of the copies from each hospital at least annually.

(b) Notify each hospital in writing at least 30 days before the date for submission of copies of all contracts, agreements and records concerning transactions between the hospital and its related entities.

2. A hospital shall, within 30 days after receipt of the written notice from the division or the date for submission contained in the notice, whichever is later, submit the requested information to the division. Unless an action is taken by the department [Department of Human Resources] against the hospital to determine if a violation of NRS 439B.430 has occurred, all information submitted pursuant to this section is **confidential.** The division or department [Department of Human Resources] shall not disclose the information to any person.

3. The division shall, within 60 days after receipt of the information from the hospital, review the information and determine if there is reason to believe a violation of NRS 439B.430 has occurred.

4. If the division determines that:

(a) There is reason to believe that a violation has occurred, it shall forward the information and its determination to the director and notify the hospital in writing of its determination;

(b) There is no reason to believe a violation has occurred, it shall notify the hospital in writing of its determination; or

(c) Additional information is required to determine if a violation has occurred, it shall request the additional information from the hospital or its related entity. The hospital or its related entity shall provide the additional information within 30 days after receipt of the request therefor.

5. This section does not prohibit the director from conducting an examination pursuant to subsection 3 of NRS 439B.430 at any time.

(Added to NAC by Dep't of Human Resources, eff. 4-13-88)

## MATERNAL AND CHILD HEALTH;ABORTION

**Sec. 15. 442.060 Confidential records.**

1. Any information concerning personal facts and circumstances obtained by the state or a local staff administering the maternal and child health and crippled children's program is a privileged communication and must be held **confidential.**

2. The information must not be divulged without the consent of the person seeking or receiving services or the consent of his parent or guardian if he is a minor.

3. The information may be disclosed without consent if it is in a summary, statistical or other form which does not identify the person receiving or seeking services.

[Bd. of Health, Confidentiality of Records Reg. § 1, eff. 6-5-72; A and renumbered as § 1.0, 12-20-79]

**Sec. 16. 443.250 Publicity prohibited.** No person making any of the reports required in NAC 443.010 to 443.270, inclusive, nor any other person, may **disclose** the name or address of any diseased person, except where the **disclosure** is authorized by regulation or any prosecution for violations of the regulations.

[Bd. of Health, Tuberculosis Reg. § 13, eff. 2-16-62; A and renumbered as § 14, 10-24-65; A 3-6-71]

**Sec. 17. 443.340 Publicity prohibited.** No person making any of the reports or examinations required in NAC 443.300 to 443.350, inclusive, nor any other person may **disclose** to any person the name or address of any person afflicted with silicosis except where the **disclosure** is authorized or required by NAC 443.300 to 443.350, inclusive.

[Bd. of Health, Silicosis Reg. § 3 subsec. C, eff. 10-2-63]



**Sec. 18. 445.149 Public access to information; confidentiality.**

1. The director [of the State Department of Conservation and Natural Resources] shall ensure that any application, reporting or related forms (including the draft permits prepared pursuant to subsection 1 of NAC 445.145), or any public comment upon those forms pursuant to subsection 3 of NAC 445.146 are available to the public for inspection and copying. The director may also make available to the public any other records, reports, plan or information obtained by the state pursuant to its participation in the permit program.

2. The director [of the State Department of Conservation and Natural Resources] shall protect any information (other than effluent data) contained in such forms or other records, reports or plans as **confidential** upon a showing by any person that such information, if made public, would divulge methods or processes entitled to protection as trade secrets of that person. If, however, the information being considered for **confidential** treatment is contained in any NPDES form, the director shall forward the information to the regional administrator for his concurrence in any determination of **confidentiality.** If the regional administrator issues a decision to the department [State Department of Conservation and Natural Resources] that the information is not entitled to protection as a trade secret, the information must be made available to the public by the department.

3. Any information accorded **confidential** status, whether or not contained in any NPDES form, must be disclosed, upon request, to the regional administrator or his authorized representative, who shall maintain the disclosed information as **confidential.**

4. The director [of the State Department of Conservation and Natural Resources] shall provide facilities for the inspection of information relating to application, reporting and permit forms and shall ensure that state employees honor requests for such inspection promptly without undue restrictions. The director shall either:

(a) Ensure that copying machines are available for a reasonable fee; or

(b) Otherwise provide for copying services so that requests for copies of nonconfidential documents may be honored promptly.

[Environmental Comm'n, Water Pollution Control Reg. §§ 4.5.1-4.5.4, eff. 2-26-75]

**Sec. 19. 445.42445 Confidentiality of information submitted to director.**

1. Any information submitted to the director pursuant to NAC 445.422 to 445.4278, inclusive, may be claimed as **confidential** by the person submitting the information. If the person submitting the information wants the director to consider the information **confidential** pursuant to NRS 445.311, the claim must be asserted at the time of submission by stamping or writing "**confidential** business information" on each page containing the information. If a claim is not made at the time of submission, the director may make the information available to the public without further notice.

2. In addition to the information described in NRS 445.311, the director must deny a claim of **confidentiality** for the name and address of any applicant for a permit or any holder of a permit.

3. The **confidential** information must be disclosed, upon request, to the Administrator of the Environmental Protection Agency or his authorized representative, who shall maintain the disclosed information as **confidential.**

(Added to NAC by Environmental Comm'n, eff. 7-22-87; A 10-21-87)

**Sec. 20. 445.662 Confidential information.**

1. Information concerning the emission of an air contaminant which has an ambient air quality standard or emission standard or has been designated as a hazardous air pollutant by the United States Environmental Protection Agency cannot be certified as being **confidential**.

2. Any information other than emission data received by the commission, the director or local air pollution control agency which is certified to be **confidential** by the owner or operator disclosing it, may, unless the owner expressly agrees to its publication or availability to the public, be used only:

(a) In the administration or formulation of air pollution controls;

(b) In compiling or publishing analyses or summaries relating to the condition of the atmosphere which do not identify any owner or operator or reveal any **confidential** information; or

(c) In complying with federal statutes, rules and regulations.

3. **Confidential** information may be used in the prosecution of a violation of any air pollution control statute, ordinance or regulation.

[Environmental Comm'n, Air Quality Reg. §§ 2.7.1 & 2.7.2, eff. 11-7-75]

**Sec. 21. 445.993 Conduct of hearing.**

1. The parties may appear in person and may be represented by counsel. All testimony must be given under oath and recorded verbatim by human or electronic means. The matter must then be heard in the following manner:

(a) Prior to testifying, the witness must state his name, address and business, employment or position. Subsequent comments and testimony may be preceded by name only;

(b) Opening statement and presentation of the state's evidence followed by cross-examination by appellant;

(c) Opening statement and presentation of evidence by appellant followed by cross-examination by the state;

(d) The parties may then respectively offer rebutting testimony only, unless the commission, in its discretion, permits additional evidence. In the exercise of its discretion, the commission will consider the relevance and necessity of the new matter expected to be brought out by the additional testimony; and

(e) Closing argument of the state, closing argument of appellant and rebuttal by the state.

2. Hearings are open to the public until such time as **confidential** information, within the meaning of chapter 445 of NRS or applicable sections of this chapter of NAC, is admitted to the record, at which time the hearing will be closed.

[Environmental Comm'n, Practice Rule 8, eff. 1-7-73; A 4-3-74; A and renumbered as Rule 13, 1-9-76]

MEDICAL AND OTHER RELATED FACILITIES

**Sec. 22. 449.273 Records and reports.**

1. Each facility must maintain records and make reports which are necessary for proper administration and as the health division may prescribe.

2. Each facility must report immediately to the health division any unusual occurrence, such as an unusual death, serious injury or accident to a resident, major fire or other emergency.

3. Written admission policies with criteria for the selection of the residents must be maintained and available to the public.

4. A record for each employee must be maintained and contain the information outlined in NAC 449.237.

5. A record of all meals served in the facility must be maintained for 90 days.

6. The facility must establish and maintain an adequate record in individual folders for each resident.

7. Records of residents accepted for service must include the following information:

(a) Identifying information including full name, address, race, religion, education, occupation, names and addresses of relatives, names of any referring agency and the person to notify in an emergency.

(b) Selective recording of significant information obtained or observed by members of the staff in their contacts with residents, including incident reports.

(c) Reports of initial and subsequent physical examinations which include statements as to the mental competence and ambulatory status of the person, including transfer summaries.

(d) Correspondence of permanent value, referral summaries, financial and other agreements.

8. Records must be kept in a locked file which is resistant to fires and must be available only to authorized personnel. The records must be kept **confidential.**

[Bd. of Health, Group Care Facilities §§ 19.1-19.8, eff. 12-18-75]

**Sec. 23. 449.403 Other facilities: Medical records.**

1. In accordance with accepted professional standards, a medical record must be maintained for every patient admitted to an extended care facility or nursing home. The medical record must contain the following:

(a) Identification of the patient, his address and next of kin.

(b) Medical notations.

(c) Physician's orders.

(d) Physical examination.

(e) History and progressive notes which must be signed by the attending physician.

(f) Nursing notations.

(g) Incident reports.

(h) Laboratory and X-ray reports.

(i) Consultation reports.

(j) Reports of all tests, examinations, medical procedures and services rendered to the patient in the facility by allied health professionals.

2. All records must be kept current and must be completed within 48 hours, if possible. Medical records must be completed within 15 days of discharge or the death of the patient. The records must be filed and retained for a period required by the statute of limitations of Nevada.

3. Suitable storage space must be provided for safe, **confidential** retention of records. A system of identification and filing for rapid location of records must be provided, and a designated employee must be assigned the responsibility for maintaining completed records.

[Bd. of Health, Health Facilities Reg. Part III Ch. II § VI, eff. 10-9-69]

**Sec. 24. 449.512 Medical records: General requirements.**

1. There must be a system of identification and filing of medical records that ensures the rapid location of a patient's records.

2. A patient's records must be available only to persons authorized by the administrator. The **confidentiality** of these records must be maintained in accordance with professional ethics. The written consent of the patient or legal guardian must be presented as authority for the release of medical information. Medical records must not be removed from the facility except upon the issuance of an order by a court with legal authority for issuing such an order.

3. Medical records must contain sufficient information to justify the diagnosis, warrant treatment and vindicate the end result. Only members of the medical and house staff may write or dictate medical histories and physical examinations. Records must be authenticated and signed by the licensed attending physician.

4. Current records as well as those on discharged patients must be completed promptly. Current records must be completed within 48 hours following admission. Records of discharged patients must be completed within 15 days following their discharge.

[Bd. of Health, Mental Health Facilities Reg. § VI subsecs. C-G, eff. 12-16-71]

**Sec. 25. 449.963 Information concerning discharged patients: Submission; limitation on disclosure.**

1. Each hospital shall prepare and submit to the department, [Department of Human Resources] for each patient discharged by the hospital during each month, a copy of the UB-82 form specified by the Health Care Financing Administration. The hospital shall submit the required forms for each month within 45 days after the last day of the month, and include the following information on each form:

(a) UB-82 field number 3, the Patient Control Number (Patient ID);

(b) UB-82 field number 8, Medical Number (Hospital ID);

(c) UB-82 field number 11, Patient Address (ZIP code only will be used by the division in its data system);

(d) UB-82 field number 12, Birth Date;

(e) UB-82 field number 13, Sex;

(f) UB-82 field number 15, Admission Date;

(g) UB-82 field number 17, Admission Type;

(h) UB-82 field number 18, Admission SRC (Source);

(i) UB-82 field number 21, STAT (Discharge Status);

(j) UB-82 field number 22, Discharge Date;

(k) UB-82 field numbers 51a through 51w, inclusive, Revenue Codes;

(l) UB-82 field numbers 52a through 52w, inclusive, Service Units;

(m) UB-82 field numbers 53a through 53w, inclusive, Total Charges;

(n) UB-82 field numbers 57A through 57C, inclusive, Payer (including the 5-digit Payer Classification Code Number);

(o) UB-82 field number 68, patient social security number (only last six digits will be used in the division's data system);

(p) UB-82 field number 77, Principal Code (Principal Diagnosis Code-ICD-9-CM);

(q) UB-82 field numbers 78-81, inclusive, Other Diagnosis Codes (ICD-9-CM);

(r) UB-82 field number 84a, Principal Procedure CD (Procedure Code-ICD-9-CM);

(s) UB-82 field numbers 85A through 86A, inclusive, Other Procedure Codes (ICD-9-CM);

(t) UB-82 field number 92, Attending Physician ID; and

(u) UB-82 field number 93, Other Physician ID.

2. The department [Department of Human Resources] and any person with whom the department may contract for the development and operation of the division's UB-82 data system shall not **disclose** any information from the data system which may be used to identify any patient of a hospital.

3. A hospital with more than 200 beds which submits the information required by this section by means other than a magnetic tape shall pay the costs of entering the data into the data system. The division [Mental Hygiene and Mental Retardation Division of the Department of Human Resources] shall prepare a bill for such entry on a quarterly basis and submit it to the hospital. The hospital shall pay the bill within 30 days after receipt of the bill.

4. As used in this section, "hospital" has the meaning ascribed to it in NRS 449.012.

(Added to NAC by Dep't of Human Resources, eff. 4-29-86; A 1-2-90)

CANCER

**Sec. 26. 457.060 Confidentiality of information.** All documents in the possession of the registry which contain names of patients, physicians or hospitals are **confidential** except the list of names of hospitals which report information to the registry.

(Added to NAC by Bd. of Health, eff. 12-3-84)

**Sec. 27. 457.070 Procedures for maintaining confidentiality of information.** Each employee of the health division who has access to **confidential** information of the registry shall comply with the following procedures for maintaining the **confidentiality** of that information:

1. All files containing **confidential** information, including the indexes for access to other files, must be locked when not in use.

2. All documents containing **confidential** information must be out of sight when an employee is away from his desk.

3. Keys to the office of the registry may be issued to and used only by employees so authorized by the state health officer.

4. The doors to the registry must be locked at all times when the office is vacant.

(Added to NAC by Bd. of Health, eff. 12-3-84)

**Sec. 28. 457.100 Persons with whom the state health officer contracts.** If the state health officer contracts with another person to perform data processing or other services using the **confidential** information of the registry, the other person shall maintain the **confidentiality** of the information to the same extent as is required in this chapter and shall not disclose any of the information to a third person without the prior approval of the state health officer.

(Added to NAC by Bd. of Health, eff. 12-3-84)

**Sec. 29. 457.110 Disclosure of information: Authorized recipients; verification of identity.**

1. The state health officer or person employed in the registry shall not **disclose** the existence or nonexistence in the registry of a record concerning any patient or **disclose** other information about the patient except to:

(a) The physician who treated the patient;

(b) The hospital where the patient was treated;

(c) A health and care facility or a registry connected with that facility which has participated or is participating in treating the patient; or

(d) A qualified researcher in cancer.

2. If a request for information about a patient is made over the telephone by the physician who treated the patient or by a representative of the hospital in which the patient was treated, and the caller is not known to the employee who receives the call at the registry, he must verify the identity of the caller in the manner described in NAC 457.130.

(Added to NAC by Bd. of Health, eff. 12-3-84)

**Sec. 30. 457.120 Disclosure of information: Requirements of person seeking information.** The state health officer may provide **confidential** medical information in the registry concerning a patient's medical treatment for cancer with any health and care facility, or registry connected with the facility which has participated or is participating in treating that patient's illness if the person seeking the information:

1. Has been identified in the manner described in NAC 457.130;

2. Furnishes the employee of the registry with specific information, other than the patient's name, which is sufficient to identify the patient without using his name; and

3. Gives assurances to the employee of the registry that the **confidentiality** of the information will be maintained to the same extent as is required in this chapter.

(Added to NAC by Bd. of Health, eff. 12-3-84)

**Sec. 31. 457.140 Disclosure of information: Scientific research.**

1. A person who desires to use the **confidential** records of individual patients or the statistical data of the registry for the purpose of scientific research into cancer must apply in writing to the state health officer. The applicant must:

(a) Set forth in his application:

(1) His qualifications as an epidemiologist, physician or employee of a bona fide program of research into cancer or other qualification for using **confidential** information and statistical data in the registry; and

(2) A description of the research project in which that information will be used.

(b) Sign a statement, on a form furnished by the state health officer, in which the applicant agrees not to make any copies of the records, and to maintain the **confidentiality** of the information in the records in the manner required by this chapter; and

(c) Agree to submit to the state health officer for review and approval any proposed publication which is based on or contains information obtained from the registry.

2. The state health officer must:

(a) Before a researcher is allowed access to information in the registry, make a written finding that he is qualified as a researcher and has a need for the information; and

(b) Before any material based on or containing information from the registry is published by the researcher, examine and give written approval for the proposed publication.

(Added to NAC by Bd. of Health, eff. 12-3-84)

## ABUSE OF ALCOHOL AND DRUGS

**Sec. 32. 458.340 Personnel.**

1. The operator of a program shall have on duty at all times of operation a sufficient number of qualified employees to carry out the policies and furnish the services of the program.

2. The administrator of the program or his qualified delegate shall be present and responsible for the operations of the program during normal working hours.

3. The operator of a program for detoxification shall provide for the availability of a professional nurse and emergency medical care which is adequate to protect the health and safety of patients undergoing detoxification.

4. The operator of a residential program must provide for the ready availability of emergency medical service, either directly or by written agreement with qualified persons or organizations.

5. A program for treatment with methadone must have a medical adviser on the staff or available as a consultant. The medical adviser must be a physician who is licensed to practice medicine by the board of medical examiners.

6. A description of each position of employment in a program must be available to all employees on request. These descriptions must clearly specify the duties to be performed and the qualifications required for each position.

7. A personnel record must be maintained for each employee. It must contain:

(a) The application for employment;

(b) The letters of recommendation;

(c) The records of the investigation of references;

(d) The verification of education, training, experience and certification;

(e) The evaluations of performance in employment;

(f) Copies of any reports of incidents and disciplinary actions taken;

(g) Information on salaries, including documents on all changes in salaries; and

(h) A background check.

8. A consultant employed for the program must be employed under a written contract which clearly specifies the nature and amount of services to be provided and the compensation to be paid.

9. Personnel records must be kept **confidential** and may be made available only to persons having written authorization except that an employee must be allowed to inspect his own personnel file upon request.

10. A course of orientation must be provided for each new employee and a record of it must be kept in his file. The course must include a study of all the policies and procedures governing the program and the services required to be performed under the program.

(Added to NAC by Bur. of Alcohol and Drug Abuse, eff. 10-16-84)

## HAZARDOUS MATERIALS

### Sec. 33. 459.236 Specific licenses: Filing of application.

1. Applications for specific licenses must be filed on a form prescribed by the division [Health Division of the Department of Human Resources] and accompanied by the appropriate fee as prescribed in NAC 459.310.

2. The division may at any time after the filing of the original application, and before the expiration of the license, require further statements in order to enable the division to determine whether the application should be granted or denied or whether a license should be modified or revoked.

3. Each application must be signed by the applicant or licensee or a person duly authorized to act for and on his behalf.

4. An application for a license may include a request for a license authorizing one or more activities.

5. In his application, the applicant may incorporate by reference information contained in previous applications, statements or reports filed with the division provided such references are clear and specific.

6. Applications and documents submitted to the division may be made available for **public inspection** except that the division may withhold any document or part thereof from **public inspection** if disclosure of its content is not required in the public interest and would adversely affect the interest of a person concerned.

[Bd. of Health, Radiation Control Reg. §§ 3.5-3.5.1.6, eff. 2-28-80]--(NAC A 9-1-89)

### Sec. 34. 459.792 Inspections: Requests by employees.

1. Any worker or representative of workers who believes that a violation of chapter 459 of NRS, NAC 459.010 to 459.794, inclusive, or license conditions exists or has occurred in work under a license or a registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by giving notice of the alleged violation to the division. [Health Division of the Department of Human Resources] Any such notice must be in writing, set forth the specific grounds for the notice, and must be signed by the worker or representative of the workers. A copy must be given to the licensee or registrant by the division no later than at the time of inspection except that, upon the request of the worker giving

the notice, his name and the name of the persons referred to therein must not be **disclosed** in any copy or on any record published, released or made available by the division, except for good cause shown.

2. If, upon receipt of the notice, the division determines that the complaint meets the requirements in subsection 1, and that there is a reasonable ground to believe that the alleged violation exists or has occurred, the division shall cause an inspection to be made as soon as practicable, to determine whether the alleged violation exists or has occurred. Inspections pursuant to this section need not be limited to matters referred to in the complaint.

3. No licensee or registrant may discharge or in any manner discriminate against any worker because the worker has filed any complaint, instituted or caused to be instituted any proceeding under NAC 459.010 to 459.794, inclusive, or has testified or is about to testify in any such proceeding or because the worker, on behalf of himself or others, has exercised any option afforded by NAC 459.780 to 459.794, inclusive.

[Bd. of Health, Radiation Control Reg. §§ 10.7-10.7.3, eff. 2-28-80]

**Sec. 35. 459.794 Inspections: Informal review.**

1. If the division [Health Division of the Department of Human Resources] determines, with respect to the complaint under NAC 459.792, that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists or has occurred, the division must notify the complainant in writing of that determination.

2. The complainant may obtain a review of the determination by submitting a written statement of his position with the state health officer, who shall provide the licensee or registrant with a copy of the statement by certified mail, excluding, at the request of the complainant, name of the complainant. The licensee or registrant may submit an opposing written statement of position with the state health officer, who shall provide the complainant with a copy of the statement by certified mail. Upon request of the complainant, the state health officer may hold an informal conference, pursuant to subsection 2 of NAC 459.136, in which the complainant and licensee or registrant, may orally present their views. An informal conference may also be held at the request of the licensee or registrant, but **disclosure** of the identity of the complainant may be made only following receipt of his written authorization. After considering all written or oral views presented, the state health officer shall affirm, modify or reverse the determination of the division and furnish the complainant and the licensee or registrant a written notification of the decision and the reason therefore.

3. If the informal conference does not result in resolution of the problem, formal consideration by the state board of health may be requested by the complainant or the licensee or registrant pursuant to subsection 3 of NAC 459.136. The board shall affirm, modify or reverse the determination of the division and furnish the complainant and the licensee or registrant a written notification of its decision and the reason for it.

4. If the division determines that an inspection is not warranted because the requirements of subsection 1 of NAC 459.792 have not been met, the division shall notify the complainant in writing of that determination. Such a determination is without prejudice to the filing of a new complaint meeting the requirements of that subsection.

[Bd. of Health, Radiation Control Reg. §§ 10.8-10.8.4, eff. 2-28-80]

## HUMAN BLOOD AND BLOOD PRODUCTS

**Sec. 36. 460.030 Identifying data.**

1. The communicable disease section [of the Health Division of the Department of Human Resources] is responsible for the maintenance of data concerning persons identified as having viral hepatitis.

2. A diagnosis must be made by the attending physician and reported in a **confidential** case report given either directly to the communicable disease section or to the local health authority if the diagnosis is made within his jurisdiction.

3. The report must include the name, address, date of birth and social security number of the person with viral hepatitis and any relevant clinical data. Reports must be mailed to the office of each blood bank at the end of the month.

[Bd. of Health, Hepatitis Reg. §§ 2.0 & 2.1, eff. 12-3-75]

**Sec. 37. 466.530 Report of veterinarian who treats horse.**

1. A veterinarian who treats a horse within the enclosure must report to the commission's veterinarian on a form prescribed by the commission and in a manner prescribed by him:

(a) The name of the horse treated;

(b) The name of the trainer of the horse;

(c) The time of treatment; and

(d) Any other information requested by the commission's veterinarian.

2. The report is **confidential** and its contents may not be disclosed except in a proceeding before the stewards or the commission, or in exercise of the commission's jurisdiction.

[Racing Comm'n, Horse Racing Reg. § 466.093 subsec. 11, eff. 8-6-80]

TRAFFIC LAWS

**Sec. 38. 484.820 Retention of documents.**

1. The operator of a school shall retain:

(a) A copy of the report prescribed in NAC 484.810;

(b) A student's preliminary and final examinations;

(c) The student's record of attendance in class;

(d) His evaluation of the course and teacher; and

(e) Any agreement signed by a teacher who is a guest pursuant to subsection 3 of NAC 484.785,

for 3 years after the student has completed the course.

2. These documents are **not public records** but must be made available to a representative of the department [Department of Motor Vehicles and Public Safety] or judicial system during any inspection of the school.

(Added to NAC by Dep't of Motor Veh., eff. 3-15-84; A by Dep't of Motor Veh. & Pub. Safety, 8-20-86)

FINANCIAL RESPONSIBILITY FOR LIABILITY

**Sec. 39. 485.060 Application for certificate.**

1. Before applying for a certificate of self-insurance, an applicant must submit a complete list of his motor vehicles to the chief of the drivers' license division [of the Department of Motor Vehicles and Public Safety] or his appointed agent. The list must contain the identification number, registration number and the name of the make and model of each vehicle.

2. After the list is submitted, the number of vehicles registered in the name indicated on the application must not drop below 11. Any vehicle acquired after a certificate of self-insurance is issued to the applicant is covered by that certificate until the date of its renewal, if the vehicle is registered in the name indicated on the application.

3. An application for a certificate of self-insurance must be made on a form approved by the drivers' license division. The application must contain a statement by the applicant that he realizes that in self-insuring, he is performing an insurance function and expressly agrees, as a condition to the granting of a certificate of self-insurance, to abide by the statutes of this state concerning unfair practices in settling claims and any regulations adopted thereunder by the commissioner of insurance.

4. Except as otherwise provided in this subsection, each applicant for a certificate of self-insurance must submit a copy of his annual balance sheet and profit and loss statement, including notes, for the **confidential** use of the department of motor vehicles and public safety. These financial statements must be verified by a certified public accountant. If the applicant is a natural person who does not have such statements, he must submit copies of his returns for federal income tax for the preceding 3 years.

5. An applicant for self-insurance may be required by the division [Driver's License Division of the Department of Motor Vehicles and Public Safety] to submit evidence of excess insurance or reinsurance written by an insurer authorized to do business in this state to provide protection against large or numerous judgments. This insurance may be in excess of the amount of security deposited with the department. To determine if excess insurance or reinsurance will be required, the chief

of the division or his appointed agent will consider the number of vehicles registered to the applicant, the manner in which they are being used and the applicant's financial ability to pay claims.

[Dep't of Motor Veh., Self-insurance Reg. § IV, eff. 4-29-82]--(NAC A by Dep't of Motor Veh. & Pub. Safety, 7-29-86)

## COMMISSION ON MINERAL RESOURCES

**Sec. 40. 513.070 Confidentiality of information.**

1. Except as otherwise provided in subsection 4, any information submitted to the executive director pursuant to the provisions of NAC 513.010 to 513.120, inclusive, may be classified as **confidential** by the person submitting the information. If the person submitting the information wishes the executive director to consider the information **confidential**, the claim must be asserted at the time of submission by stamping or writing "**confidential** business information" on each page containing the information.

2. If a claim is asserted, the information so kept must remain **confidential** except that the information may be used in connection with other data if use of that information would not disclose the identity of the **confidential** information.

3. If a claim is not made at the time of submission, the executive director may make the information available to the public without further notice.

4. The executive director will not classify as **confidential** any information required to be submitted to him pursuant to the provisions of NAC 513.010 to 513.120, inclusive, if the information relates to:

(a) The name and address of the person conducting the operation of the mine;

(b) The annual production of the commodity;

(c) The amount of the tax on the net proceeds of a mine and the amount of the tax on the property of the operation; or

(d) The number of persons employed by a mine.

(Added to NAC by Comm'n on Mineral Resources, eff. 2-18-88)

## RECLAMATION OF LAND SUBJECT TO MINING OPERATIONS OR EXPLORATION PROJECTS

**Sec. 41. 519A.170 Treatment of information as confidential.**

1. An operator may request when the information is submitted that the information submitted to the division [Division of Environmental Protection of the State Department of Conservation and Natural Resources] with the request for a permit be treated as **confidential**. The division shall consider a request only if the operator, when the information is submitted, stamps or writes "**confidential** business information" on each page.

2. The operator must show to the satisfaction of the division that the information contained in the application for a permit is entitled to protection as a trade secret.

3. Except as otherwise provided in subsection 4, if the division determines that the information is not entitled to protection as a trade secret it must not make the information public until the division has:

(a) Notified the operator; and

(b) Allowed at least 10 working days after the notice has been sent for the informant to appeal the decision.

4. If the request is not made at the time the information is submitted, the division may make the information available to the public without notice to the operator.

5. "Trade secret":

(a) Includes the location of exploration drill holes and a formula, pattern, compilation, program, device, method, technique or process that:

(1) Derives independent economic value, present or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(b) Does not include the name and address of the operator.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)

**Sec. 42. 522.540 Confidentiality of well records.**

1. Records concerning a well will not be kept **confidential** by the department [Department of Minerals] unless the owner of the well requests **confidentiality** in writing or marks "**confidential**" on the logs of an exploratory well. Upon receiving such a request or log, the department will keep the records **confidential** for 6 months after their receipt unless the owner provides a written authorization for an earlier release.

2. An operator who plans to drill a series of exploratory wells within a given region or area may apply to the department to have the records for all his exploratory wells kept **confidential**. Such an application must specifically describe the area to be explored and the number and location of exploratory wells contemplated. Upon approval of the application, the executive director will keep all records of the project **confidential** for 6 months after receipt of the record. The operator may amend the plan of the project with the written approval of the director.

(Added to NAC by Dep't of Minerals, eff. 7-22-87)

## GEOTHERMAL RESOURCES

**Sec. 43. 534A.140 Hole logs: Subsurface information; confidentiality.** Information about the subsurface obtained as a result of exploration drilling disclosed on hole logs as required by NAC 534A.130 must be filed with the state engineer within 30 days after it is acquired. Such information together with other information concerning the exploration appearing on the logs and the cards containing the notice of intent to drill is **confidential** for a period of 5 years from the date of filing the cards or logs and must not be disclosed during that time without the express written consent of the driller's client.

[St. Engineer, Exploration Drilling Reg. Art. VIII, eff. 12-13-77]

## STATE DEPARTMENT OF AGRICULTURE

**Sec. 44. 561.150 Confidentiality; applicability of chapter 241 of NRS.** Information and documents filed with or obtained by the mediator or the department [State Department of Agriculture] are **confidential**. The provisions of chapter 241 of NRS do not apply to any mediation of an agricultural debt.

(Added to NAC by Dep't of Agriculture, eff. 10-30-90)

## DAIRY PRODUCTS AND SUBSTITUTES

**Sec. 45. 584.2851 Use, disclosure of information prohibited.** No officer, employee or agent of any state or local governmental agency may use for his own advantage or reveal to any unauthorized person any information obtained pursuant to the provisions of NAC 584.1611 to 584.2881, inclusive, which is entitled to protection as a trade secret, including information as to the quantity, quality, source or disposition of milk or a milk product or the results of an inspection or tests of any of them.

[Bd. of Health, Raw Milk Reg. § 7.5, eff. 1-7-82]

**Sec. 46. 584.6211 Distributor's price list: Contents; confidentiality; amendments.**

1. A distributor shall file with the commission [of Food and Drugs] by January 31 of each year a list of the peddler-distributors with whom he does business. The list must contain the following information concerning each peddler-distributor:

(a) His name and address.

(b) The location where the products are delivered to or picked up by the peddler-distributor.

2. A price list must:

(a) Clearly state the marketing area and zone in which the prices apply;

(b) Include all terms and conditions of service which are applicable in determining the net price ultimately available to wholesale customers; and

(c) Designate its effective date.

3. Any price list filed by a distributor is **confidential** and not open for public inspection. Information contained in the price list will not be made available to any person, other than members of the commission and authorized members of its staff, except when the information is to be used in judicial proceedings or administrative proceedings under NRS 584.325 to 584.690, inclusive.

4. Whenever a distributor amends a price list filed in accordance with subsection 5 of NRS 584.583, he shall file a complete list of all his current prices, including his prices then on file and not changed by the amendment. The filing of an amended price list renders void all previous price lists.

5. Any information or price list required to be provided to the commission by chapter 584 of NRS or NAC 584.5551 to 584.6391, inclusive, must be filed in an office of the commission.

[Dairy Comm'n, Stabiliza. & Mktg. Plan - ENMA Art. VI part § A, eff. 9-1-80]--(Substituted in revision for NAC 584.332)

**Sec. 47. 584.7041 Distributor's price list: Contents; confidentiality; amendments.**

1. A distributor shall file with the commission by January 31 of each year a list of the peddler-distributors with whom he does business. The list must contain the following information concerning each peddler-distributor:

(a) His name and address.

(b) The location where the products are delivered to or picked up by the peddler-distributor.

2. A price list must:

(a) Clearly state the marketing area and zone in which the prices apply;

(b) Include all terms and conditions of service which are applicable in determining the net price ultimately available to wholesale customers; and

(c) Designate its effective date.

3. Any price list filed by a distributor is **confidential** and not open for public inspection. Information contained in the price list will not be made available to any person, other than members of the commission and authorized members of its staff, except when the information is to be used in judicial proceedings or administrative proceedings under NRS 584.325 to 584.690, inclusive.

4. Whenever a distributor amends a price list filed in accordance with subsection 5 of NRS 584.583, he shall file a complete list of all his current prices, including his prices then on file and not changed by the amendment. The filing of an amended price list renders void all previous price lists.

5. Any information or price list required to be provided to the commission by chapter 584 of NRS or NAC 584.6411 to 584.7281, inclusive, must be filed in an office of the commission.

[Dairy Comm'n, Stabiliza. & Mktg. Plan - SNMA Art. VI § A, eff. 5-5-80]--(Substituted in revision for NAC 584.532)

**Sec. 48. 584.8131 Distributor's price list: Contents; confidentiality; amendments.**

1. A distributor shall file with the commission by January 31 of each year a list of the peddler-distributors with whom he does business. The list must contain the following information concerning each peddler-distributor:

(a) His name and address.

(b) The marketing area and number of the zone which he serves.

(c) The location where the products are delivered or picked up.

2. A price list must:

(a) Clearly state the marketing area and zone in which the prices apply;

(b) Include all terms and conditions of service which are applicable in determining the net price ultimately available to wholesale customers; and

(c) Designate its effective date.

3. Any price list filed by a distributor is **confidential** and not open for public inspection. Information contained in the price list will not be made available to any person, other than members of the commission and authorized members of its staff, except when the information is to be used in judicial proceedings or administrative proceedings under NRS 584.325 to 584.690, inclusive.

4. Whenever a distributor amends a price list filed in accordance with subsection 5 of NRS 584.583, he shall file a complete list of all his current prices, including his prices then on file and not changed by the amendment. The filing of an amended price list renders void all previous price lists.

5. Any information or price list required to be provided to the commission by chapter 584 of NRS or NAC 584.7291 to 584.8371, inclusive, must be filed in an office of the commission.

[Dairy Comm'n, Stabiliza. & Mktg. Plan - WNMA Art. VI § A, eff. 4-7-80]--(Substituted in revision for NAC 584.732)

DRUGS AND COSMETICS

**Sec. 49. 585.620 Confidentiality of records.** All records acquired or compiled by the commissioner [Commissioner of food and drugs] relating to formulas, processing procedures, earnings, revenue and other internal financial matters of any applicant or licensee are **confidential** and will not be revealed in whole or in part except:

1. For the necessary administration of NAC 585.010 to 585.640, inclusive; or
2. Upon the order of a court of competent jurisdiction.

[Comm'r of Food & Drugs, Amygdalin and Procaine Hydrochl. §§ 10.1-10.1.2, eff. 5-15-78]

APPRENTICESHIPS

**Sec. 50. 610.980 Equal opportunity: Intimidation and retaliation.**

1. Any intimidation, threat, coercion or retaliation by or with the approval of any sponsor against any person which is made:

(a) For the purpose of interfering with any right or privilege secured by Title VII of the Civil Rights Act of 1964, as amended, or Executive Order 11246 of September 24, 1965, as amended; or

(b) Because the person made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing under NAC 610.510 to 610.990,

is a violation of the standards of equal opportunity set forth in NAC 610.530.

2. The identity of complainants must be kept **confidential** except when disclosure is necessary to carry out the purpose of NAC 610.510 to 610.990, inclusive, including conducting any investigation, hearing or judicial proceeding arising from NAC 610.510 to 610.990, inclusive.

[Apprenticeship Council, Equal Employment Opportunity, § 15, eff. 9-11-76, A 10-6-78]

UNEMPLOYMENT COMPENSATION

**Sec. 51. 612.252 Confidentiality of proceedings.** Hearings and reviews are **confidential** proceedings under NRS 612.265 and are closed to the public.

(Added to NAC by Employm't Security Dep't, eff. 9-5-84)

OCCUPATIONAL SAFETY AND HEALTH

**Sec. 52. 618.6449 Trade secrets.** If, during the conference at the beginning of an inspection, the employer identifies areas in the establishment which contain or might reveal a trade secret, the inspector shall label any information obtained in those areas, including negatives and prints of photographs and environmental samples, as "**confidential-trade** secrets" and shall not disclose the information except in accordance with NRS 618.365.

(Added to NAC by Div. of Occupational Safety & Health, eff. 8-26-83)

**Sec. 53. 618.764 Confidential information.**

1. Upon application by any person, in a proceeding where trade secrets or other matters may be divulged, the **confidentiality** of which is protected by the act, the board will issue such orders as may be appropriate to protect the **confidentiality** of these matters.

2. An interlocutory appeal from an adverse ruling under this section will be granted as a right.

[Dep't of Occupational Safety & Health, Rule No. 11, eff. 11-9-73]

**Sec. 54. 623A.240 Examination to be directed by board; disclosure of examination materials.**

1. The examination will be conducted under the direction and control of the board. The board may employ assistants to prepare questions, conduct the examination and submit recommended grades for the examination.

2. Examination questions, together with the answers or keys, will not be **disclosed** before the examination has been completed.

[Bd. of Landscape Arch., § 3.7, eff. 9-9-76]

ACCOUNTANTS

**Sec. 55. 628.420 Confidentiality.** The classification of any report and any documentation submitted to the board pursuant to NAC 628.320 is **confidential.**

(Added to NAC by Bd. of Accountancy, eff. 1-21-88)

VETERINARIANS

**Sec. 56. 638.245 Confidentiality of proceedings; investigation.**

1. All proceedings and investigations after the filing of a complaint are **confidential,** except to the extent necessary for the conduct of an investigation, until the board determines to proceed with disciplinary action. If the board dismisses the complaint, the proceedings remain **confidential.** If the board proceeds with disciplinary action, **confidentiality** concerning the proceedings is no longer required.

2. If the board conducts an investigation upon a complaint against a licensee, the board will not limit the scope of its investigation to the matters set forth in the complaint but may extend the investigation to any additional matters which appear to constitute a violation of any provision of chapter 638 of NRS or of this chapter.

3. If, after its investigation, the board dismisses the complaint, the dismissal does not operate as a limitation on or a deterrent to any subsequent investigation or other action by the board.

4. Whenever the board directs that an investigation be conducted into a disciplinary matter, the results of the investigation or any information relating to the investigation will not be examined by and must not be disclosed to, the members of the board before the board's hearing on the matter.

(Added to NAC by Bd. of Veterinary Med. Exam'rs, eff. 3-19-86)

PRIVATE INVESTIGATORS, PRIVATE PATROLMEN, POLYGRAPHIC EXAMINERS, PROCESS SERVERS, REPOSSESSORS AND DOG HANDLERS

**Sec. 57. 648.380 Reports of intern's progress.**

1. Each supervising examiner shall prepare and submit to the board quarterly reports of the progress of the intern during the first year of his internship. The quarterly reports must be made on a form provided by the board. Each quarterly report must be delivered to the board's secretary no later than 2 weeks before the regularly scheduled meeting of the board for the quarter in which the report is due.

2. If the board requests the supervising examiner to do so, he shall submit semiannual reports of the intern's progress during the remaining 2 years of the internship.

3. Upon the board's request, the supervising examiner and the intern shall furnish it with charts, logs and other documents showing the polygraphic examinations performed by the intern. The board will maintain in strict **confidentiality** the identities of the persons examined. All such documents furnished to the board will be returned to the supervising examiner.

(Added to NAC by Priv. Investigator's Lic. Bd., eff. 12-28-83)--(Substituted in revision for NAC 648A.050)

**Sec. 58. 677.400 Waiver; confidentiality of reports; method for ascertaining amount of hypothecated certificates.**

1. The administrator of financial institutions may waive filing any of the reports required by this chapter upon specific application of the licensee.

2. All of the reports required by this chapter will be held in confidence between the administrator and the licensee.

3. Each licensee shall establish and maintain a method for readily ascertaining the amount of its thrift certificates which have been hypothecated to it for loans to the owners of the certificates.

[Dep't of Commerce, Thrift Companies Reg. § 15 subsecs. 15.7-15.8, eff. 5-20-76; A 1-4-78; A and renumbered as § 14 subsecs. 14.7-14.9, 12-14-78]--(NAC A by Admstr. of Financial Institutions, eff. 6-29-84)

## CREDIT UNIONS

**Sec. 59. 678.180 Conversion from federal to state charter.**

1. A federal credit union desiring to convert to a state- chartered credit union must provide the administrator of financial institutions with the following:

(a) A **confidential** report of the credit union's officials, with their social security numbers;

(b) The completed forms for filing articles of incorporation with the secretary of state;

(c) An agreement to serve, executed by the board of directors, and, if applicable, by the credit committee and supervisory committee;

(d) A copy of the last three monthly financial and statistical reports;

(e) A copy of the last two year-end financial and statistical reports furnished to the National Credit Union Administration;

(f) A copy of the delinquent loan schedule as of the last month's end, accompanied by notations on the collectibility of each loan;

(g) A copy of the last audit report of the credit union's supervisory committee;

(h) A copy of the last examination report of the National Credit Union Administration; and

(i) Any other information the administrator may consider necessary or desirable.

2. Within 30 days after receipt of the items listed in subsection 1, the administrator will inform the credit union, in writing, of his decision provisionally to accept or not to accept the credit union's conversion.

3. If the administrator has provisionally accepted the conversion of a credit union from a federal to a state charter, he will issue a charter to the credit union upon a satisfactory demonstration by the credit union that it has completed all of the conversion requirements imposed upon it by the National Credit Union Administration.

[Comm'r of Credit Unions, § M, eff. 12-14-78; renumbered as § N, 2-6-81]--(NAC A by Admstr. of Financial Institutions, eff. 6-29-84)

## PUBLIC SERVICE COMMISSION OF NEVADA

**Sec. 60. 703.2481 Notice to public and customers.**

1. When a public utility files an application to adjust any rate or charge for the service or commodities furnished by it to increase its return on investment, to increase its rate base or to cover expenses not related to fuel or purchased power, the public utility shall:

(a) Within 10 days after filing the application, make available at each of its business offices a complete copy of the application in such form and place as to be readily accessible and conveniently **inspected by the public;**

(b) Within 10 days after filing the application, print in plain type and post at each of its business offices in such form and place as to be readily accessible to and conveniently **inspected by the public,** a notice stating that the application has been filed with the commission, describing briefly the purpose of the application, indicating that the complete application is **available for public inspection** on the premises and listing the locations at which additional information may be obtained; and

(c) Within 20 days after filing the application, submit to the commission affidavits of that filing and the posting required in paragraphs (a) and (b) of this subsection.

2. When a public utility files an application to adjust any rate or charge for the service or commodities furnished by it to increase its return on investment, to increase its rate base or to cover expenses not related to fuel or purchased power and the commission has set a date and location for a hearing on the application, the applicant shall provide notice to its customers who are affected by the proposed increase. The notice must state the date, time and place of the hearing, the amount of the proposed increase in dollars and the reasons for seeking the increase. The notice must specifically identify the percentage of increase for each class of customer or class of service which would, pursuant to the applicant's filing, receive a percentage of increase in rates which is at least 10 percent greater than the average percentage of increase in rates for which the applicant is applying. The notice must also state that additional information may be obtained from the commission or at the offices of the public utility filing the application. The notice must be given at least 10 days before the hearing, by two of the three following methods:

(a) Inclusion in the regular bill of charges transmitted to the applicant's customers.

(b) Separate mailing to each of the applicant's customers.

(c) Prominent presentation in one or more forms of the media, such as newspapers, television or radio, so that the notice will reach the applicant's customers.

3. At or before the hearing, the applicant must submit a verified statement to the commission that the notice required in subsection 2, has been given. The statement must:

(a) List the means by which and the dates and times when the notice was mailed, published or broadcast; and

(b) Include as an attachment, a copy of the notice as mailed, published or transcribed.

[Pub. Service Comm'n, Gen. Order 3 Rule 16 § 56, eff. 10-14-82]--(NAC A 1-6-84; 3-19-87)



**Sec. 61. 704.522 Procedure for changing level of rate; confidentiality.**

1. The utility may change the level of a rate within an established range of rates by filing a memorandum with the commission stating the new level of the rate, the name of the affected customer and the effective date of the change. The memorandum may not take effect before it is filed with the commission.

2. Upon request by the utility, the information regarding a memorandum will be kept **confidential**, except from the affected customer and the advocate for customers of public utilities, for 90 days after the memorandum is filed.

(Added to NAC by Pub. Service Comm'n, eff. 12-15-86)

**Sec. 62. 704.776 Confidentiality of exploration and subsurface information.** If any exploratory or subsurface information concerning a project to obtain geothermal energy for use in a process which changes raw or unfinished materials into another form or generates electric power is filed with the commission, the commission will keep that information **confidential** for 5 years after the date on which it was first filed with the state engineer and will not disclose it during that period without the express written consent of the operator of the project.

(Added to NAC by Pub. Service Comm'n, eff. 12-16-82)

# A P P E N D I X  B

*DONREY OF NEVADA, INC., AND RENO NEWSPAPERS, APPELANTS, V. ROBERT BRADSHAW, RENO POLICE DEPARTMENT, ROBERT L. VAN WAGONER AND THE CITY OF RENO, RESPONDENTS*

DONREY OF NEVADA, INC., AND RENO NEWSPAPERS, APPELLANTS, *v.* ROBERT BRADSHAW, RENO POLICE DEPARTMENT, ROBERT L. VAN WAGONER AND THE CITY OF RENO, RESPONDENTS.

No. 20057

September 19, 1990

798 P.2d 144

Appeal from a district court order denying appellants' petition for a writ of mandamus. Second Judicial District Court, Washoe County; William N. Forman, Judge.

[1]The Honorable Jerry Carr Whitehead, Judge of the Second Judicial District, was designated by the Governor to sit in the place of THE HONORABLE JOHN MOWBRAY, Justice. Nev. Const., art. 6, § 4.

Newspaper filed a petition for writ of mandamus under the statute which provides for disclosure of public records, seeking disclosure of a police investigative report concerning the City Attorney's dismissal of charges against a defendant, which dismissal police opposed. The district court denied the petition, and newspaper appealed. The Supreme Court, YOUNG, C. J., held that a balancing of the interests involved required disclosure of the entire report.

**Reversed.**

STEFFEN, J., dissented.

*Woodburn, Wedge & Jeppson*, and *James W. Hardesty*, Reno, for Appellants.

*Georgeson, McQuaid, Thompson & Angaran*, Reno; *Patricia Lynch*, Reno City Attorney, and *Stephen F. Volek*, Deputy City Attorney, Reno, for Respondents.

RECORDS.

Under statute which provides for disclosure of public records, balancing of interests involved required disclosure of police investigative report on the City Attorney's dismissal of charges against defendant, which dismissal was opposed by police; general policy is in favor of open government, and there were no privacy or law enforcement policy justifications for nondisclosure, as there was no pending or anticipated criminal proceeding, there were no confidential sources or investigative techniques to protect, there was no possibility of denying someone fair trial, and there was no potential jeopardy to law enforcement personnel. NRS 239.010.

## OPINION

By the Court, YOUNG, C. J.:

In March 1986, pursuant to a plea bargain, the Reno City Attorney's office dismissed charges against Joe Conforte for contributing to the delinquency of a minor. Because the Reno Police Department opposed the dismissal, it undertook an investigation of the circumstances of the dismissal and prepared a written report. The report, which concluded that there was no evidence of criminal wrongdoing (*e.g.* no bribery of a public official), was sent to the City Attorney's office, the District Attorney, and a municipal judge. Thereafter, both the City Attorney's office and the Police Department refused to release a copy of the report to petitioners Donrey of Nevada, dba KOLO-TV (Donrey), and Reno Newspapers, Inc., dba Reno Gazette-Journal (Reno Newspapers).

In April 1986, Donrey and Reno Newspapers filed a petition for a writ of mandamus based on NRS 239.010 which provides for disclosure of public records. In March 1989, the district court denied the petition, concluding that the report was a police investigative report intended by the legislature to be confidential under NRS Chapter 179A. The court further concluded that Chapter 179A did not involve a balancing test to determine whether such reports could be released if public policy considerations outweighed privacy and/or security interests. The court also found, following an in camera review, that the report was approximately 85 percent criminal investigation and 15 percent recommendations on future administrative procedures.

Appellants contend that the district court erred in concluding that the entire report was a police investigative report and in failing to release at least the 15 percent of the report that the court found administrative. As discussed below, because we conclude that the entire report was subject to disclosure based on a balancing of the interests involved, we need not address this argument.

Appellants principally contend that the investigative report prepared by the Reno Police Department is a public record subject to disclosure under NRS 239.010 because no statutory provision declares the contents of this type of report confidential. Pursuant to NRS 239.010, "all public books and public records of . . . government[] . . . officers and offices . . . *the contents of which are not otherwise declared by law to be confidential*, shall be open at all times during office hours to inspection by any person . . . ." (Emphasis added.) Specifically, appellants maintain that the district court erred in concluding that NRS Chapter 179A declares investigative and intelligence information confidential and not subject to disclosure.

NRS Chapter 179A was enacted in 1979 in response to the federal government's requirement that states "provide an acceptable plan concerning the dissemination of criminal history records, or be subject to certain budgetary sanctions." *See* 83 Op. Att'y Gen. No. 3 (May 2, 1983). NRS 179A.100(5) provides that

> [r]ecords of criminal history must be disseminated by an agency of criminal justice upon request, to the following persons or governmental entities:
>
> . . .
>
> (i) Any reporter for the electronic or printed media in his professional capacity for communication to the public.
>
> . . .

A "record of criminal history" is defined at NRS 179A.070 and

specifically excludes investigative or intelligence information.[1] Although this court has never interpreted the criminal history records statute, in 1983 the Attorney General rendered an opinion that criminal investigative reports were confidential and were not public records subject to NRS 239.010. *See* 83 Op. Att'y Gen. No. 3, *supra*.

Appellants maintain that the exclusion of the records listed in NRS 179A.070(2) from the definition of "record of criminal history" does not constitute a declaration of their confidentiality. Accurately observing that other excluded records are clearly not considered confidential, (*e.g.*, posters of wanted persons, court records of public judicial proceedings), appellants assert that the

[1]NRS 179A.070 provides:

"Record of criminal history" defined.

1. "Record of criminal history" means information contained in records collected and maintained by agencies of criminal justice, the subject of which is a natural person, consisting of descriptions which identify the subject and notations of arrests, detention, and indictments, informations or other formal criminal charges and dispositions of charges, including dismissals, acquittals, convictions, sentences, correctional supervision and release, occurring in Nevada. The term includes only information contained in memoranda of formal transactions between a person and an agency of criminal justice in this state. The term is intended to be equivalent to the phrase "criminal history record information" as used in federal regulations.

2. *"Record of criminal history" does not include:*

(a) *Investigative or intelligence information*, reports of crime or other information concerning specific persons collected in the course of the enforcement of criminal laws.

(b) Information concerning juveniles.

(c) Posters, announcements or lists intended to identify fugitives or wanted persons and aid in their apprehension.

(d) Original records of entry maintained by agencies of criminal justice if the records are chronological and not cross-indexed in any other way.

(e) Records of application for and issuance, suspension, revocation or renewal of occupational licenses, including permits to work in the gaming industry.

(f) Court indices and records of public judicial proceedings, court decisions and opinions, and information disclosed during public judicial proceedings.

(g) Records of traffic violations constituting misdemeanors.

(h) Records of traffic offenses maintained by the department to regulate the issuance, suspension, revocation or renewal of drivers' or other operators' licenses.

(i) Announcements of actions by the state board of pardons commissioners and the state board of parole commissioners.

(j) Records which originated in an agency other than an agency of criminal justice in this state.

(Emphasis added.)

Attorney General's opinion that investigative reports are confidential is inconsistent with the public status of the other records listed in NRS 179A.070(2).

Furthermore, appellants note that while Chapter 179A was patterned after the federal regulations concerning criminal history records, the Nevada legislature specifically deviated from the federal regulations when it excluded, along with other records, investigative and intelligence information from the definition of "criminal history records." *See* NRS 179A.070(2). Under the federal regulations, while the definition of "criminal history record information" is qualified not to extend to investigative information, a separate subpart specifically excludes various other records from the regulations governing disclosure of criminal history records. *See* 28 C.F.R. §§ 20.3(b), 20.20(b) and (c), and Appendix—Commentary on § 20.3(b) (1989). Unlike the federal regulations, the Nevada statute lists investigative and intelligence information together with other excluded records in the same subsection, NRS 179A.070(2), as not included in the definition of "record of criminal history" contained in NRS 179A.070(1). Appellants assert that the inescapable conclusion is that the Nevada legislature intended investigative reports to be subject to disclosure as are the other records.

Respondents maintain that this "overlap" does not appear to be intentional and they note that NRS 179A.070(1) states that "[t]he term [record of criminal history] is intended to be equivalent to the phrase 'criminal history record information' as used in the federal regulations." However, we reject respondents' argument that the legislature mistakenly lumped investigative reports together with other exclusions which are public records disclosable under NRS 239.010. Rather, we hold that the legislature deviated from the federal regulations with an intent to clarify that investigative reports are subject to disclosure if policy considerations so warrant.

Because NRS 179A.070 does not expressly declare criminal investigative reports to be confidential, we must determine to what extent they are disclosable under NRS 239.010. While NRS 239.010 mandates unlimited disclosure of all public records, other courts considering this question have recognized the common law limitations on disclosure of such records. *See, e.g.*, Carlson v. Pima County, 687 P.2d 1242, 1245 (Ariz. 1984); *see also* Records and Recording Laws, 66 Am.Jur.2d § 12 (1973).[2]

[2]The dissent argues that if the reports are non-confidential and subject to disclosure under NRS 239.010, then "the reports are to be made available to any person, at all times during office hours, for any advantage and for copying in full." Stating that this is an untenable conclusion, the dissent

Appellants argue that, under common law, criminal investigative reports were not confidential unless confidentiality was made necessary by considerations of public policy and on a case-by-case basis. Appellants note that the Attorney General's 1983 opinion lists a number of public policy considerations in support of the conclusion that criminal investigative reports are confidential.[3] In the present case, appellants argue that those same policy considerations favor disclosure of the report in question. Thus, appellants contend that the court erred in refusing to apply a balancing test to determine whether the investigative report should have been released.

Respondents assert that in enacting Chapter 179A, the legislature performed the necessary balancing between the public's right to know and individuals' rights to privacy and that consequently no additional judicial balancing is required. However, while the legislature may have balanced interests in deciding to require the release of criminal history records to the media, this is not dispositive of whether a court must balance public policy considerations when release of records other than those specifically defined as criminal history records is sought.

In support of their contention that the court should have used a balancing test to determine disclosure, appellants rely on a number of cases from other jurisdictions. *See, e.g., Carlson*, 687 P.2d at 1245; Irvin v. Macon Telegraph Publishing Co., 316 S.E.2d 449, 452 (Ga. 1984). Although respondents contend that these cases are inapposite, we hold that a balancing of the interests involved is necessary regardless of the case law from other jurisdictions.[4] Moreover, in applying a balancing test to this

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asserts that we have rewritten NRS 239.010 with a balancing limitation regarding investigative and intelligence files. Rather than rewriting the Public Records Act, however, we simply recognize a common law limitation on the otherwise unlimited provisions of NRS 239.010.

[3]The opinion states:

> The legitimate public policy interests in maintaining confidentiality of criminal investigation records and crime reports include the protection of the elements of an investigation of a crime from premature disclosures, the avoidance of prejudice to the later trial of the defendant from harmful pretrial publicity, the protection of the privacy of persons who are not arrested from the stigma of being singled out as a criminal suspect, and the protection of the identity of informants.

83 Op. Att'y Gen. No. 3 (May 2, 1983).

[4]The dissent suggests that we should adopt a "categorical" balancing test similar to that involved in the federal Freedom of Information Act. 5 U.S.C. § 552(b)(7) (1988). Contrary to the dissent's characterization of our balancing test as "ad hoc," however, we do not believe that there is a meaningful

case, none of the public policy considerations identified in the case law and the Attorney General's opinion as justifying the withholding of investigative information is present. There is no pending or anticipated criminal proceeding; there are no confidential sources or investigative techniques to protect; there is no possibility of denying someone a fair trial; and there is no potential jeopardy to law enforcement personnel. Even the district court acknowledged in its order that "if a [balancing] test were applied under the circumstances of this case, petitioners would undoubtedly prevail."

Accordingly, weighing the absence of any privacy or law enforcement policy justifications for nondisclosure against the general policy in favor of open government, we reverse the district court's denial of appellants' petition and remand with instructions to issue a writ of mandamus ordering respondents to release to appellants the entire police investigative report.

SPRINGER, MOWBRAY and ROSE, JJ., concur.

STEFFEN, J., dissenting:

Respectfully, I dissent.

Police investigative and intelligence reports are not subject to disclosure under NRS Chapter 179A, Nevada's Records Of Criminal History Act (the Act). They are specifically exempted from disclosure under the terms of the Act. Appellants contend that because other records are also specifically exempted that are not confidential, the Act intended to treat criminal investigative and intelligence reports as public records subject to disclosure to the media. The most that can be said for appellants' position is that the Act does not classify such reports as confidential or nonconfidential. Appellants' contention that the Attorney General's opinion declaring investigative reports confidential is inconsistent with the public status of other records listed in NRS 179A.070(2) appears to me to be unsound. All the referenced exemptive provision does is exclude various items from the mandatory disclosure requirements of the Act.

Appellants also contend that police investigative and intelligence reports are "public records" subject to disclosure under NRS 239.010 because they have not been accorded a confidential

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difference between the two tests, especially where a number of the considerations listed in federal Exemption 7 are virtually identical to policy considerations mentioned here. Furthermore, we do not perceive that it would be any less burdensome to judicially screen these records under the dissent's proposed categorical test, if indeed judicial screening is unduly burdensome at all.

status by statute. By so contending, appellants are seeking the realignment of two strongly favored and juxtaposed public policies involving open government and effective law enforcement. Heretofore, law enforcement agencies have released to the media selective information on criminal investigations and procedures consistent with the ongoing interests of effective and efficient police operations and the right of the public to be reasonably informed. Obviously, if appellants had succeeded in achieving their optimum position, serious problems would have resulted in the law enforcement community. Considerations of safety for officers and informants, investigative methodology and efficacy, and cooperative efforts between agencies, to name but a few, would be seriously impacted.

The majority appears to have assumed a position of "neither fish nor fowl" concerning the status of criminal investigative and intelligence reports. As a result of the majority's rule of equivocation, law enforcement agencies will be unable to predict with assurance the status of their investigative and intelligence reports in any given case until they have been subjected to the uncertainties of a judicial balancing test. I expect that the end result of such a rule will be an altered method of maintaining or memorializing ongoing police investigations. In any event, I suggest that the majority rule is unnecessarily vexatious and disruptive to law enforcement. There is, I submit, a preferable alternative that I will address in due course.

As noted previously, appellants maintain that because some of the records excluded from the definition of criminal history records are not confidential in nature, all excluded records are public records and subject to dissemination under NRS 239.010. Aside from the fact that the premise is a non sequitur, it would be highly unlikely that the Legislature would exclude investigative and intelligence records from mandatory dissemination in one statute and require their disclosure in another. Appellants also assert, and the majority agrees, that because the Act deviated from the parent federal regulations by excluding investigative and intelligence records along with other records, the "inescapable conclusion" is that the Nevada Legislature intended such records to be subject to disclosure. I have reached a contrary conclusion.

The fact that certain records are excluded from the definition of "criminal history records" does not make them public records. For example, 28 C.F.R. § 20.20(b) of the parent federal regulations (hereinafter, in general, Federal Regulations) does not exclude information concerning juveniles. However, that category of records is among the records excluded from NRS 179A.070. NRS Chapter 62 prescribes a procedure for handling

juvenile records, including the sealing thereof. Although juvenile records are not explicitly declared confidential by statute, their general inaccessibility to the public and the procedures provided for their sealing compel the inference that they are confidential.

Similarly, criminal investigative and intelligence records are not among the enumerated documents excluded from the definition of "criminal history records" in the Federal Regulations. For this reason, the majority concludes that the Nevada Legislature deviated from the Federal Regulations with the intention that such records be subject to disclosure. It is clear, however, that NRS 179A.070(2) is not a "deviation" from the Federal Regulations. Subsection 20.21(g)(6) of the Code of Federal Regulations provides that:

> The individual's right to access and review of criminal history record information *shall not* extend to data contained in intelligence, investigatory, or other related files and shall not be construed to include any other information than that defined by § 20.3(b).

(Emphasis added.)

The quoted section limits an individual's right of access to his criminal history records. An individual who is the subject of a criminal history record is among those who *must* be given access to such records under NRS 179A.100(5). It is unreasonable to assume that the Federal Regulations, after which Chapter 179A was patterned, would preclude an individual from obtaining investigatory information on himself while mandating the release of the same information to the media. It is equally incredible that the Nevada Legislature, also precluding an individual from accessing investigative data concerning himself (NRS 179A.150(1)), would mandate the disclosure of such information to the media. I suggest, therefore, that Nevada's Act does not constitute a deviation from its federal counterpart and that the majority improperly concludes that the non-existent deviation was purposefully enacted in order to "clarify that investigative reports are subject to disclosure if policy considerations so warrant."

In Branzburg v. Hayes, 408 U.S. 665 (1972), the Supreme Court noted that "[i]t has generally been held that the First Amendment does not guarantee the press a constitutional right of special access to information not available to the public generally." *Id.* at 684. The court also observed that the press is regularly excluded from grand jury proceedings and crime scenes to which the public has no access, despite the fact that news gathering may be impeded. *Id.* Grand jury proceedings and crime

scenes are generally loci of investigations and intelligence which law enforcement agencies seek to protect from public access. Thus, even the public's right to know must at times be subordinate to criminal detection and investigation.

As previously noted, NRS 179A.070(2) does not make a declaration of confidentiality, but rather of exemption. NRS 179.100(5) (Supp. 1989) mandates that records of criminal history *must* be disseminated to certain enumerated individuals and entities, including the media. By excluding investigative and intelligence information from criminal history records, the statute is exempting such information from mandatory access. This position is supported by the Opinion of the Attorney General 83-3 (5-2-1983) in regards to NRS 239.010 as follows:

> Criminal investigation and intelligence reports are confidential as internal intelligence and investigative records collected in the course of the enforcement of criminal laws and are not public records subject to inspection under this section.

Because appellants' contentions are founded on the Public Records Act (PRA) embodied in NRS 239.010, it is illuminating to review cases in other jurisdictions interpreting similar statutes and their federal counterpart, the Federal Freedom of Information Act (FOIA).[1]

Appellants cite the PRA in support of the proposition that "absent an express declaration that a record is confidential, its disclosure is mandatory." They contend that because investigative and intelligence records have not been expressly declared confidential, they are public records subject to mandatory disclosure under the PRA. Importantly, however, that statute provides that "[a]ll *public* books and *public* records . . . the contents of which are not otherwise declared by law to be confidential" shall be available to the public. (Emphasis added.) Equally important, before a document comes within the purview of the statute, it must be a "public record." And, if the public record is declared to be confidential, it is exempt from disclosure under the PRA. Unfortunately, "public record" is not defined in the statute.

I am convinced that an investigative report is not, and was never intended to be, a public record subject to the disclosure mandates of the PRA. It has been stated that:

> "A public record, strictly speaking, is one made by a public officer in pursuance of a duty, the immediate *purpose of which is to disseminate information to the public*, or to serve as a memorial of official transactions *for public reference.*"

[1] 5 U.S.C. § 552.

> Also a record is a "public record" which is *required by law to be kept*, or necessary to be kept in the discharge of a duty imposed by law or directed by law to serve as a memorial and evidence of something written, said or done. . . . It has also been held that a written record of transactions of a public officer in his office, which is a convenient and appropriate method of discharging his duties, and is kept by him as such, whether required by express provisions of law or not, is admissible as a public record.

Matthews v. Pyle, 251 P.2d 893, 895 (Ariz. 1952) (emphasis supplied).

Moreover, the mere fact that a record is prepared by a public official or employee does not make it a public record. Cowles Pub. Co. v. Murphy, 637 P.2d 966, 968 (Wash. 1981) (en banc). Similarly, a document does not become a public record merely because public officials collectively act upon it. *Id.* Nor does the fact that a document is kept by a public officer make it a public record. Looby v. Lomenzo, 301 N.Y.S.2d 163 (1969). In *Looby*, the court ruled that a card index file was not a public record because it was created to promote office efficiency rather than to satisfy statutory mandate. *Id.* at 165.

In the case of In re Toth, 418 A.2d 272 (N.J.Super.A.D. 1980), the Right to Know Law defined a public record as one "required by law to be made, maintained or kept on file" by government officials. *Toth* was, in essence, an inverse disclosure action. An officer was appealing a disciplinary action for disclosing an investigatory report on the chairman of the Casino Control Board. His defense was that the record was public under the State's Right to Know Law. The court held that because the statute did not require a written record or report to be made, it was not a public record within the purview of the statute.

By its very nature, a criminal investigative report does not fit the category of a public record. It is not prepared for dissemination to the public or to memorialize official transactions for public reference. Neither is it required by Nevada law to be prepared, maintained, or filed, unlike the situation in Carlson v. Pima County, 687 P.2d 1242 (Ariz. 1984), relied on by appellants. In *Carlson*, the report at issue dealt with an altercation between inmates and was required by law to be made.

The court in Westchester Rockland Newspapers, Inc. v. Moscydlowski, 396 N.Y.S.2d 857 (1977), noted that "records of law enforcement agencies have traditionally been held exempted from public disclosure." *Id.* at 860. That case involved an Internal Affairs Division investigation into the untimely death of an inmate. As here, the inquiry focused on whether any crimes had

been committed and the extent to which any police department personnel were guilty of breach of duty. The IAD prepared its report, and the district attorney concluded that no evidence of criminal wrongdoing existed. The press, dissatisfied with a summary of the report, unsuccessfully sought access to the original. One of the grounds for denial was that the report was outside the purview of the Freedom of Information Law because it was part of a police investigatory file. The lower court ordered disclosure under the rationale that because the investigation had been closed without determining a basis for any criminal action, the report was no longer protected by the statute.

In reversing, the appellate court recognized that the New York Public Officers Law (akin to the Nevada's Public Records Law) subjected some police records to disclosure (e.g., police blotter and booking entries). The court nevertheless stated that:

> The subject report is not such a record. . . . [I]t is akin to an intra- or inter-agency memorandum within the contemplation of the Federal Freedom of Information Act (U.S. Code, tit. 5, § 552[b][5]), upon which our law is patterned, or is, perhaps, a final agency opinion on the facts and circumstances surrounding the death of an individual while in police custody. . . . So viewed, the competing interests at bar are best satisfied by directing disclosure of only so much of the subject report as represents purely factual matter, with the names of police officers and jail personnel deleted.

*Id.* at 860. The competing interests in the instant case appear to have been satisfied by the City Attorney's disclosure of the facts surrounding the dismissal of charges against Joe Conforte, portions of the report, and corresponding data.

I suggest, therefore, that only if a record can be properly construed to be both "public" and non-confidential in nature is it subject to mandatory dissemination. Although the majority has rewritten the PRA with a balancing limitation regarding investigative and intelligence files, if, as appellants contend, such files are non-confidential and subject to the terms of the PRA, then, under its express terms, the reports are to be made available to any person, at all times during office hours, for any advantage and for copying in full. In my opinion, such a conclusion is untenable and inimical to society's interests.

Appellants also assert that publication of the investigation report is necessary so that the public is not "left in the dark" about the policies and procedures of the City Attorney's office. However, as emphasized by cases interpreting FOIA and its state counterparts, there are some documents to which the public should not be privy.

Appellants cited Houston Chronicle Pub. Co. v. City of Houston, 531 S.W.2d 177 (Tex. 1975), for the proposition that the press and the public have a constitutional right of access to information concerning crime in the community and activities of law enforcement agencies. However, as stated by that court:

> This constitutional right of access to information should not extend to such matters as a synopsis of a purported confession, officers' speculation of a suspect's guilt, officers' views as to the credibility of witnesses, statements by informants, ballistics reports, fingerprint comparisons, or blood and other laboratory tests.

*Id.* at 187.

Prior to 1976, FOIA's Exemption 7 pertained to "investigatory records compiled for law enforcement purposes except to the extent available by law to a private party." 5 U.S.C. § 552(b)(7). That phrase was broadly interpreted to include any records containing information garnered in the investigation of possible criminal activity. For example, in Koch v. Dept. of Justice, 376 F.Supp. 313 (D.C. 1974), three Congressmen sought disclosure of files pertaining to themselves. The files contained background information on the Congressmen, correspondence, internal memoranda, and citizen complaints and comments. The court ruled that files maintained by the FBI in aid of investigations into the possibility that a subject had engaged in criminal activity or other conduct that would disqualify the person from government service were "investigatory files" and thus exempt under Exemption 7. The *Koch* court reasoned that "[i]n order to insure such confidentiality, F.B.I. files may be withheld if law enforcement was a significant aspect of the investigation for which they were compiled. . . ." *Id.* at 315. Because all documents (investigatory and non-investigatory) had been mingled together, the court ordered an in camera inspection. It stated that the inspection "could have been avoided had the Bureau clearly segregated investigatory material from other documents. . . ." *Id.*

Because Exemption 7 was subject to broad interpretation, it was amended by Congress in 1986 to narrow its scope. As amended, records and information compiled for law enforcement purposes are exempt from disclosure. However, the exemption applies only where disclosure would result in one of six specified harms.[2]

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[2]5 U.S.C. § 552(b)(7) (1988 ed.) provides:

> (b) This section does not apply to matters that are—
>
> . . . .
>
> (7) records or information compiled for law enforcement purposes,

In Abramson v. FBI, 456 U.S. 615 (1981), the Supreme Court interpreted the meaning and scope of the 1976 version of Exemption 7.[3] *Abramson* involved a professional journalist who invoked the FOIA in an attempt to obtain information compiled by the FBI regarding certain politicians. The desired reports had been incorporated into a document transmitted to the White House. The Bureau denied the request on grounds that the information was exempt from disclosure under Exemptions 6 and 7 of the FOIA. However, the Bureau did provide the journalist with 84 documents, some of which had been partially redacted. The issue was whether the FBI reports lost their exempt status when joined with records compiled for other than law enforcement purposes.

The *Abramson* court approached the issue with the following analysis:

> The language of the Exemption indicates that judicial review of an asserted Exemption 7 privilege requires a two-part inquiry. First, a requested document must be shown to have been an investigatory record "compiled for law enforcement purposes." If so, the agency must demonstrate that release of the material would have one of six results specified in the Act.

*Id.* at 622. The court of appeals had ordered disclosure on the basis that the record did not qualify for the exemption. It reasoned that the record transmitted to the White House had not been compiled for law enforcement purposes, even though it contained information that was. The Supreme Court reversed, holding that:

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but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence information, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual.

[3]The 1976 version of Exemption 7 is substantially the same as the current Exemption 7. The amendment substituted the words "records and information" for the words "investigatory records."

> If a requested document . . . contains or essentially reproduces all or part of a record that was previously compiled for law enforcement reasons, it is reasonably arguable that the law enforcement record does not lose its exemption by its subsequent inclusion in a document created for a non-exempt purpose.
>
> . . . .
>
> [T]he statutory language is reasonably construable to protect that part of an otherwise non-exempt compilation which essentially reproduces and is substantially the equivalent of all or part of an earlier record made for law enforcement uses.

*Id.* at 624-25.

In the instant matter, the subject report unquestionably satisfies the threshold inquiry. The investigation commenced to determine whether bribery or other misconduct was a factor in the dismissal of charges against Conforte. Appellants contend, however, that because the report did not result in a prosecution and was subsequently labeled "administrative" in nature, the report is subject to disclosure. I do not agree.

Under the *Abramson* ruling, if a report is initially prepared for law enforcement purposes, the threshold requirement is met, and the subsequent use to which the report is committed or name it is given is of no significance. As declared by the court in Arenberg v. DEA, 849 F.2d 579 (11th Cir. 1988):

> The information gathered by the agency need not lead to a criminal prosecution in order to meet the threshold requirement. Courts should be hesitant to reexamine a law enforcement agency's decision to investigate if there is a plausible basis for the agency's decision.

*Id.* at 581.

Under the foregoing federal authorities interpreting the FOIA, it is apparent that the investigative report compiled by the Reno Police Department would qualify as exempt under subsection 7. However, the inquiry does not end there. Next, an agency claiming the Exemption 7 privilege must demonstrate that one of six "harms" within Exemption 7 would result.

Appellants contend that because the investigative report has not been declared by law to be confidential, at the very least a balancing test should be used to determine whether the report should be disseminated to the public. According to the Supreme Court, the FOIA does not require such a test. The *Abramson* court interpreted the federal act to mean that "[c]ongress . . . created a scheme of categorical exclusion; it did not invite a

judicial weighing of the benefits and evils of disclosure on a case-by-case basis. *Abramson*, 456 U.S. at 631.

In U.S. Dept. of Justice v. Reporters Comm. for Freedom of the Press, 489 U.S. 749 (1989), the court discussed the categorical balancing approach to the FOIA exemptions. Reporters there sought to obtain the "rap sheets" of individuals believed to have improper dealings with a corrupt Congressman. The FBI invoked Exemption 7(C) in refusing the request. The court rejected an ad hoc balancing approach in favor of categorical balancing. Under the latter test, once a report falls into an exempted category, it is exempt from disclosure without the need for case-by-case balancing. The court reasoned that:

> *establishing a discrete category of exempt information* implements the congressional intent to provide "workable" rules. . . . Only by construing the Exemption to provide a categorical rule can the Act's purpose of expediting disclosure by means of workable rules be furthered.

(Emphasis in original.) *Id.* 489 U.S. at 779 (quoting FTC v. Grolier Inc., 462 U.S. 19 at 27-28). The court declared that this approach may be undertaken for an "appropriate class of law-enforcement records or information." Reporters Comm., 489 U.S. at 777. Thus, the court held:

> as a categorical matter that a third party's request for law-enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy, and that when the request seeks no "official information" about a Government agency, but merely records that a Government happens to be storing, the invasion of privacy is "unwarranted."

*Id.* 489 U.S. at 780.

However, protection from disclosure is not limited to persons in their individual capacity. In Buhovecky v. Dept. of Justice, 700 F.Supp. 566 (D.C. 1988), an inmate convicted of bank robbery sought access to FBI records. The investigative file consisted of grand jury material, "rap sheets," information obtained through interviews with law enforcement officials and individuals, and other materials. The FBI released some of the requested material, but withheld information which included the names of individuals and FBI personnel and the rap sheets. After undergoing a two-part inquiry to determine whether Exemption 7 was applicable, the court ruled that:

> The type of information defendants seek to protect is information which would lead to discovery of the identity of

> participants in a criminal investigation. The interest in non-disclosure is obvious here; there is a need to protect from harassment those who participate, in either an official capacity or as investigative sources, in FBI investigations.

*Id.* at 570.

Here, among the reasons respondents refused disclosure is the invasion of privacy of those who were investigated and against whom no charges were brought. Appellants claim the invasion is "minimal" and thus the public's need to know should be balanced favorably against the minimal intrusion. Such reasoning is inconsistent with the Supreme Court's interpretation of Exemption 7.

Categorical balancing is consistent with the second prong of the *Abramson* court's two-part analysis of Exemption 7. That is, once *one* of the six "harms" is demonstrated, the exemption is applicable. Moreover, it would appear that a "categorical balancing" would be both administratively and judicially efficient. In handling a records request, a government agency should be able to rely on bright-line procedures for disseminating information rather than awaiting a case-by-case judicial determination.

I have belabored federal case law concerning the FOIA by way of analogy only. In those limited instances where "public records" are of an uncertain confidential status, I suggest that the categorical balancing approach would be preferable to the ad hoc balancing fashioned by the majority. Despite the absence of Exemption 7 in Nevada's PRA, it would appear that the categories contained therein could be accorded judicial deference by Nevada courts as guidelines for implementing a categorical balancing approach. In so doing, we would assume no greater liberties with the language of the PRA than the majority rule limiting access to investigative and intelligence reports under the PRA to material sifted by an ad hoc judicial balancing.

Unfortunately, my preoccupation with the categorical balancing test amounts to little more than vented frustration over the burdensome judicial screening imposed by the majority under circumstances that, I respectfully submit, justify no balancing requirements at all. To me, it is beyond cavil that the PRA operates only on "public records," and that criminal investigative and intelligence reports are not, and were never intended to be, classified as public records. NRS Chapter 179A mandates the dissemination of specific criminal history information, expressly excluding investigatory and intelligence reports. The PRA mandates a complete dissemination of "public records." It is illogical to assume that what the Legislature specifically excluded from dissemination under the former, it intended to mandatorily

release in full under the latter. Such contortive reasoning renders meaningless the exclusion under Chapter 179A.

For the reasons hereinbefore expressed, I am convinced that the district court judge was both perceptive and correct and should be affirmed. I therefore dissent.

# A P P E N D I X  C

"COMPARISONS OF STATE PUBLIC RECORDS LAWS,"

DATED JANUARY 10, 1992

PRESENTATION TO THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO STUDY THE LAWS GOVERNING PUBLIC RECORDS AND BOOKS

# COMPARISONS OF STATE PUBLIC RECORDS LAWS

January 10, 1992

Dennis Neilander, Senior Research Analyst
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This presentation provides a comparison of various aspects of state public records laws. Attached are Table I "Comparison Of Certain Provisions Of State Public Records Laws" and Attachment 1 "Definitions Of Public Records In State Laws."

## Overview

As with many policy areas in state law, a comparison of the general public records laws in the 50 states reveals a wide variety of approaches and provisions dealing with the primary issue of guaranteeing access to public records. Probably the only consistent feature of state public records laws is that all states have some provision that asserts the right of access to

public records. Beyond that feature, there appears to be little, if any, consistency concerning the organization and structure of states' laws on public records.

This comparison deals only with states' general laws on public records. No attempt was made to thoroughly research all aspects of every state's laws or to check cross references throughout a state's statutes.

Table I, under "Statutory Citation," provides the initial reference for each state's public or open records law. Copies of these laws were compiled by and are available from the Research Division of the Legislative Counsel Bureau (LCB). In general, most of these state laws reflect the provisions in effect as of the end of 1990, although a few include changes made in 1991 legislative sessions, based on the references available in Nevada's Supreme Court Law Library.

Most states' laws in this area are known as public or open records laws, but 12 states specifically name their laws in the statutes. Five states use "Public or Open Records Act," 5 states call it the "Freedom of Information Act," Hawaii names its law the "Uniform Information Practices Act" and Minnesota uses the "Government Data Practices Act."

The remainder of this presentation highlights and summarizes the other categories of comparisons shown in Table I.

## Policy Statement

Twenty-one states have policy statements or statements of purpose or intent that introduce their public records laws. In general, these statements express the importance and principles of open records to the adequate functioning of a democratic and open government whose sovereignty resides in the people. The policy statements range from a couple of sentences to several paragraphs in length.

## Definition

A formal definition of the term "public records" or its equivalent is contained in the general public records laws of 37 states. In addition, another 3 states (Nebraska, New Jersey and North Dakota) have no formal definition but their general laws include language that specifies what is included, deemed to be or shall be a public record.

Attachment I provides a complete listing of the formal definitions of public records that are found in the 37 states' laws. These definitions usually include a listing of the various types

of formats of records (such as books, papers, maps, tapes, etc.) and a catchall reference to other materials "regardless of physical form or characteristics" which appears in 25 of the 37 definitions. A few states define public records in terms of public writing and then further define that term.

Exemptions

Only 6 states do not specifically list the types of records that are confidential or exempt from disclosure in their general public records laws. The other 44 states list a variety of exemptions or types of confidential records ranging from 1 listed in 4 states up to a list of 46 exemptions in Virginia's general law.

A couple states' laws indicate that the exemptions listed in the general law are the only ones that are allowed, but most states designate other records as exempt in other sections of their statutes. A preliminary compilation by the Legal Division of LCB indicates about 248 references in Nevada Revised Statutes to records that are classified as confidential or not subject to disclosure.

## Access Provisions

The general laws in at least 30 states could be classified as containing detailed provisions and deadlines concerning access to public records. States were classified under this category if they had provisions in their laws dealing with specific access procedures such as how the public is to request access to records, deadlines for agency response, hours of availability and so on. Many states authorize agencies to promulgate rules and regulations governing access procedures.

## Recourse Upon Denial of Access

Almost every state's public records law includes some provision for a recourse of action if a person is denied access to a public record, and the recourse in nearly every state is to take the issue to the courts.

Only 11 states have some provision for an intermediate review or determination of denial of access before a person may take the issue to court. Among these states, 4 allow for review or petition to the attorney general or district attorney (Kentucky, Nebraska, Oregon and Wisconsin), 3 states provide for appeal to the agency head (Illinois, New York and Rhode Island), 2 allow for administrative review (Alaska and Maryland), Hawaii provides

for an appeal to the Office of Information Practices and Massachusetts allows a petition to the supervisor of records.

Most states' laws establish deadlines or require the courts to give priority to or expedite the handling of cases involving the denial of access to public records.

Electronic Records

Many states have definitions or brief references to include computer or electronic records within the purview of public records laws. However, only 9 states could be identified as having specific provisions or special sections within their public records laws that deal directly with electronic records.

Confidentiality/Privacy Criteria

At least 12 states' general public records laws could be identified as having specific provisions dealing with confidential personal records or privacy aspects, such as authorizing a person to review and correct personal information in state public records. This representation may not be entirely accurate since these types of provisions could be covered elsewhere in a state's statutes outside the public records law.

## Cost/Fee Provisions

This comparison reveals that nearly all states have some provisions in their laws regarding fees and charges for public records. In general, most state laws specify that no charges are to be made for the examination or review of a public record. For copies of records, most laws specify only recovery of the actual cost of reproduction, or designate a specific or maximum fee for copies per page. Several states allow fees to be set by agency rules or regulations. Most of the states' laws reflect the principle that fees and charges for public records should only be established as necessary to recover the actual costs and not to provide a profit. Several states have provisions that allow or establish criteria for the waiver of fees for public records.

## Enforcement

A review of states' enforcement and penalty provisions for violations of public records laws indicates that the most popular is to classify an offense as a misdemeanor. However, as shown in Table I, the penalty provisions vary considerably, even among those offenses classified as misdemeanors.

Several states' laws require the payment of court costs and attorney fees to persons who prevail in a case of denial of

access to public records, and a few states specify amounts for damages or punitive damages in such cases.

## Conclusion

This review and comparison of state laws on public records would seem to indicate that, while all states are consistent on the basic principle of widest possible access to public records, the provisions for implementation of the concept vary considerably. It would be difficult to point out one or two state's laws that might serve as a model since, as in many areas of state laws, the public records provisions in most states probably have evolved in response to specific or perceived needs in the application of the basic principle within the individual states.

BLD/llp;records,x8

## TABLE I

## COMPARISON OF CERTAIN PROVISIONS OF STATE PUBLIC RECORDS LAWS

| State | Statutory Citation | Formal Name of Law |
|---|---|---|
| Alabama | Code of Ala. 36-12-40 | |
| Alaska | Stat. 09.25.110 | |
| Arizon | ARS 39-121 | |
| Arkansas | Code 25-19-101 | Freedom of Information Act of 1967 |
| California | Govt. Code 6250 | Ca. Public Records Act |
| Colorado | CRS 24-72-201 | |
| Connecticut | Gen. Stat. 1-15 | |
| Delaware | Code Title 29, 10001 | |
| Florida | FSA 119.01 | |
| Georgia | Code 50-18-90 | Georgia Records Act |
| Hawaii | HRS 92F-1 | Uniform Information Practices Act (Modified) |
| Idaho | Id. Code 9-337 | |
| Illinois | Stat. 116, § 201 | Freedom of Information Act |
| Indiana | ISA 5-14-3-1 | |
| Iowa | Code 22.1 | |
| Kansas | KSA 45-215 | Open Records Act |
| Kentucky | KRS 61.870 | |
| Louisiana | LRS 44:1 | |
| Maine | MRS Title 1, § 408 | |
| Maryland | State Govt. Code 10-611 | |
| Massachusetts | Ch. 66 | |
| Michigan | MPL 15.231 | Freedom of Information Act |
| Minesota | MSA 13.01 | Minn. Government Data Practices Act |
| Mississippi | Code 25-61-1 | Miss. Public Records Act of 1983 |
| Missouri | Stat. 109.180 | |
| Montana | MCA 2-6-101 | |
| Nebraska | RSN 84-712 | |
| Nevada | NRS 239.101 | |
| New Hampshire | RSA 91-A:1 | |
| New Jersey | NJSA 47:1A-1 | |
| New Mexico | Stat. 14-2-1 | |

| | | |
|---|---|---|
| New York | Public Officers Law, § 84 | |
| North Carolina | Gen. Stat. 132-1 | |
| North Dakota | Century Code 44-04-18 | |
| Ohio | ORC 149.43 | |
| Oklahoma | OSA Title 52, § 24A.1 | Ok. Open Records Act |
| Oregon | ORS 192.410 | |
| Pennsylvania | PSA Title 65, § 66.1 | |
| Rhode Island | Gen. Laws 38-2-1 | |
| South Carolina | Code of Laws 30-4-10 | Freedom of Information Act |
| South Dakota | Codified Laws 1-27-1 | |
| Tennessee | Code 10-7-503 | |
| Texas | Civil Stat. Art. 6252-17a | |
| Utah | UCA 63-2-60 and 78-26-1 | |
| Vermont | VSA Title 1, § 315 | |
| Virginia | Code 2.1-340 | Va. Freedom of Information Act |
| Washington | RCW 42.17.250 | |
| West Virginia | Code 29B-1-1 | |
| Wisconsin | WSA 19.31 | |
| Wyoming | Stat. 16-4-201 | |

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# T A B L E I

## COMPARISON OF CERTAIN PROVISIONS OF STATE PUBLIC RECORDS LAWS

| State | Policy Statement | Formal Definition of Public Records | Exemptions Listed in General Law (No.) | Detailed Access Provisions and Deadlines | Recourse Upon Denial of Access |
|---|---|---|---|---|---|
| Alabama | | | X (1) | | |
| Alaska | | X | X (6) | | Administrative appeal regulations & Superior Court. |
| Arizona | | | | | Special action in Superior Court. |
| Arkansas | X | X | X (10) | | Appeal to Circuit Court. |
| California | X | X | X (22) | X | Petition to Superior Court. |
| Colorado | X | X | X (14) | X | Apply to District Court. |
| Connecticut | | X | X (15) | | |
| Delaware | X | x | X (13) | X | Bring suit petition Attorney General. |
| Florida | X | X | X (26) | X | Civil action. |
| Georgia | | X | | | |
| Hawaii | X | X | X (5) | X | Bring acction to circuit court. Appeal to Office of Information Practices. |
| Idaho | | X | X (36) | X | District Court. |
| Illinois | X | X | X (28) | X | Appeal to head of public body. Circuit Court. |
| Indiana | X | X | X (26) | X | File action in court. |
| Iowa | | X | X (28) | X | Action for judicial review. |
| Kansas | X | X | X (36) | X | District Court. |
| Kentucky | | X | X (10) | X | Review by Attorney General. Circuit Court. |
| Louisiana | | X | X (25) | X | District Court. |
| Maine | | | | | Appeal to Superior Court. |
| Maryland | | X | X (22) | X | Administrative review. Judicial review. |
| Massachusetts | | X | X (10) | X | Petition Supervisor of Records. Judicial review. |
| Michigan | | X | X (20) | X | Action in Circuit Court. |
| Minnesota | | X | | X | |
| Mississippi | | X | X (3) | X | Institute court suit. |
| Missouri | | | | X | |
| Montana | | X | X (2) | | District Court. |
| Nebraska | | | X (11) | | District Court. Petition Attorney General. |
| Nevada | | | X (4) | X | Superior Court. |
| New Hampshire | X | | X (1) | | Superior Court. |
| New Jersey | X | | X (5) | | District Court. |
| New Mexico | | | X (9) | X | Appeal to agency head or governing body. Court review. |
| New York | X | X | | | |

| State | Policy Statement | Formal Definition of Public Records | Exemptions Listed in General Law (No.) | Detailed Access Provisions and Deadlines | Recourse Upon Denial of Access |
|---|---|---|---|---|---|
| North Carolina | | X | X (2) | | Court review. |
| North Dakota | | | X (7) | | |
| Ohio | | X | X (8) | | Mandamus action in court. |
| Oklahoma | X | X | X (17) | X | Civil suit. |
| Oregon | | X | X (38) | X | Petition Attorney General. Court review. |
| Pennsylvania | | X | X (3) | | Appeal to court. |
| Rhode Island | X | X | X (22) | X | Appeal to agency's Chief Administrative Officer. Complaints to Attorney General and court proceedings. |
| South Carolina | X | X | X (18) | X | Apply to Circuit Court. |
| South Dakota | | | X (1) | | |
| Tennessee | | | X (12) | | Petition to court. |
| Texas | X | X | X (23) | X | Seek a writ of mandamus. |
| Utah | X | X | X (1) | | District Court. |
| Vermont | X | X | X (20) | X | Superior Court. |
| Virginia | X | X | X (46) | X | Petition to court. |
| Washington | | | X (24) | X | Judicial review. |
| West Virginia | X | X | X (8) | X | Circuit Court. |
| Wisconsin | X | X | X (6) | X | Request to District Attorney. Court action. |
| Wyoming | | X | X (18) | | District Court. |

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# TABLE I

## COMPARISON OF CERTAIN PROVISIONS OF STATE PUBLIC RECORDS LAWS

| State | Specific Provisions on Electronic Records | Confidentiality/ Privacy Criteria | Cost/ Fee Provisions | Enforcement/ Penalty Provisions |
|---|---|---|---|---|
| Alabama | | | "Payment of legal fees" | |
| Alaska | X | | X | Injunctive relief. |
| Arizona | | | Fee authorized | Cause of action. |
| Arkansas | | | | Misdemeanor $200 fine, 30 days jail. |
| California | X | X | X | Injunctive relief. |
| Colorado | | | X | Misdemeanor $100 fine, 90 days jail. |
| Connecticut | X | X | X | |
| Delaware | | | X | Injunction, etc. |
| Florida | X | | X | Suspension and removal or impeachment and misdemeanor offense. |
| Georgia | | X | X | |
| Hawaii | | X | | Misdemeanor. |
| Idaho | | X | X | Civil penalty up to $1,000. |
| Illinois | X | | X | Injunction. |
| Indiana | X | X | X | Misdemeanor. |
| Iowa | | X | X | Injunction. Misdemeanor. |
| Kansas | X | | X | Injunction or order. |
| Kentucky | | | X | Injunction or order. $25 daily fee. |
| Louisiana | | | X | Injunction, etc. Damages at $100 per day. |
| Maine | | | X | Civil violation not more than $500. |
| Maryland | | | X | Damages, disciplinary action. Misdemeanor. |
| Massachusetts | | | X | Judicial order. |
| Michigan | | | X | Judicial order. Punitive damages $500. |
| Minnesota | | | X | |
| Mississippi | | | X | Civil liability not to exceed $100. |
| Missouri | | | X | Removal on impeachment. Misdemeanor. $100 fine, 90 days jail. |

| State | Specific Provisions on Electronic Records | Confidentality/ Privacy Criteria | Cost/ Fee Provisions | Enforcement/ Penalty Provisions |
|---|---|---|---|---|
| Montana | X | X | X | Court order. |
| Nebraska | | | | Removal or impeachment. |
| Nevada | | | | Misdemeanor |
| New Hampshire | | | X | Misdemeanor Injunction and fees. |
| New Jersey | | | X | Court order, Attorney's fee. |
| New Mexico | | | | Court costs and fees. |
| New York | | X | X | |
| North Carolina | | | | Misdemeanor. |
| North Dakota | | | | Infraction. |
| Ohio | | | X | |
| Oklahoma | | | | Misdemeanor. $500 fine, 1 year in jail. |
| Oregon | | | X | |
| Pennsylvania | | | X | |
| Rhode Island | | | X | |
| South Carolina | | | | Misdemeanor, $100 fine, 30 days jail. |
| South Dakota | | | X | |
| Tennessee | | | X | |
| Texas | | X | X | Misdemeanor. $1,000 fine, 6 months jail. |
| Utah | | X | | Damages from $100 to $1,000. |
| Vermont | | | X | Disciplinary action. |
| Virginia | | | X | Civil penalty from $25 to $1,000. |
| Washington | | X | X | Court costs and fees and up to $25 per day for denial. |
| West Virginia | | | X | Misdemeanor, $500 fine, 10 days jail. |
| Wisconsin | X | | X | Court costs, fees and punitive damages. |
| Wyoming | | | X | Misdemeanor, $100 fine. |

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## N O T E S

| | |
|---|---|
| Alabama | Brief law; uses "public writing." |
| Alaska | Requirement to pay personnel costs under certain circumstances. Fee waiver provision. New law on access to electronic services and products. |
| Arizona | Provisions on "commercial purpose." |
| Arkansas | |
| California | Computer software not itself a public record. |
| Colorado | Extensive provisions on criminal justice records. |
| Connecticut | |
| Delaware | |
| Florida | Includes provisions on copyright of data processing software created by governmental agencies, remote electronic access to public records, and periodic legislative review of exemptions. |
| Georgia | |
| Hawaii | Includes specific lists of records to be disclosed. Provisions on Office of Information Practices. |
| Idaho | |
| Illinois | Detailed procedural provisions. Fee waiver provision. |
| Indiana | |
| Iowa | Extensive enforcement provisions. Includes Fair Information Practices Act. |
| Kansas | No liability for damages for violation of act. |
| Kentucky | |
| Louisiana | |
| Maine | |
| Maryland | Provision for temporary denials. Fee waiver provision. |
| Massachusetts | |
| Michigan | Fee waiver provision. |
| Minnesota | Provision on copyright or patent for computer program. Distinguishes between public and nonpublic data. |
| Mississippi | |
| Missouri | |
| Montana | Defines broadly "public writings" and public records as class of public writings. |

| | |
|---|---|
| Nebraska | The examination of public records, and making memoranda and abstracts from them, are all free of charge. No formal definition but the law specifies what is included as a public record. |
| **Nevada** | |
| New Hampshire | |
| New Jersey | No formal definition but the law specifies what is deemed to be public records. |
| New Mexico | |
| New York | Provision on access to state legislative records. Mention of committee on access to public records and committee on open government. |
| North Carolina | |
| North Dakota | No formal definition but the law indicates what shall be public records. |
| Ohio | |
| Oklahoma | |
| Oregon | Fee waiver provision. Detailed procedures on Attorney General and court review of denial cases. |
| Pennsylvania | |
| Rhode Island | Commercial use of public records prohibited. |
| South Carolina | Fee waiver provision. Includes list of specific matters declared public information. |
| South Dakota | |
| Tennessee | |
| Texas | Contains list of specific information which is public. Fee waiver provision. |
| Utah | |
| Vermont | |
| Virginia | |
| Washington | |
| West Virginia | |
| Wisconsin | |
| Wyoming | Public records classified as "official public records" and "office files and memoranda." |

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ATTACHMENT 1

## DEFINITIONS OF PUBLIC RECORDS IN STATE LAWS

ALASKA

* * * books, papers, files, accounts, writings, including drafts and memorializations of conversations, and other items, regardless of format or physical characteristics, that are developed or received by a public agency, or by a private contractor for a public agency, and that are preserved for their informational value or as evidence of the organization or operation of the public agency; "public records" does not include proprietary software programs.

ARKANSAS

* * * writings, recorded sounds, films, tapes, or data compilations in any form, required by law to be kept or otherwise kept, and which constitute a record of the performance or lack of performance of official functions which are or should be carried out by a public official or employee, a governmental agency, or any other agency wholly or partially supported by public funds or expending public funds. All records maintained in public offices or by public employees within the scope of their employment shall be presumed to be public records.

CALIFORNIA

* * * any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.
"Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

COLORADO

* * * includes all writings made, maintained, or kept by the state or any agency, institution, or political subdivision thereof for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds.
"Writings" means and includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics.

CONNECTICUT

"Public records or files" means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

DELAWARE

* * * information of any kind, owned, made, used, retained, received, produced, composed, drafted or otherwise compiled or collected, by any public body, relating in any way to public business, or in any way of public interest, or in any way related to public purposes, regardless of the physical form or characteristic by which such information is stored, recorded or reproduced.

FLORIDA

* * * all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law, or ordinance or in connection with the transaction of official business by any agency.

GEORGIA

"Records" means all documents, papers, letters, maps, books (except books in formally organized libraries), microfilm, magnetic tape, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in performance of functions by any agency.

HAWAII

"Government record" means information maintained by an agency in written, auditory, visual, electronic, or other physical form.

IDAHO

* * * includes, but is not limited to, any writing containing information relating to the conduct or administration of the public's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.
"Writing" includes, but is not limited to, handwriting, typewriting, printing, photostating, photographing and every means of recording, including letters, words, pictures, sounds or symbols or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums or other documents.

ILLINOIS

* * * all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, recorded information and all other documentary materials, regardless of physical form or characteristics, having been prepared, or having been or being used, received, possessed or under the control of any public body.

INDIANA

* * * any writing, paper, report, study map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, used, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, or any other material, regardless of form or characteristics.

IOWA

* * * includes all records, documents, tape, or other information, stored or preserved in any medium, of or belonging to this state or any [subdivision].

KANSAS

> * * * any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency.

KENTUCKY

> * * * all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings or other documentary materials regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency.

LOUISIANA

> All books, records, writings, accounts, letters and letter books, maps, drawings, photographs, cards, tapes, recordings, memoranda, and papers, and all copies, duplicates, photographs, including microfilm, or other reproductions thereof, or any other documentary materials, regardless of physical form or characteristics, including information contained in electronic data processing equipment, having been used, being in use, or prepared, possessed, or retained for use in the conduct, transaction, or performance of any business, transaction, work, duty, or function which was conducted, transacted, or performed by or under the authority of the constitution or laws of this state, or by or under the authority of any ordinance, regulation, mandate, or order of any public body or concerning the receipt or payment of any money received or paid by or under the authority of the constitution or the laws of this state, are "public records," except as otherwise provided in this Chapter or as otherwise specifically provided by law.

MARYLAND

> * * * the original or any copy of any documentary material that: (i) is made by a unit or instrumentality of the State government or of a political subdivision or received by the unit or instrumentality in connection with the transaction of public business; and (ii) is in any form, including 1. a card; 2. a computerized record; 3. correspondence; 4. a drawing; 5. film or microfilm; 6. a form; 7. a map; 8. a photograph or photostat; 9. a recording; or 10. a tape.

"Public record" includes a document that lists the salary of an employee of a unit or instrumentality of the State government or of a political subdivision.

MASSACHUSETTS

* * * all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency [etc.], unless such materials or data fall within the following [certain] exemptions.

MICHIGAN

* * * a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. "Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

MINNESOTA

"Government data" means all data collected, created, received, maintained, or disseminated by any state agency, political subdivision, or statewide system regardless of its physical form, storage media or conditions of use.

MISSISSIPPI

* * * all books, records, papers, accounts, letters, maps, photographs, films, cards, tapes, recordings or reproductions thereof, and any other documentary materials, regardless of physical form or characteristics, having been used, being in use, or prepared, possessed or retained for use in the conduct, transaction or performance of any business, transaction, work duty or function of any public body, or required to be maintained by any public body.

MONTANA

Public writings are: (a) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country; (b) public records, kept in this state, of private writings [exceptions]. Public writings are divided into four classes: (a) laws; (b) judicial records; (c) other official documents; (d) public records, kept in this state, of private writings.

NEW YORK

"Record" means any information kept, held, filed, produced or reproduced by, with or for an agency or the state legislature, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawing maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.

NORTH CAROLINA

* * * all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions.

OHIO

"Records" includes any document, device, or item, regardless of physical form or characteristic, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

OKLAHOMA

"Record" means all documents, including, but not limited to, any book, paper, photograph, microfilm, computer tape, disk, and record, sound recording, film recording, video record or other material regardless of physical form or characteristic, created by, received by, under the authority of, or coming into the custody, control or possession of public officials, public bodies, or their representatives in connection with the transaction of public business, the expenditure of public funds or the administering of public property.

OREGON

* * * includes any writing containing information relating to the conduct of the public's business, including but not limited to court records, mortgages and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristic.
"Writing" means handwriting, typewriting, printing, photostating, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, or other documents.

PENNSYLVANIA

Any account, voucher or contract dealing with the receipt or disbursement of funds by an agency or its acquisition, use or disposal of services or of supplies, materials, equipment or other property and any minute, order or decision by an agency fixing the personal or property rights, privileges, immunities, duties or obligations of any person or group of persons: Provided [exceptions]* * *

RHODE ISLAND

* * * all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

SOUTH CAROLINA

> * * * all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body. [Exceptions.]

TEXAS

> * * * the portion of all documents, writings, letters, memoranda, or other written, printed, typed, copies, or developed materials which contains public information.

UTAH

> * * * all books, papers, letters, documents, maps, plans, photographs, sound recordings, management information systems, or other documentary materials, regardless of physical form or characteristics, made or received, and retained by any state public office under state law or in connection with the transaction of public business by the public offices, agencies, and institutions of the state and its counties, municipalities, and other political subdivisions.

VERMONT

> * * * all papers, staff reports, individual salaries, salary schedules or any other written or recorded matters produced or acquired in the course of agency business [exceptions] * * * .

VIRGINIA

> "Official records" means all written or printed books, papers, letters, documents, maps and tapes, photographs, films, sound recordings, reports or other material, regardless of physical form or characteristics, prepared, owned, or in the possession of a public body or any employee or officer of a public body in the transaction of public business.

WEST VIRGINIA

* * * includes any writing containing information relating to the conduct of the public's business, prepared, owned and retained by a public body.
"Writing" includes any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics.

WISCONSIN

"Record" means any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority. [Includes and does not include]

WYOMING

* * * when not otherwise specified includes the original and copies of any paper, correspondence, form, book, photograph, photostat, film, microfilm, sound recording, map drawing or other document, regardless of physical form or characteristics that have been made by the state of Wyoming and any counties, municipalities and political subdivisions thereof, or received by them in connection with the transaction of public business, except those privileged or confidential by law * * *

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# A P P E N D I X  D

## EXPLANATION OF THE FREEDOM OF INFORMATION ACT

PRESENTATION TO THE LEGISLATIVE COMMISSION'S

SUBCOMMITTEE TO STUDY PUBLIC RECORDS

DENNIS NEILANDER

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## THE FREEDOM OF INFORMATION ACT

The Freedom of Information Act (FOIA) was enacted by the United States Congress in 1966. It established for the first time a statutory right of access to Federal governmental information. The enactment of FOIA followed a decade of debate among legislators, public interest groups and agency officials.

The legislative history of FOIA indicates that its primary purpose is to ensure an informed citizenry. An informed citizenry is fundamental to democratic government because it checks corruption and allows for accountability. However, achieving the goal of an informed citizenry often conflicts with societal interests. Among these competing interests are the public's interest in effective government, responsible use of

limited fiscal resources, and the preservation of the confidentiality of personal, commercial, and certain sensitive government information.

## OVERVIEW OF FOIA

Generally, FOIA grants any person a right, enforceable in court, of access to Federal agency records, except to the extent that such records are protected from disclosure by one of nine exemptions or are excluded entirely from the law by one of three exclusions. Virtually every record possessed by a Federal agency must be available to the public in one form or another unless it is exempted or excluded.

The key to coverage by FOIA is the information sought must be a "record" maintained by an "agency." The definition of agency encompasses all executive branch agencies including independent regulatory agencies. The term "record" is not defined by statute, but the Federal courts have defined the term to include almost everything that is prepared by or used by an agency official in connection with performing his duties. Distinctions are made between "public" and "private" records. For example, such things as appointment calendars and telephone message slips, employee logs created voluntarily to facilitate work, and

personal notes of agency surveyors have been held to not constitute "agency records."

The FOIA begins with the premise that certain information should be made automatically available to the public. Two categories of information are required to be disclosed automatically by FOIA. First, a description of each Federal agency's organization, functions, procedures, substantive rules and policies must be published in the Federal Register. Second, final opinions in the adjudication of cases, specific policy statements, and certain staff manuals must be made available for public inspection.

Outside of these two categories of information that are automatically public, FOIA provides that all other records not exempted or excluded, are subject to disclosure upon an agency's receipt of a specific and proper access request from any person. The procedures for requesting information are prescribed by FOIA and each agency has some specific requirements.

The FOIA also establishes various time lines for complying with requests, procedural requirements, and a fee schedule for documents. Each of these elements will be discussed in this presentation.

## NEVADA'S OPEN RECORD SCHEME COMPARED WITH FOIA

Nevada, like many other states, provides that all public books and records (state and local government) be available to the public, unless specifically exempted by law. This is also the basic approach of FOIA. If information is not covered by the automatic provisions, then it is subject to disclosure unless exempted or excluded.

The Nevada Open Record Law does not require automatic publication of records as FOIA does. Nevada also does not define public records and it has been up to the courts and individual agencies to determine what is or is not a public record or book. The FOIA defines "agency," but not "record." Nevada does not have a statutory administrative decisionmaking process. Nevada does have a series of exemptions, but not exclusions whereas FOIA contains both.

As was discussed earlier, over 300 exemptions to the Nevada Open Record Law have been identified. FOIA contains nine broad exemptions and three exclusions.

## FOIA EXEMPTIONS

The Freedom of Information Act contains nine exemptions. If the information requested fits one of the exemptions, then an agency is not required to disclose the information requested.

### Exemption 1

Exemption 1 protects from disclosure national security information concerning the national defense or foreign policy. The information must be properly classified in accordance with the substantive and procedural requirements of an Executive Order to qualify for the exemption.

### Exemption 2

Exemption 2 protects records "related solely to the internal personnel rules and practices of an agency." The Federal courts have interpreted this exemption to protect internal agency matters so routine or trivial that they could not be subject to a genuine and significant public interest.

Exemption 3

This exemption incorporates the disclosure prohibitions that are contained in other Federal statutes. Congress amended this exemption in 1976 by placing two conditions on the exemption. The statute must:

1. Require that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

2. Establish particular criteria for withholding or refer to particular types of matters withheld.

A statute falls within the exemption if it satisfies one of the disjunctive requirements.

Exemption 4

Exemption 4 of FOIA protects "trade secrets and commercial or financial information obtained from a person which is privileged or confidential." This exemption is intended to protect both the interests of commercial entities that are required to submit proprietary information to the government and the interests of the government in receiving access to such data.

Exemption 5

Exemption 5 protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party * * * in litigation with the agency." It exempts those documents normally privileged in the civil discovery context.

Exemption 6

This exemption is referred to as the privacy exemption. It applies to information about individuals in "personnel and medical files and similar files" where the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." This exemption requires a balancing of the public's right to disclosure against the individual's right to privacy. This test is similar to the one currently used by Nevada's Office of the Attorney General in cases involving confidentiality.

Exemption 7

This exemption protects form disclosure records or information compiled for law enforcement purposes. To qualify

for the exemption the record or information must be compiled for law enforcement purposes and meet one of six additional qualifications. The production of these records or information is not required if the records or information:

1. Could reasonably be expected to interfere with enforcement proceedings;

2. Would deprive a person of the right to a fair trial or an impartial adjudication;

3. Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

4. Could reasonably be expected to disclose the identity of a confidential source in a criminal investigation;

5. Would disclose techniques, procedures, or guidelines used in law enforcement investigations or prosecutions where such disclosure could reasonably be expected to cause circumvention of the law; or

6. Could reasonably be expected to endanger the life or physical safety of any individual.

Exemption 8

Exemption 8 covers matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions." In examining the legislative history of this exemption, the Federal courts have determined that it has two purposes: first, to protect the security of financial institutions by withholding from the public frank evaluations of the bank's stability; and second, to promote cooperation and communication between employees and examiners.

Exemption 9

This exemption covers "geological and geophysical information and data, including maps, concerning wells." It is a rarely invoked exemption that has little history or judicial interpretations.

## FOIA EXCLUSIONS

The 1986 amendments to FOIA created a new mechanism for protecting sensitive law enforcement matters by adding three

exclusions. The exclusions have the effect of allowing law enforcement officials to treat certain especially sensitive records as not subject to the requirements of FOIA.

Exclusion 1

This exclusion is invoked where an investigation or proceeding involves a possible violation of criminal law and there is reason to believe that the subject of the investigation is not aware of its pendency and disclosure of the existence of its pendency could reasonably be expected to interfere with enforcement proceedings.

In circumstances where the fact of an investigation is unknown to the person being investigated, invoking Exemption No. 7 may "tip off" the person regarding the investigation. Using this exclusion, the agency may simply respond that the records do not exist, without informing the person of the investigation.

Exclusion 2

The second exclusion applies to the threatened identification of confidential informants in criminal proceedings. The exclusion allows law enforcement agencies to treat a

request by a third party regarding the name of an informant as not subject to FOIA. Like the previous exclusion, this exclusion is invoked where using the similar exemption would disclose that the informant's name is somewhere in the records, even if the records themselves are not disclosed.

Exclusion 3

This exclusion applies to certain Federal Bureau of Investigation records pertaining to foreign intelligence and terrorism. To qualify for the exclusion, the records must be classified pursuant to Executive Order.

## PROCEDURES FOR FOIA REQUESTS

An access request under FOIA must "reasonably describe" the records sought and be made in accordance with the agencies published procedural regulations.

## Time Frames

The agency is required to inform the requester of its decision to grant or deny access within 10 working days. The agency does not have to provide the records within 10 days, but must provide them promptly after access is granted. Extensions of time limits are provided in certain circumstances.

## Appeals

A decision to deny access must contain the specific reason for denial and information regarding the right to an administrative appeal. This appeal is to the head of the agency who has 20 working days to rule on the appeal. If the appeal is denied, the requester may then seek judicial review. The requester must exhaust his administrative remedies before judicial review is allowed. If the agency fails to meet the time limits, the requester may immediately file for judicial review. In judicial cases, the Department of Justice (DOJ) represents the agency that has denied the request for access.

## FEES

Three levels of fees are prescribed by FOIA that depend in part upon the identity of the requester and the intended use of the information. The Office of Management and Budget (OMB) has adopted regulations and guidelines regarding the fees.

The first level of fees includes charges for document search, duplication and review, when the records are requested for commercial use. A key element of this level is that charges are allowed for the time involved in searching the records.

The second level of fees limits charges to only document duplication costs if the records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution or member of the news media.

The third level of fees applies to all requesters not covered by levels one and two and authorizes reasonable charges for document search and duplication.

The OMB has established a uniform schedule of fees for agencies. In addition, certain federal statutes establish specific fees for information that supersede FOIA and the OMB fee schedule.

Fee Waivers and Reductions

Fees are required to be waived or reduced if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations of government and is not primarily in the commercial interest of the requester. The DOJ has established a list of six factors agencies should consider in determining whether to apply a fee waiver or reduction.

DN/llp;Records,X2

# A P P E N D I X  E

"MANAGEMENT AND PRESERVATION OF NEVADA'S ELECTRONIC PUBLIC RECORDS," A REPORT TO THE STATE HISTORICAL RECORDS ADVISORY BOARD, BY MARGARET HEDSTROM, PH.D., DATED DECEMBER 1990

# MANAGEMENT AND PRESERVATION OF NEVADA'S ELECTRONIC PUBLIC RECORDS

A Report to the Nevada

State Historical Records Advisory Board

Margaret Hedstrom, PhD

Albany, NY

December 1990

## RECOMMENDATIONS

The State of Nevada should establish a comprehensive information policy governing all aspects of information technology management and information management. A comprehensive information policy generally covers a broad range of issues, including procurement of computing resources, information needs assessment, information processing standards, telecommunications, recruitment and training of staff, access to government information, and records retention and preservation.

The recommendations outlined below cover those aspects of information policy that concern maintenance, retention and preservation of electronic records. The recommendations can be implemented gradually and incrementally during the next decade. Each recommendation on its own will contribute to better management, increased

accessibility, and improved preservation of Nevada's government records. However, the recommendations will be even more effective if they are carried out within a broader information policy framework.

**1. The State of Nevada should develop a comprehensive inventory of its information holdings that includes all public records regardless of format.**

a) The records inventory of the current Division of Archives and Records records scheduling project can form the basis for the inventory, but it should be expanded to include computer records and other electronically-stored records, such as audio tapes.

b) The inventory should be maintained on-line so that it can be updated and disseminated widely.

c) The inventory should serve as a planning tool for information systems development to help identify areas where data sharing among agencies may reduce reporting burdens and eliminate maintenance of redundant data.

d) The inventory should contain information needed by the Division of Archives and Records to schedule records for disposition, and by the Board of Examiners to approve the disposal of records and monitor compliance with public records laws.

e) The inventory should serve as a public access tool by making information about the information holdings of state agencies widely available and easily accessible to the public. To ensure that access to records is provided on a fair and equitable basis and that personal privacy and confidentiality are protected, the inventory should include information about the terms and conditions under which access by the public is allowed or denied.

f) This inventory can be developed incrementally by adding data about new information systems when they are created or about older recordkeeping systems when they are redesigned.

**2. The Division of Archives and Records should work with State agencies and with the Division of Data Processing to establish retention and disposition schedules for records when information systems are designed or redesigned.**

a) Retention requirements and procedures for both paper and electronic records should be evaluated whenever an information system is redesigned or whenever there is a significant change in recordkeeping practices or records storage technologies.

b) Retention requirements should be evaluated every five years to ensure that measures are being taken to identify and protect electronic records with continuing and long-term value.

c) All records retention plans should be reviewed by the Board of Examiners. Sign-off by the Board of Examiners on the retention plans for electronically-stored information should be incorporated into the approval process for new information systems.

d) This approach will provide for the gradual and incremental implementation of a program to schedule electronic records for disposition.

**3. The State should clarify its definition of public records to explicitly include electronically-stored information in the definition of public records, through revision of the current statute if necessary.**

a) A separate task force is reporting on the definition of public record. The task force should make sure that the definition is broad and explicit enough to clearly include electronic records.

b) In conjunction with an evaluation of the definition of public records, the State should review potential barriers to public access, such as fees, copyright, licensing agreements, and other obstacles.

**4. The State should develop an adequate storage facility and introduce maintenance procedures to ensure ongoing accessibility of electronic records with enduring value.**

a) The storage facility should include adequate temperature and humidity controls to maintain magnetic tapes at a constant temperature of 60-70 degrees F and 40-50% RH.

b) The storage facility should be used to store back-up copies of data retained on-line as well as data that has been downloaded from active systems and retained on magnetic tape for occasional reference.

c) The storage facility should be secure from unwarranted access and designed to minimize damage from fires, floods, and other disasters.

d) The storage facility should be equipped with proper shelving and other equipment needed to store electronic records.

e) A small sample of the magnetic media in storage should be evaluated annually to detect deterioration.

f) Magnetic media should be copied to new media a minimum of once every five years or whenever a new storage format is introduced.

g) The storage facility should be developed in conjunction with a statewide disaster preparedness plan for government information resources.

h) The Division of Archives and Records should investigate upgrading the State Records Center to serve this purpose.

**5. The Division of Archives and Records should undertake a program to educate state officials about their responsibilities for retention, care, and preservation of government records with special emphasis on electronically-stored public records.**

a) The Archives and Records program should develop guidelines for care and maintenance of electronic records and distribute them widely to government agencies.

b) The program should educate government officials about retention requirements and train them how to maintain public records.

c) The program should monitor compliance with public records laws and regulations and report periodically to the Board of Examiners on the status of electronic records.

d) Staff in the Division of Archives and Records should acquire the technical expertise needed to preserve archival records in electronic form. Such expertise can be acquired gradually through participation in professional development activities and through hands-on experience with the acquisition and preservation of records in electronic form. Pilot projects, starting with simple data sets, should be used to develop procedures and learn techniques for preservation of records in electronic form.

e) The Division of Archives and Records needs additional resources to purchase and maintain equipment required for preservation of audio and video recordings, and to obtain access to computer services required for preservation of computer records.

f) Until such time that the State Archives develops the technical capacity to preserve and disseminate public records in electronic form, the State Archives should require agencies to retain their archival records under terms and conditions established by the Archives.

# A P P E N D I X  F

LETTER OF TRANSMITTAL,

DATED SEPTEMBER 11, 1990,

AND COPY OF MODEL POLICY TO ASSIST

PUBLIC ENTITIES IN IMPLEMENTING

IDAHO PUBLIC RECORDS ACT

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
BOISE 83720

JIM JONES
ATTORNEY GENERAL

TELEPHONE
(208) 334-2400

September 11, 1990

Dear Public Official:

The Idaho Public Records Act, which went into effect on July 1, deserves careful consideration by those who serve the public. It sets the ground rules for release of government information to the public. It specifies the types of documents exempt from disclosure, while setting a simple, uniform procedure for examining and copying documents. It was designed to strike a balance between the right of citizens to have access to public documents and the necessity to maintain the confidentiality of certain categories of sensitive records.

Because of the important implications of this law for public employees, my staff has prepared a model policy to assist public entities in implementing it. A copy of the model policy is attached. It should be adaptable for public agencies at all levels of government and I would encourage you to proceed with its adoption for your agency. I hope it provides the guidance you need to insure timely compliance with the Idaho Public Records Act.

Sincerely,

JIM JONES
ATTORNEY GENERAL

JTJ/tg

PHOTOCOPIER COST ANALYSIS WORKSHEET

| MACHINE COST PER COPY: | | |
|---|---|---|
| Average copies per month | = | |
| Purchase Price | = | |
| Amortized Cost per month over copier life | = | |
| TOTAL MACHINE COST PER COPY | = | |

| MAINTENANCE & SUPPLY COSTS PER COPY: | | |
|---|---|---|
| Maintenance per copy | = | |
| Supplies - Toner, Drums, etc. | = | |
| Supplies - Paper | = | |
| TOTAL COST OF SUPPLIES PER COPY | = | |
| TOTAL COST PER COPY | = | |

PHOTOCOPIER COST ANALYSIS EXAMPLE

| MACHINE COST PER COPY: | | |
|---|---|---|
| Average copies per month | = | 44,695 |
| Purchase Price | = | 11,995.00 |
| Amortized Cost per month for 3 years | = | 333.19 |
| TOTAL MACHINE COST PER COPY | = | 0.0075 |

| MAINTENANCE & SUPPLY COSTS PER COPY: | | |
|---|---|---|
| Maintenance per copy | = | 0.0125 |
| Supplies - Toner, Drums, etc. | = | 0.0055 |
| Supplies - Paper | = | 0.0050 |
| TOTAL COST OF SUPPLIES PER COPY | = | 0.0230 |
| TOTAL COST PER COPY | = | 0.0305 |

# IDAHO PUBLIC RECORDS LAW

## MODEL POLICY

### INTRODUCTION

Effective July 1, 1990, Idaho has a new law relating to the disclosure of information by all state and local government entities. The Idaho Public Records Act is found at Idaho Code Sections 9-337 through 9-348. The intent of this law is that all records maintained by public agencies are open to the public for inspection and copying at all reasonable times, unless the information is specifically exempted from disclosure by law.

### DEFINITIONS

Key terms are defined in the Act. Some of the law's most important concepts are:

1. Public records - These include, but are not limited to, any writing containing information relating to the conduct or administration of the public's business, prepared, owned, used or retained by a public agency. "Writing" means information maintained in many forms, including, for example, pictures, maps, tapes, magnetic or punched cards, and computer disks.

2. Inspect - This means the right to listen, view, and make notes of public records, as long as the public record is not altered or damaged.

3. Copy - This means transcribing by handwriting, photo-copying, duplicating machine, and reproducing by any other means, so long as the public record is not altered or damaged.

4. Custodian - This means any public official or employee having physical custody and control of the public records, including those who respond to requests for information on a routine basis. "Custodian" also includes the person, whether elected or appointed, who is legally responsible for administering the public agency, or that person's designee. "Designated custodians" are those employees authorized to perform specific responsibilities that are described in this policy, including denying requests for information when appropriate to do so.

### DESIGNATED CUSTODIANS

The following persons are the designated custodians for this agency:

_____

_____

## EXEMPTIONS

The records exempt from disclosure by this Act are listed in Idaho Code Section 9-340. All employees should be aware of the following exemptions that apply to this agency:

[List exemptions that pertain to the public agency]

_____

_____

Personnel Information

The employment history, classification, pay grade and step, longevity, gross salary and salary history, status, work place and employing agency of any current or former employee are required to be disclosed to any person who requests the information.

All other information relating to an employee or applicant, such as home address and phone number, shall not be disclosed to the public without the written consent of the employee, applicant or designated representative. Employees may inspect and copy their own records, except for material used to screen and test for employment.

* * * *

Records may contain both exempt and non-exempt material. The public agency is responsible for separating the exempt from the non-exempt information and supplying the non-exempt record. The Act prohibits denying access based upon the fact that the record contains both types of materials.

Even if an exemption applies to a record, the law allows disclosure of statistical information that does not identify any particular person.

## PROCEDURE FOR REQUESTING PUBLIC RECORDS

It is this agency's policy to continue providing access to and copies of records immediately upon request whenever possible. Examination of records should be done during normal working hours, unless the person who administers the agency or a designated custodian authorizes otherwise. A certified copy, if feasible to produce or required by law, must be provided upon request.

The law prohibits asking why the information is needed. It is permissible to explain what records are available and to help identify the material that is desired. It is also permissible to allow the person to examine non-exempt files in order to select the specific records needed. Staff must maintain vigilance to see that records are not altered or destroyed, but the law prohibits examination of any copy, photograph or notes in the person's possession.

**[The agency has the right to determine whether written requests will be required. Choose:**

a) A written request will not be required if the information is routinely provided by this agency and is readily available. **or**

b) Whenever information is requested, ask the person to fill out a written request form.]

A request for records must be granted or denied within three (3) working days.

If a longer time is needed to locate or retrieve the records, ask for a written request. The person in this agency who is authorized to determine that a request cannot be granted within three working days is ___[the custodian who receives the request, or a designated custodian, or the person who administers the agency]___. The request must be granted or denied in whole or part within ten (10) working days. If no answer is provided within ten (10) working days, the request will be deemed to have been denied.

**[Policy Decision:**

Some agencies have considered keeping a log of requests. Given legislative intent that there be free access to public records and that such a log would itself be a public document, it may be inappropriate to include any information identifying the person making the request.]

## COSTS FOR PROVIDING PUBLIC RECORDS

**[The agency must determine whether a certain number of copies will be provided without charge. Choose:**

a) Due to the cost of accounting for copying fees, copies of _____ numbers of records will be provided free of charge. If the request is for a greater number of records, copying fees will be charged for all records requested. **or**

b) A fee will be charged for each photocopy provided.]

The Act does not require the agency to provide multiple copies of the same document.

The fee charged for locating or copying a public record cannot include any administrative or labor costs. The Act does permit public agencies to charge for the actual cost of copying records. This agency's cost of standard photocopies is currently five (5) cents per page. **[Note:** Most agencies are finding that the actual cost of photocopying averages about five cents. Insert a higher copying fee only if that is the actual cost that can be justified.

In order to determine actual costs, use the cost per copy charges to the agency if the agency pays another entity to do the copying. If copying is done in-house, the cost includes the cost of all supplies such as paper, toner and replaceable parts. To this add the cost of the maintenance agreement. Supplies and maintenance numbers should be calculated on a per copy basis. Finally, add the capital outlay costs of the photocopier, amortized over the expected life span to provide a monthly figure (divided by the average number of copies per month). See the attached "photocopier cost analysis example" and worksheet.

In addition, there is an exception for fees established by law, such as Recorder's fees. If applicable, substitute the statutory fee and citation for this paragraph.]

**[The agency must determine whether advance payment of copying charges will be required. Choose:**

a) Advance payment for copies will only be required if the charges are not minimal, that is, $_____ or more. or

b) Advance payment of the photocopying charges is required.]

The fee charged for providing information in the form of computer tapes, disks, microfilm or similar record media may not exceed the amount of the direct cost of copying. **[Note:** It appears to be legislative intent that "direct cost" does not include the regular wages of the computer operator who may be providing these copies.] If the information is also available in publication form, the agency may offer the published material to the individual at the standard cost of selling the publication.

When necessary, [the custodian who receives the request, or a designated custodian, or the person who administers the agency] may authorize examination of records to be done outside of regular working hours. If this is done, advance payment of reasonable compensation for this added expense **[choose: (a) is (b) may be]** required.

If there is a request to mail copies of documents to someone and the mailing cost is in excess of $_____, ask for a written request, advance payment, and a stamped, self-addressed envelope large enough for the number of copies.

The designated custodian or person who administers the agency may choose to allow staff, as time permits, to transmit a small number of records by FAX, with the understanding that the person requesting the records will pay the telecommunications charges if they are not minimal.

## INSPECTION AND CORRECTION OF AN INDIVIDUAL'S RECORDS

After providing identification, an individual may inspect, copy and request correction of public records pertaining to that person, except those portions of records that are exempt from disclosure. A correction, or a written refusal to make the correction, must be made within ten (10) calendar days. Refer these requests to the person who administers the agency or a designated custodian immediately.

Subsection (3) of Section 9-342 prohibits access to certain records pertaining to oneself, if the information: relates to exempt investigatory records of ongoing investigations; "is compiled in reasonable anticipation of litigation which is not otherwise discoverable"; relates to adoption records; or "is otherwise exempt from disclosure by statute."

## DENIAL OF REQUEST

If there is **any** doubt about whether information should be disclosed, ask for a written request and immediately direct it to a designated custodian. It is this agency's policy that such a request shall be reviewed by the agency's attorney.

If a request for a record is denied in whole or in part, the Act requires the person who administers the agency or a designated custodian to notify the person in writing. This notice shall state that (1) the attorney for the agency has reviewed the request, or that the agency had the opportunity to consult with an attorney and has chosen not to do so; (2) the statutory basis for the denial; (3) a simple statement of the right to appeal and the time limit for appeal; and (4) a certificate of mailing. (See attached form.)

If a request to correct an individual's record is denied, written notification is required within ten (10) calendar days of the receipt of the request. The notice of refusal to amend a record must state the reasons for the refusal, and provide the statement of appeal rights and certificate of mailing mentioned above.

The time limit for filing an appeal is 180 days from the date the notice of denial is mailed. The sole remedy for protesting the public agency's decision is to file a petition in the district court of the county where the records or some part of them are located, requesting the court to compel the agency to make the information available or to correct the record.

If a request is denied, the requested records must be retained until the end of the appeal period, until there has been a decision on an appeal, or as otherwise provided by law, whichever is longer. Whenever a request is denied, there must be some indication made on the record that it shall not be purged without the approval of the person who administers the agency or a designated custodian.

## PENALTY AND IMMUNITY

The law provides a penalty of up to $1,000 for a deliberate, bad faith denial of information that should be disclosed. It also provides immunity from liability for the release of records as long as there is a good faith attempt to comply with the law's requirements. Therefore, it is important to refer immediately any questions or any requests that seem doubtful to the person who administers the agency or a designated custodian.

**Sample letter denying requested information**

To:

Re: Request for Information

Dear _____:

On __(date)__, I received your request for _____.

Section 9-340(___) of the Idaho public records law provides:

_____.

To the extent that your request involves records that are exempt from disclosure under this section, the request is denied.

You have 180 days from the date of mailing indicated below in which to protest this decision. You have the right to file a petition in the district court of the county where the records, or some part of them, are located, requesting the court to compel disclosure of the information. The court will set a time for our response and for a hearing at the earliest possible time, not later than twenty-eight days after the petition is filed.

I regret that we could not accommodate your request.

Very truly yours,

_____
Designated Custodian

[ ] This request has been reviewed by _____, our attorney.
Approved: _____.
(signature of attorney)

[ ] Though I have had an opportunity to have this request reviewed by an attorney, I have chosen not to do so because the Idaho Public Records Law makes this information exempt from disclosure.

[ ] I have consulted with our attorney, _____, by telephone. [cc: attorney]

CERTIFICATE OF MAILING

I hereby certify that the original of this letter was deposited in the United States mail, postage prepaid, this ____ day of _____, 199__.

_____

**REQUEST FOR PUBLIC RECORDS**

I request to examine [ ]
copy [ ] the following records:

_____

_____

_____

_____

_____.

Mailing Address:

_____
Name (Please Print)

_____

_____

_____
Zip

_____
Date of Request

_____
Daytime Phone Number

---

Received by

_____
Date Received

_____
[Public Agency]

[ ]
Initial if Applicable

More than three working days are needed to locate or retrieve the requested records. A response shall be provided within ten (10) working days of the request.

Payment received for _____ copies: _____
Amount Received

_____
Receipt Number

(Model one-page procedure to post above copier, if desired)

**PROCEDURE FOR COPYING RECORDS**

1. If someone requests information or a copy of a record, **a written request is necessary when** [whatever the agency's policy is].

2. **Determine if the record may be made available for public inspection and copying. Do not ask why the individual wants the information.**

[List records specific to your organization that are exempt or open to the public, whichever is feasible]

_____ -

_____ -

The Idaho public records law requires the disclosure of the following:

Personnel Information - employment history, classification, pay grade and step, longevity, gross salary, salary history, workplace, and employing agency.

Current or former employees, or their authorized representatives, may inspect and copy their own personnel records, except for materials used to screen and test for employment.

3. **If you think the information is exempt from disclosure, if voluminous records are requested, or you have any doubt about whether the information can be disclosed, immediately refer the request to the following individuals:**

_____

_____

4. **(If more than ____ copies are provided,) charge** 5 **cents per page and give the money to** _____.

## APPENDIX G

## SUGGESTED LEGISLATION

SUMMARY--Substitutes civil enforcement of access to public records for criminal penalty. (BDR 19-393)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to public information; substituting civil enforcement of access to public books and records for a criminal penalty for denial of access; conferring immunity upon public officers and employees for certain actions in good faith; and providing other matters properly relating thereto.

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

**Section 1.** Chapter 239 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

**Sec. 2.** *If a request for inspection or copying of a public book or record open to inspection and copying is denied, the requester may apply to the district court in the county in which the book or record is located for an order permitting him to inspect or copy it. The court shall give this matter priority over other civil matters to which priority is not given by other statutes. If the*

*requester prevails, he is entitled to recover his costs and attorney's fees in the proceeding from the agency whose officer has custody of the book or record.*

**Sec. 3.** *A public officer or employee who acts in good faith in disclosing or refusing to disclose information is immune from liability for damages, either to the requester or to the person whom the information concerns.*

**Sec. 4.** NRS 239.010 is hereby amended to read as follows:

239.010 **[**1.**]** All public books and public records of state, county, city, district, governmental subdivision and quasi-municipal corporation officers and offices of this state (and all departments thereof), the contents of which are not otherwise declared by law to be confidential, **[**shall**]** *must* be open at all times during office hours to inspection by any person, and the **[**same**]** *books and records* may be fully copied or an abstract or memorandum prepared therefrom, and any copies, abstracts or memoranda taken therefrom may be utilized to supply the general public with copies, abstracts or memoranda of the records or in any other way in which the **[**same**]** *books and records* may be used to the advantage of the owner thereof or of the general public.

**[**2. Any officer having the custody of any of the public books and public records described in subsection 1 who refuses any person the right to inspect such books and records as provided in subsection 1 is guilty of a misdemeanor.**]**

**Sec. 5.** NRS 122.040 is hereby amended to read as follows:

122.040 1. Before persons may be joined in marriage, a license must be obtained for that purpose from the county clerk of any county in the state, at the county seat of that county.

2. Before issuing a marriage license, the county clerk may require evidence that the applicant for the license is of age. The county clerk shall accept a statement under oath by the applicant and the applicant's parent, if available, that the applicant is of age.

3. The county clerk issuing the license shall require the applicant to answer under oath each of the questions contained in the form of license, and, if the applicant cannot answer positively any questions with reference to the other person named in the license, the clerk shall require both persons named in the license to appear before him and to answer, under oath, the questions contained in the form of license. If any of the information required is unknown to the person responding to the question, he must state that the answer is unknown.

4. If any of the persons intending to marry is under age and has not been previously married, and if the authorization of a district court is not required, the clerk shall issue the license if the consent of the parent or guardian is:

(a) Personally given before the clerk;

(b) Certified under the hand of the parent or guardian, attested by two witnesses, one of whom must appear before the clerk and make oath that he saw the parent or guardian subscribe his name to the annexed certificate, or heard him or her acknowledge it; or

(c) In writing, subscribed to and acknowledged before a person authorized by law to administer oaths. A facsimile of the acknowledged writing must be accepted if the original is not available.

5. If the authorization of a district court is required, the county clerk shall issue the license if that authorization is given to him in writing.

6. All records pertaining to marriage licenses are public records and open to inspection pursuant to the provisions of NRS 239.010. [Any county clerk who refuses to permit an inspection is guilty of a misdemeanor.]

7. A marriage license issued on or after July 1, 1987, expires 1 year after its date of issuance.

SUMMARY--Urges Department of Data Processing and Division of Archives and Records of State Library and Archives to take certain actions regarding public records stored on electronic media. (BDR R-394)

CONCURRENT RESOLUTION--Urging the Department of Data Processing and the Division of Archives and Records of the State Library and Archives to take certain actions regarding the retention, care and preservation of public records stored on electronic media.

WHEREAS, Nevada's law governing access to public records and documents has remained largely unchanged since its enactment in 1911; and

WHEREAS, The lack of applicable definitions and clear-cut guidelines regarding new technology have resulted in confusion by those responsible for administering the law and those seeking access to public records and documents; and

WHEREAS, Such confusion has led to the destruction of records which should have been retained for historical purposes; and

WHEREAS, There is a growing need to identify, preserve and maintain public access to significant public records stored on electronic media along with maintenance of our documentary heritage; and

WHEREAS, The development of an integrated computer system for use by all state agencies would reduce the cost of retaining and preserving public

records and would increase the efficient use and preservation of information within the system; now, therefore, be it

RESOLVED BY THE OF THE STATE OF NEVADA, THE CONCURRING, That the Department of Data Processing and the Division of Archives and Records of the State Library and Archives are hereby urged to:

1. Create and maintain an inventory of the hardware, software and computer data bases used by each state agency and the information stored thereon;

2. Develop an integrated system of hardware and software for use by all state agencies;

3. Work with all state agencies to establish schedules for the retention and disposition of records at the time such an integrated system is designed or redesigned;

4. Create a facility for the storage of information retained on an integrated system and develop procedures for maintaining that information; and

5. Establish an educational program for state officers and employees concerning their responsibilities for the retention, care and preservation of public records, with special emphasis on public records stored on electronic media;

and be it further

RESOLVED, That the of the prepare and transmit a copy of this resolution to the Director of the Department of Data Processing and the State Librarian.

SUMMARY--Directs Legislative Commission to conduct interim study of exemptions to laws governing public records and books. (BDR R-395)

CONCURRENT RESOLUTION--Directing the Legislative Commission to conduct an interim study of the exemptions to the laws governing public records and books to determine if any exemptions should be repealed, amended or added.

WHEREAS, Assembly Concurrent Resolution No. 90 of the 66th session of the Nevada Legislature urged the Governor of Nevada to create a Blue Ribbon Executive-Legislative Panel to Study and Propose Revisions to the Laws Governing Public Records and Books during the interim; and

WHEREAS, Assembly Concurrent Resolution No. 90 resolved that the Blue Ribbon Executive-Legislative Panel include in its study a careful examination of the definitions of "records" and "public records"; and

WHEREAS, Throughout the Nevada Revised Statutes, numerous provisions provide that certain information is exempt from the definition of a public record and is thereby exempt from the laws governing public records and books; and

WHEREAS, The advisory committee of the Blue Ribbon Executive-Legislative Panel has determined that because of the number of exemptions which exist throughout the laws of the state, it was impossible to review

adequately the exemptions within the budget and time constraints of the interim; and

WHEREAS, The advisory committee of the Blue Ribbon Executive-Legislative Panel has advised that the study of the exemptions to the laws governing public records and books to determine if any exemptions should be repealed, amended or added is a worthwhile endeavor and should not be abandoned but should continue during the next interim; now, therefore, be it

RESOLVED BY THE OF THE STATE OF NEVADA, THE

CONCURRING, That the Legislative Commission is hereby directed to conduct an interim study of the exemptions to the laws governing public records and books to determine if any exemptions should be repealed, amended or added; and be it further

RESOLVED, That the Legislative Commission report the results of the study and any recommended legislation to the 68th session of the Nevada Legislature.

SUMMARY--Requires charges for copies of public records not to exceed cost.

(BDR 19-396)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to public information; providing that charges made for copies must approximate the cost of copying; authorizing public agencies to conduct searches of records by individual request for a fee; and providing other matters properly relating thereto.

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

**Section 1.** Chapter 239 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. Unless free copies are provided pursuant to a specific statute, an agency of the state or of a local government which is required or permitted to furnish copies from its books or records shall charge a fee for the copies. The fee must not exceed the cost to the agency for making the copies, taking into account supplies used and the depreciation of equipment but not the time spent by its personnel.*

*2. Such an agency may conduct searches of its records by individual request, and charge a reasonable fee for each search which takes into account time spent by personnel as well as any cost related to equipment.*

*3. Such an agency fulfills its duty to provide copies by providing the information requested in the form in which the agency's records are kept. If the requester desires the information in another form, the agency may make an additional charge for reformatting which may include the cost of time reasonably spent by its personnel.*

**Sec. 2.** NRS 2.250 is hereby amended to read as follows:

2.250 1. The clerk of the supreme court may demand and receive for his services rendered in discharging the duties imposed upon him by law the following fees:

(a) Whenever any appeal from the final judgment or any order of a district court is taken to the supreme court, or whenever any special proceeding by way of mandamus, certiorari, prohibition, quo warranto, habeas corpus, or otherwise, is brought in or to the supreme court, the appellant and any cross-appellant or the party bringing a special proceeding shall, at or before the filing of the transcript on the appeal, cross-appeal or petition in a special proceeding in the supreme court, pay the clerk of the supreme court the sum of $100, which payment is in full of all fees of the clerk of the supreme court in the action or special proceeding.

(b) No fees may be charged by the clerk in any action brought in or to the supreme court wherein the state, or any county, city or town thereof, or any

officer or commission thereof is a party in his or its official capacity, against the officer or commission.

(c) In habeas corpus proceedings of a criminal or quasi-criminal nature no fees may be charged.

(d) A fee of $30 for supreme court decisions in pamphlet form for each fiscal year, or a fee of $15 for less than 6 months' supply of decisions, to be collected from any person except those persons and agencies mentioned in NRS 2.345.

[(e) A fee from any person who requests any photostatic copy or any photocopy print of any paper or document in an amount not to exceed the cost of copying the paper or document.]

2. No other fees may be charged than those specially set forth in this section *or required by section 1 of this act,* nor may fees be charged for any other services than those mentioned in this section [.] *or section 1 of this act.*

3. The clerk of the supreme court shall keep in his office a fee book in which he shall enter in detail the title of the matter, proceeding or action, and the fees charged therein. The fee book must be open to public inspection.

4. The clerk of the supreme court shall publish and set up in some conspicuous place in his office a fee table for public inspection. He shall forfeit a sum not exceeding $20 for each day of his omission to do so, which sum with costs may be recovered by any person by an action before any justice of the peace of the same county.

5. All fees prescribed in this section must be paid in advance, if demanded. If the clerk of the supreme court has not received any or all of his fees which may be due him for services rendered by him in any suit or proceeding, he may have execution therefor in his own name against the party from whom they are due, to be issued from the supreme court upon order of a justice thereof or from the court upon affidavit filed.

6. The clerk of the supreme court shall give a receipt on demand of any party paying a fee. The receipt must specify the title of the cause in which the fee is paid and the date and the amount of the payment.

7. The clerk of the supreme court shall, when he deposits with the state treasurer money received by him for court fees, render to the state treasurer a brief note of the cases in which the money was received.

**Sec. 3.** NRS 4.060 is hereby amended to read as follows:

4.060 1. Except as otherwise provided in subsection 2, each justice of the peace shall charge and collect the following fees:

(a) On the commencement of any action or proceeding in the justice's court, other than in actions commenced pursuant to chapter 73 of NRS, to be paid by the party commencing the action:

| | |
|---|---|
| If the sum claimed does not exceed $1,000 | $25.00 |
| If the sum claimed exceeds $1,000 but does not exceed $5,000 | 35.00 |
| In all other civil actions | 25.00 |

(b) For the preparation and filing of an affidavit and order in an action commenced pursuant to chapter 73 of NRS:

If the sum claimed does not exceed $500 ..... 10.00

If the sum claimed exceeds $500 but does not exceed $1,500 ..... 20.00

If the sum claimed exceeds $1,500 but does not exceed $2,500 ..... 30.00

(c) On the appearance of any defendant, or any number of defendants answering jointly, to be paid him or them on filing the first paper in the action, or at the time of appearance:

In all civil actions ..... 10.00

For every additional defendant, appearing separately ..... 5.00

(d) No fee may be charged where a defendant or defendants appear in response to an affidavit and order issued pursuant to the provisions of chapter 73 of NRS.

(e) For the filing of any paper in intervention ..... 5.00

(f) For the issuance of any writ of attachment, writ of garnishment, writ of execution, or any other writ designed to enforce any judgment of the court ..... 5.00

(g) For filing a notice of appeal, and appeal bonds ..... 10.00

One charge only may be made if both papers are filed at the same time.

(h) For issuing supersedeas to a writ designed to enforce a judgment or order of the court ..... 10.00

(i) For preparation and transmittal of transcript and papers on appeal ..... 10.00

(j) For celebrating a marriage and returning the certificate to the county recorder ..... 35.00

(k) For entering judgment by confession ..... 5.00

(l) [For preparing any copy of any record, proceeding or paper, for each page ..... .25

(m)] For each certificate of the clerk, under the seal of the court ..... 2.00

[(n) For searching records or files in his office, for each year ..... 1.00

(o)] *(m)* For filing and processing each bail or property bond ..... 40.00

2. A justice of the peace shall not charge or collect any of the fees set forth in subsection 1 for any service rendered by him to the county in which his township is located.

3. Except as otherwise provided by an ordinance adopted pursuant to the provisions of NRS 244.207, the justice of the peace shall, on or before the fifth day of each month, account for and pay to the county treasurer all fees collected during the preceding month, except for the fees he may retain as compensation and the fees he must pay to the state treasurer pursuant to subsection 4.

4. The justice of the peace shall, on or before the fifth day of each month, pay to the state treasurer half of the fees collected pursuant to paragraph [(o)] *(m)* of subsection 1 during the preceding month. The state treasurer shall deposit the money in the fund for the compensation of victims of crime.

**Sec. 4.** NRS 19.013 is hereby amended to read as follows:

19.013 1. Each county clerk shall charge and collect the following fees:

On the commencement of any action or proceeding in the district court, or on the transfer of any action or proceeding from a district court of another county, except probate or guardianship proceedings, to be paid by the party commencing the action, proceeding or transfer ..... $47

On an appeal to the district court of any case from a justice's court or a municipal court, or on the transfer of any case from a justice's court or a municipal court ..... 35

On the filing of a petition for letters testamentary, letters of administration, setting aside an estate without administration, or a guardianship, which fee includes the court fee prescribed by NRS 19.020, to be paid by the petitioner:

Where the stated value of the estate is more than $1,000 ..... 65

Where the stated value of the estate is $1,000 or less, no fee may be charged or collected.

On the filing of a petition to contest any will or codicil, to be paid by the petitioner ..... 37

On the filing of an objection or cross-petition to the appointment of an executor, administrator or guardian, or an objection to

the settlement of account or any answer in an estate or guardianship matter ..... 37

On the appearance of any defendant or any number of defendants answering jointly, to be paid upon the filing of the first paper in the action by him or them ..... 37

For filing a notice of appeal ..... 20

For issuing a transcript of judgment and certifying thereto ..... 2

For [preparing any copy of any record, proceeding or paper, for each page ..... 1

For] each certificate of the clerk, under the seal of the court ..... 2

For examining and certifying to a copy of any paper, record or proceeding prepared by another and presented for his certificate ..... 5

For filing all papers not otherwise provided for, other than papers filed in actions and proceedings in court and papers filed by public officers in their official capacity ..... 15

For issuing any certificate under seal, not otherwise provided for .. 5

[For searching records or files in his office, for each year ..... 1]

For filing and recording a bond of a notary public, per name ..... 15

For entering the name of a firm or corporation in the register of the county clerk ..... 15

2. All fees prescribed in this section are payable in advance if demanded by the county clerk.

3. The fees set forth in subsection 1 are in full for all services rendered by the county clerk in the case for which the fees are paid, including the preparation of the judgment roll, but the fees do not include payment for typing, copying, certifying or exemplifying or authenticating copies.

4. No fee may be charged any attorney at law admitted to practice in the State of Nevada for searching records or files in the office of the clerk. No fee may be charged for any services rendered to a defendant or his attorney in any criminal case or in habeas corpus proceedings.

5. Each county clerk shall, on or before the 5th day of each month, account for and pay to the county treasurer all fees collected during the preceding month.

**Sec. 5.** NRS 78.785 is hereby amended to read as follows:

78.785 1. The fee for filing a certificate of change of location of a corporation's registered office or resident agent, or a new designation of resident agent, is $15.

2. The fee for filing a designation of resident agent is $25.

3. The fee for certifying articles of incorporation where a copy is provided is $10.

4. The fee for certifying a copy of an amendment to articles of incorporation, or to a copy of the articles as amended, where a copy is furnished, is $10.

5. The fee for certifying an authorized printed copy of the general corporation law as compiled by the secretary of state is $10.

6. The fee for certifying the reservation of a corporate name is $20.

7. The fee for executing a certificate of corporate existence which does not list the previous documents relating to the corporation, or a certificate of change in a corporate name, is $15.

8. The fee for executing, certifying or filing any certificate not provided for in NRS 78.760 to 78.785, inclusive, is $20.

9. The fee for comparing any document or paper submitted for certification, with the record thereof, to ascertain whether any corrections are required to be made before certifying, is 20 cents for each folio of 100 words of each document or paper compared.

10. [The fee for copies made at the office of the secretary of state is $1 per page.

11.] The fee for copying and providing the copy of the list of the corporate officers is the fee for copying the necessary pages.

[12.] *11.* The fee for filing a certificate of the change of address of a resident agent is $15, plus $1 for each corporation which he represents.

[13.] *12.* The fee for filing articles of incorporation, articles of merger, or certificates of amendment increasing the basic surplus of a mutual or reciprocal insurer must be computed pursuant to NRS 78.760, 78.765 and 78.770, on the basis of the amount of basic surplus of the insurer.

[14.] *13.* The fee for examining and provisionally approving any document at any time before the document is presented for filing is $100.

**Sec. 6.** NRS 86.561 is hereby amended to read as follows:

86.561 1. The secretary of state shall charge and collect for:

(a) Filing the original articles of organization, or for registration of a foreign company, the same fee as required by subsection 1 of NRS 88.415 for filing a certificate of limited partnership;

(b) Amending the articles of organization, or amending the registration of a foreign company the same fee as required by subsection 2 of NRS 88.415 for filing a certificate of amendment of limited partnership or restated certificate of limited partnership;

(c) Filing a statement of intent to dissolve, $5;

(d) Filing articles of dissolution, and canceling the articles of organization of a domestic or foreign company, $10;

(e) Filing a statement of change of address of records office or change of the agent for service of process, or both, $15; and

(f) The corresponding documents of a limited-liability company, the same fees as required by subsections 6 to [11,] *10,* inclusive, of NRS 88.415.

2. The secretary of state shall charge and collect at the time of any service of process on him as agent for service of process of a limited-liability company, $5 which may be recovered as taxable costs by the party to the suit or action causing the service to be made if the party prevails in the suit or action.

**Sec. 7.** NRS 88.415 is hereby amended to read as follows:

88.415 The secretary of state, for services relating to his official duties and the records of his office, shall charge and collect the following fees:

1. For filing a certificate of limited partnership, $75.

2. For filing a certificate of amendment of limited partnership or restated certificate of limited partnership, $50.

3. For filing a reinstated certificate of limited partnership, $75.

4. For filing the annual list of general partners and designation of an agent for service of process, $30.

5. For filing a certificate of the change of address of an agent for service of process, $10 plus $1 for each limited partnership he represents.

6. For certifying a certificate of limited partnership, an amendment to the certificate, or a certificate as amended where a copy is provided, $5.

7. For certifying an authorized printed copy of the limited partnership law, $5.

8. For certifying the reservation of a limited partnership name, $5.

9. For executing, filing or certifying any other document, $10.

10. For comparing any document or paper submitted for certification, with the record thereof, to ascertain whether any corrections are required to be made before certifying, 20 cents for each folio of 100 words of each document or paper compared.

[11. For copies made at the office of the secretary of state from microfiche, $1 per page.]

**Sec. 8.** NRS 108.630 is hereby amended to read as follows:

108.630 1. Each county recorder shall maintain a hospital lien docket in which, upon the filing of any such notice of lien, he shall enter the name of the injured person, the approximate date of the injury, the name and address of the hospital filing the notice and the amount claimed; and he shall make an index thereto in the names of the injured persons.

2. Each county recorder shall charge and collect the fees provided in NRS 247.305 for the filing of each notice of lien and for [making certified] *certifying* copies upon request.

**Sec. 9.** NRS 247.305 is hereby amended to read as follows:

247.305 1. Where another statute specifies fees to be charged for services, county recorders shall charge and collect only the fees specified. Otherwise county recorders shall charge and collect the following fees:

| | |
|---|---|
| For recording any document, for the first page | $5.00 |
| For each additional page | 1.00 |
| For recording each portion of a document which must be separately indexed, after the first indexing | 2.00 |
| [For copying any record, for each page | 1.00] |
| For certifying, including certificate and seal, for the first seal | 2.00 |
| For each additional seal | .50 |
| For a certified copy of a certificate of marriage | 5.00 |
| For a certified abstract of a certificate of marriage | 5.00 |

2. Except as otherwise provided in subsection 3, a county recorder shall not charge or collect any fees for any of the services specified in this section when rendered by him to:

(a) The county in which his office is located.

(b) The State of Nevada or any city or town within the county in which his office is located, if the document being recorded:

(1) Conveys to the state, or to that city or town, an interest in land;

(2) Is a mortgage or deed of trust upon lands within the county which names the state or that city or town as beneficiary; or

(3) Imposes a lien in favor of the state or that city or town.

3. A county recorder shall charge and collect the fees specified in [this] section *1 of this act* for copying of any document at the request of the State of Nevada, and any city or town within the county. For copying, and for his certificate and seal upon the copy, the county recorder must charge the regular fee.

4. For purposes of this section, "State of Nevada," "county," "city" and "town" include any department or agency thereof and any officer thereof in his official capacity.

5. Except as otherwise provided by an ordinance adopted pursuant to the provisions of NRS 244.207, county recorders shall, on or before the fifth working day of each month, account for and pay to the county treasurer all such fees collected during the preceding month.

**Sec. 10.** NRS 248.275 is hereby amended to read as follows:

248.275 1. The sheriff of each county in this state may charge and collect the following fees:

| | |
|---|---|
| For serving a summons or complaint, or any other process, by which an action or proceeding is commenced, except as a writ of habeas corpus, on every defendant | $10 |
| For traveling and making such service, per mile in going only, to be computed in all cases the distance actually traveled, for each mile | 1 |
| If any two or more papers are required to be served in the same suit at the same time, where parties live in the same direction, one mileage only may be charged. | |
| For taking a bond or undertaking in any case in which he is authorized to take a bond or undertaking | 3 |
| [For a copy of any writ, process or other paper, when demanded or required by law, for each page | 2] |
| For serving every rule or order | 8 |
| For serving one notice required by law before the commencement of a proceeding for any type of eviction | 15 |
| For serving not fewer than 2 nor more than 10 such notices to the same location, each notice | 12 |
| For serving not fewer than 11 nor more than 24 such notices to the same location, each notice | 10 |

For serving 25 or more such notices to the same location, each notice ..... 9

For mileage in serving such a notice, for each mile necessarily and actually traveled in going only ..... 1

But if two or more notices are served at the same general location during the same period, mileage may only be charged for the service of one notice.

For serving a subpena, for each witness summoned ..... 8

For traveling, per mile in serving subpenas, or a venire, in going only, for each mile ..... 1

When two or more witnesses or jurors live in the same direction, traveling fees must be charged only for the most distant.

For serving an attachment on property, or levying an execution, or executing an order of arrest or order for the delivery of personal property, together with traveling fees, as in cases of summons ..... 5

For making and posting notices and advertising for sale, on execution or any judgment or order of sale, not to include the cost of publication in a newspaper ..... 5

For issuing each certificate of sale of property on execution or order of sale, and for filing a duplicate thereof with the

county recorder, which must be collected from the party receiving the certificate ..... 3

For drawing and executing every sheriff's deed, to be paid by the grantee, who shall in addition pay for the acknowledgment thereof ..... 12

For serving a writ of possession or restitution, putting any person into possession entitled thereto ..... 15

For traveling in the service of any process, not otherwise provided in this section, for each mile necessarily traveled, for going only, for each mile ..... 1

For mailing a notice of a writ of execution ..... 1

The sheriff may charge and collect $1 per mile traveled, for going only, on all papers not served, where reasonable effort has been made to effect service, but not to exceed $20.

2. The sheriff may also charge and collect:

(a) For commissions for receiving and paying over money on execution or process, where lands or personal property have been levied on, advertised or sold, on the first $500, 4 percent; on any sum in excess of $500, and not exceeding $1,000, 2 percent; on all sums above that amount, 1 percent.

(b) For commissions for receiving and paying over money on executions without levy, or where the lands or goods levied on are not sold, on the first $3,500, 2 percent, and on all amounts over that sum, one-half of 1 percent.

(c) For service of any process in a criminal case, or of a writ of habeas corpus, the same mileage as in civil cases, to be allowed, audited and paid as are other claims against the county.

(d) For all services in justices' courts, the same fees as are allowed in subsection 1 and paragraphs (a), (b) and (c) of this subsection.

3. The sheriff is also entitled to further compensation for his trouble and expense in taking possession of property under attachment, execution or other process and of preserving the property, as the court from which the writ or order may issue certifies to be just and reasonable.

4. In service of a subpena or a venire in criminal cases, the sheriff is entitled to receive mileage for the most distant only, where witnesses and jurors live in the same direction.

5. The fees allowed for the levy of an execution, for advertising and for making and collecting money on an execution or order of sale, must be collected from the defendants, by virtue of the execution or order of sale, in the same manner as the execution is directed to be made.

6. Except as otherwise provided by an ordinance adopted pursuant to the provisions of NRS 244.207, all fees collected by a sheriff must be paid into the county treasury of his county on or before the 5th working day of the month next succeeding the month in which the fees are collected.

**Sec. 11.** NRS 378.270 is hereby amended to read as follows:

378.270 1. Subject to the provisions of NRS 378.310 and subsection 4 of NRS 239.090, the state librarian shall furnish, on request, to any person who

has paid the proper fees for it, a copy of any material not deemed confidential in the archives, and may certify it if required.

2. The state librarian may charge a reasonable fee for [searching archives of the state, for producing copies of and for] certifying copies of any material in the archives.

**Sec. 12.** NRS 623.310 is hereby amended to read as follows:

623.310 The board shall, by regulation, adopt a [fee] schedule *of fees* which may not exceed the following:

| | |
|---|---|
| For an examination for a certificate | $500.00 |
| For rewriting an examination or a part or parts failed | 500.00 |
| For a certificate of registration | 125.00 |
| For initial registration or renewal of registration | 200.00 |
| For the late renewal of an expired certificate | 220.00 |
| For the restoration of an expired or revoked certificate | 300.00 |
| For change of address | 5.00 |
| For replacement of a certificate | 30.00 |
| For application forms | 25.00 |
| [For photostatic copies, each sheet | .25] |

**Sec. 13.** NRS 623A.240 is hereby amended to read as follows:

623A.240 The following fees must be prescribed by the board and must not exceed the following amounts:

| | |
|---|---|
| Examination fee | $250.00 |
| Re-examination fee | 250.00 |
| Certificate of registration | 160.00 |
| Renewal fee | 160.00 |
| Reinstatement fee | 160.00 |
| Delinquency fee | 100.00 |
| Change of address fee | 5.00 |
| [Copy of a document, per page | .25] |

SUMMARY--Establishes procedures for public inspection of public records. (BDR 19-397)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to public records; establishing procedures for the public to inspect public records; clarifying that certain officers of the state are immune from certain related civil actions; and providing other matters properly relating thereto.

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

**Section 1.** Chapter 239 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

**Sec. 2.** *A person may request, orally or in writing, to inspect a public book or public record. The request may be made in person or by telephone or other electronic means.*

**Sec. 3.** *1. An officer having custody of a public book or public record which is not otherwise declared by law to be confidential shall, upon request:*

*(a) Ensure that the requester has reasonable access to:*

*(1) The book or record; and*

*(2) Facilities for making copies, abstracts or memoranda of the book or record.*

*(b) Provide an explanation of any code which must be read by a machine or any other code or abbreviation necessary to facilitate the inspection of the book or record.*

*2. The officer shall not deny inspection to any person because the requested book or record contains both confidential and nonconfidential information. In such a case, before allowing the requested inspection, the officer shall cause the confidential information to be deleted, concealed or separated from the information which is not confidential.*

*3. The officer need not prepare a compilation or summary of the book or record unless the information for the compilation or summary is readily available or retrievable.*

**Sec. 4.** *An officer having custody of a public book or public record which is not otherwise declared by law to be confidential may make inquiries of a person requesting inspection of the book or record only to the extent necessary to clarify the request. Except as otherwise provided in NRS 481.063, the officer shall not inquire about the intended use of the requested book or record.*

**Sec. 5.** *If an officer having custody of a public book or public record which is not otherwise declared by law to be confidential receives a request to inspect the book or record and he:*

*1. Is not immediately able to fulfill the request;*

*2. Does not intend to fulfill the request; or*

*3. Denies the request,*

*he shall immediately explain to the requester his reason for not fulfilling the request and inform the requester of his right to make a written appeal to the officer.*

**Sec. 6.** *1. An officer having custody of a public book or public record which is not otherwise declared by law to be confidential who receives a written appeal of his decision to not fulfill a request to inspect the book or record shall, within a reasonable time, but not later than 3 working days after receiving the appeal:*

*(a) Allow the requester to inspect the book or record;*

*(b) Inform the requester that unusual circumstances have delayed the processing of the request and specify a time and date, within 13 working days after receiving the original request to inspect, on which the book or record will be available for inspection;*

*(c) Inform the requester that the officer does not have custody of the requested book or record and provide, if known, the name and location of the officer who has custody of the book or record; or*

*(d) Deny the appeal.*

*2. If the officer denies the appeal, he shall immediately send the requester an explanation, in writing, of his reason for denial.*

*3. If unusual circumstances delay the processing of the appeal for more than 3 days, the officer shall, within 13 working days after receiving the original request, allow the requester to inspect the book or record.*

*4. As used in this section, "unusual circumstances" includes a situation in which:*

*(a) The request involves an unusually large volume of books or records;*

*(b) The officer must conduct a search for the book or record; or*

*(c) The officer must consult with or obtain the book or record from another officer.*

**Sec. 7.** NRS 239.010 is hereby amended to read as follows:

239.010 1. All public books and public records of state, county, city, district, governmental subdivision and quasi-municipal corporation officers and offices of this state (and all departments thereof), the contents of which are not otherwise declared by law to be confidential, **[**shall**]** *must* be open at all times during office hours to inspection by any person . **[**, and the same**]** *Each public book and public record* may be fully copied or an abstract or memorandum prepared therefrom, and any copies, abstracts or memoranda taken therefrom may be utilized to supply the general public with copies, abstracts or memoranda of the records or in any other way in which the same may be used to the advantage of the owner thereof or of the general public.

2. Any officer having the custody of any of the public books and public records described in subsection 1 who refuses any person the right to inspect such books and records as provided in subsection 1 is guilty of a misdemeanor.

*3. No action may be brought pursuant to NRS 41.031 against an officer having custody of a confidential public book or public record who permits inspection of it unless the officer knew at the time he permitted the inspection*

*that the book or record was declared confidential by a specific statute or a court of competent jurisdiction.*

SUMMARY--Defines "public record" to accommodate various forms in which records are maintained. (BDR 19-398)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to public records; defining "public record" to accommodate the various forms in which records are maintained; and providing other matters properly relating thereto.

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

**Section 1.** Chapter 239 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. As used in NRS 239.010, "public record" means a letter, document, paper, final budget, proposed budget and supporting information, map, plan, photograph, film, card, tape, recording, electronic data or other material regardless of its physical form or characteristics which is prepared, owned, used, received, retained or maintained by a governmental entity in connection with the transaction of public business, the expenditure of public money or the administration of public property.*

*2. As used in this section, "governmental entity" means the state, a county, city, district, governmental subdivision, quasi-municipal corporation or any board or commission thereof which is supported at least in part by public money or is established by the government to carry out the public's business.*

SUMMARY--Makes various changes regarding access to public books and records. (BDR 19-399)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to public records; categorizing certain records as public; limiting the disclosure of certain public records; removing the criminal penalty for the failure of a public officer or employee to disclose certain public records; and providing other matters properly relating thereto.

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

**Section 1.** Chapter 239 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

**Sec. 2.** *1. As used in this section and NRS 239.010:*

*(a) "Governmental entity" means the state, its officers, agencies, political subdivisions, and any office, board or commission thereof which is funded, at least in part, by public money, or is established by the government to carry out the public's business.*

*(b) "Public record" means a book, letter, document, paper, final budget, proposed budget and supporting information, map, plan, photograph, film, card, tape, recording, electronic data or other material regardless of its physical form or characteristics which is prepared, owned, used, received, retained or maintained by a governmental entity in connection with the transaction of public business, the expenditure of public money or the administration of public property.*

*(c) "Public record" includes, but is not limited to:*

*(1) Records maintained by governmental entities which evidence:*

*(I) The title to or encumbrances on real property;*

*(II) Any restrictions on the use of real property;*

*(III) The capacity of a person to take or convey title to real property;*

*(IV) The amount of any tax assessed on real or personal property, and the status of the account; or*

*(V) Except as otherwise provided in paragraph (d), employment information regarding a former or present officer or employee of the state.*

*(2) Any contract entered into by a governmental entity.*

*(3) A draft that has never been made final but was relied upon by the governmental entity in carrying out action or policy.*

*(d) "Public record" does not include:*

*(1) Except as otherwise provided in subparagraph (3) of paragraph (c), a temporary draft or similar material which is prepared for the originator's personal use or use by a person for whom the originator is working. A draft of*

*a proposed budget and the supporting information for that proposal are not temporary, for the purposes of this subsection, if the originating department or entity submits that version of the proposal for final approval or adoption.*

*(2) Any material which is legally owned by a person in his private capacity.*

*(3) Any material to which access is limited by the laws of copyright or patent, unless the copyright or patent is owned by a governmental entity. This paragraph does not grant any governmental entity the right to obtain a copyright or patent.*

*(4) Proprietary software.*

*(5) Mail or publications which consist solely of advertisements.*

*(6) A record that evidences employment information regarding law enforcement officers or investigators, to the extent that disclosure would impair the effectiveness of an investigation or endanger any person's safety.*

*(7) Books, governmental publications or other materials which are:*

*(I) Cataloged, indexed or inventoried; and*

*(II) Included,*

*in the collections of public libraries.*

*(8) Property acquired by a library or museum for exhibition.*

*(9) Artifacts and nondocumentary tangible property.*

*2. As used in this section "employment information" includes, but is not limited to, the:*

*(a) Employee's name;*

*(b) Employee's gender;*

*(c) Employee's gross compensation and perquisites;*

*(d) Title of the position held by the employee;*

*(e) Description of the position held by the employee;*

*(f) Qualifications required for the position held by the employee;*

*(g) Employee's business address;*

*(h) Employee's business telephone number;*

*(i) Number of hours the employee works per pay period;*

*(j) Amount of annual and sick leave taken by the employee;*

*(k) Date on which the employee began employment; and*

*(l) Date, if applicable, on which the employment was terminated.*

**Sec. 3.** *A record listed in subsection 2 of NRS 239.010 must be disclosed if, with respect to the particular record, the general policy in favor of open records outweighs an expectation of privacy or a justification for nondisclosure based on public policy.*

**Sec. 4.** NRS 239.010 is hereby amended to read as follows:

239.010 1. **[**All public books and**]** *Except as otherwise provided in subsection 2, all* public records of **[**state, county, city, district, governmental subdivision and quasi-municipal corporation officers and offices of this state (and all departments thereof), the contents of which are not otherwise declared by law to be confidential, shall**]** *a governmental entity in this state, must* be open at all times during office hours to inspection by any person . **[**, and the same**]** *Each such public record* may be fully copied or an abstract or memorandum prepared therefrom . **[**, and any**]** *Any* copies, abstracts or

memoranda taken therefrom may be utilized to supply the general public with copies, abstracts or memoranda of the records or in any other way [in which the same may be used] to the advantage of the owner thereof or of the general public.

2. [Any officer having the custody of any of the public books and public records described in subsection 1 who refuses any person the right to inspect such books and the records as provided in subsection 1 is guilty of a misdemeanor.] *Except as otherwise provided in section 3 of this act, a public record must not be disclosed if:*

*(a) Access to the record is restricted:*

*(1) By a specific federal statute or regulation;*

*(2) By a specific statute of this state;*

*(3) As a condition of participation in a state or federal program; or*

*(4) As a condition of receiving state or federal money.*

*(b) It contains information regarding a person's medical, psychiatric or psychological history, diagnosis, condition, treatment, evaluation or similar data, but only to the extent that the information would reveal the person's identity.*

*(c) It is a record customarily retained in the personnel files of a governmental entity, but only to the extent that the disclosure would reveal the person's home telephone number, home address, medical history or other information of a personal or familial nature that is not related to obtaining the employment, retaining the employment, promotion, demotion or the termination of employment.*

*(d) It contains information regarding auditing techniques, procedures or policies the disclosure of which may facilitate the circumvention of an audit.*

*(e) It contains information relating to an ongoing or planned audit, unless the final report of the audit has been released.*

*(f) Disclosure would jeopardize the physical security of a correctional facility, detentional facility, juvenile facility or other governmental facility or property.*

*(g) The information is related to a governmental investigation, unless the investigation has been closed.*

*(h) The information is related to the identity of a confidential informant.*

*(i) It has not been filed with a court and contains material which:*

*(1) Is directly related to an existing lawsuit; and*

*(2) Was prepared in anticipation of or during litigation.*

*(j) It relates to an existing lawsuit and contains material which:*

*(1) Is undiscoverable according to the applicable court rules; or*

*(2) Has been specifically determined by the court in which the matter is being litigated to be privileged for good cause shown pursuant to the standards set forth in Rule 26(c) of the Nevada Rules of Civil Procedure.*

*(k) The information is privileged from disclosure pursuant to a statute or a rule of the supreme court of this state.*

*(l) The information contains a trade secret, as that term is defined in NRS 600A.030.*

*(m) It is material in a library, archive or museum which has been donated by a private person who, as a condition of the donation, requires that his name or*

*the material remains confidential for a specified period and the period has not passed. If no period is specifically agreed upon by the donor and the custodian of the material, the period of nondisclosure shall be deemed to be the period of the donor's life or 30 years after the receipt of the material, whichever is longer.*

*(n) It contains questions or answers used in, or preparatory information relating to, an academic examination or an examination to determine fitness for licensure, certification or employment, but only to the extent that:*

*(1) Disclosure would compromise the security, fairness or objectivity of the examination; or*

*(2) A contract governing the use of the examination requires the confidentiality of the questions or answers.*

*(o) It contains administrative or technical information, including that contained in computer systems or programs and operating procedures or manuals, the disclosure of which would jeopardize the security of a recordkeeping system.*

*(p) It is information which:*

*(1) Is in the custody of a governmental entity that performs data processing, microfilming or similar services; and*

*(2) Is the property of another governmental entity that is using those services.*

**Sec. 5.** This act becomes effective on January 1, 1994.