

Assembly Bill No. 398—Assemblyman Ohrenschall

Joint Sponsor: Senator Parks

CHAPTER.....

AN ACT relating to commercial tenancies; prohibiting a landlord's interference with a tenant's use of commercial premises under certain circumstances; establishing a procedure for a tenant to recover possession of commercial premises following a lockout; setting forth the circumstances under which a tenant can be presumed to have abandoned commercial premises; repealing and reenacting provisions relating to the disposal of personal property abandoned by a tenant on commercial premises; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 14 of this bill prohibits a landlord from interfering in certain manners with a tenant's use of commercial premises.

Section 15 of this bill establishes a process for a tenant to recover possession of commercial premises from which a landlord has locked the tenant out.

Section 15.5 of this bill provides that the justice court has jurisdiction over any civil action or proceeding concerning the exclusion of a tenant from commercial premises or the summary eviction of a tenant from commercial premises in which no party is seeking damages. **Section 15.5** also provides that certain provisions of existing law governing actions for the recovery of a debt secured by a mortgage or other lien and the doctrines of res judicata and collateral estoppel do not apply to: (1) a claim by a landlord for contractual damages which is brought subsequent to an action by the landlord for the summary eviction of a tenant from commercial premises; or (2) an action by a landlord for the summary eviction of a tenant from commercial premises which is brought subsequent to a claim by the landlord for contractual damages.

Sections 16 and 27 of this bill repeal and reenact provisions authorizing a landlord to dispose of abandoned personal property left on commercial premises by a tenant under certain circumstances.

Section 26.3 of this bill revises provisions governing the granting of a stay of execution to a tenant of commercial property who appeals an order of eviction by providing that the tenant may obtain a stay of execution only upon the issuance of a stay pursuant to Rule 8 of the Nevada Rules of Appellate Procedure and the posting of a supersedeas bond in the amount of 100 percent of the unpaid rent claim of the landlord.



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

Section 1. Title 10 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 24, inclusive, of this act.

Sec. 2. *As used in sections 2 to 24, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 12, inclusive, of this act, have the meanings ascribed to them in those sections.*

Sec. 3. *“Abandoned personal property” means any personal property which is left unattended on commercial premises after the termination of the tenancy and which is not removed by the tenant or a person who has an ownership interest in the personal property within 14 days after the date on which the landlord mailed, by certified mail, return receipt requested, notice of the landlord’s intention to dispose of the personal property, as required by paragraph (a) of subsection 1 of section 16 of this act.*

Sec. 4. *“Action” includes a counterclaim, crossclaim, third-party claim or any other proceeding in which rights are determined.*

Sec. 4.5. *“Commercial premises” means any real property other than premises as defined in NRS 118A.140.*

Sec. 5. *“Court” means the district court, justice court or other court of competent jurisdiction situated in the county or township wherein the commercial premises are located.*

Sec. 6. *“Landlord” means a person who provides commercial premises for use by another person pursuant to a rental agreement.*

Sec. 7. *“Owner” means one or more persons, jointly or severally, in whom is vested:*

1. All or part of the legal title to a commercial premises, except a trustee under a deed of trust who is not in possession of the commercial premises; or

2. All or part of the beneficial ownership, and a right to present use and enjoyment of the commercial premises.

Sec. 8. *“Person” includes a government, a governmental agency and a political subdivision of a government.*

Sec. 9. *“Rent” means all periodic payments to be made to the landlord for occupancy of commercial premises, including,*



without limitation, all reasonable and actual late fees set forth in the rental agreement.

Sec. 10. *“Rental agreement” means an agreement to lease or sublease commercial premises for a term less than life which provides for the periodic payment of rent.*

Sec. 11. *(Deleted by amendment.)*

Sec. 12. *“Tenant” means a person who has the right to possess commercial premises pursuant to a rental agreement.*

Sec. 13. *The provisions of sections 2 to 24, inclusive, of this act apply only to the relationship between landlords and tenants of commercial premises.*

Sec. 14. 1. *A landlord or a landlord’s agent may not interrupt or cause the interruption of utility service paid for directly to the utility company by a tenant unless the interruption results from construction, bona fide repairs or an emergency.*

2. *A landlord may not remove:*

(a) A door, window or attic hatchway cover;

(b) A lock, latch, hinge, hinge pin, doorknob or other mechanism connected to a door, window or attic hatchway cover; or

(c) Furniture, fixtures or appliances furnished by the landlord, from commercial premises unless the landlord removes the item for a bona fide repair or replacement. If a landlord removes any of the items listed in this subsection for a bona fide repair or replacement, the repair or replacement must be promptly performed.

3. *A landlord may not intentionally prevent a tenant from entering the commercial premises except by judicial process unless the exclusion results from:*

(a) Construction, bona fide repairs or an emergency;

(b) Removing the contents of commercial premises abandoned by a tenant; or

(c) Changing the door locks of a tenant who is delinquent in paying at least part of the rent.

4. *If a landlord or a landlord’s agent changes the door lock of commercial premises leased to a tenant who is delinquent in paying rent, the landlord or agent must, for a period of not less than 5 business days, place a written notice on the front door of the commercial premises stating the name and the address or telephone number of the person or company from which the new key may be obtained. The new key is required to be provided only during the regular business hours of the tenant and only if the tenant pays the delinquent rent.*



5. *If a landlord or a landlord's agent violates this section, the tenant may:*

- (a) Recover possession of the commercial premises; and*
- (b) Recover from the landlord an amount equal to the sum of the tenant's actual damages, one month's rent or \$500, whichever is greater, reasonable attorney's fees and court costs, less any delinquent rents or other sums for which the tenant is liable to the landlord.*

6. *A rental agreement supersedes this section to the extent of any conflict.*

Sec. 15. *1. If a landlord locks a tenant out of commercial premises that are subject to a rental agreement in violation of section 14 of this act, the tenant may recover possession of the commercial premises as provided by this section.*

2. A tenant must file with the justice court of the township in which the commercial premises are located a verified complaint for reentry, specifying the facts of the alleged unlawful lockout by the landlord or the landlord's agent. The tenant must also state orally under oath to the court the facts of the alleged unlawful lockout.

3. If a tenant has complied with subsection 2 and if the court reasonably believes an unlawful lockout may have occurred, the court:

(a) Shall issue an order requiring the tenant to post a bond in an amount equal to 1 month of rent; and

(b) Upon the posting of the bond, may issue, ex parte, a temporary writ of restitution that entitles the tenant to immediate and temporary possession of the commercial premises, pending a final hearing on the tenant's verified complaint for reentry.

4. A temporary writ of restitution must be served on the landlord or the landlord's agent in the same manner as a writ of restitution in a forcible detainer action. A sheriff or constable may use reasonable force in executing a temporary writ of restitution under this subsection.

5. The court shall hold a hearing on a tenant's verified complaint for reentry. A temporary writ of restitution must notify the landlord of the pendency of the matter and the date of the hearing. The hearing must be held not earlier than the first judicial day and not later than the fifth judicial day after the date on which the court issues the temporary writ of restitution.

6. A party may appeal from the court's judgment at the hearing on the verified complaint for reentry in the same manner



as a party may appeal a judgment in an action for forcible detainer.

7. If a writ of restitution is issued, the writ supersedes a temporary writ of restitution.

8. If the landlord or the person on whom a writ of restitution is served fails to immediately comply with the writ or later disobeys the writ, the failure is grounds for contempt of court against the landlord or the person on whom the writ was served, under chapter 22 of NRS.

9. This section does not affect a tenant's right to pursue a separate cause of action under section 14 of this act.

10. If a tenant in bad faith files a sworn complaint for reentry resulting in a writ of restitution being served on the landlord or landlord's agent, the landlord may in a separate cause of action recover from the tenant an amount equal to actual damages, one month's rent or \$500, whichever is greater, reasonable attorney's fees, and costs of court, less any sums for which the landlord is liable to the tenant.

11. This section does not affect the rights of a landlord or tenant in a forcible detainer, unlawful detainer or forcible entry and detainer action.

Sec. 15.5. *1. Except as otherwise provided in subsection 2, the justice court has jurisdiction over any civil action or proceeding concerning the exclusion of a tenant from commercial premises or the summary eviction of a tenant from commercial premises in which no party is seeking damages.*

2. If a landlord combines an action for summary eviction of a tenant from commercial premises with a claim to recover contractual damages, jurisdiction over the claims rests with the court which has jurisdiction over the amount in controversy.

3. The provisions of NRS 40.430 and the doctrines of res judicata and collateral estoppel do not apply to:

(a) A claim by a landlord for contractual damages which is brought subsequent to an action by the landlord for the summary eviction of a tenant from commercial premises; or

(b) An action by a landlord for the summary eviction of a tenant from commercial premises which is brought subsequent to a claim by the landlord for contractual damages.

Sec. 16. *1. Except as otherwise provided in subsection 3, a landlord who leases or subleases any commercial premises under a rental agreement that has been terminated for any reason may, in accordance with the following provisions, dispose of any abandoned personal property, regardless of its character, left on*



the commercial premises without incurring any civil or criminal liability:

(a) The landlord may dispose of the abandoned personal property and recover his or her reasonable costs out of the abandoned personal property or the value thereof if the landlord has notified the tenant in writing of the landlord's intention to dispose of the abandoned personal property and 14 days have elapsed since the notice was mailed to the tenant. The notice must be mailed, by certified mail, return receipt requested, to the tenant at the tenant's present address, and if that address is unknown, then at the tenant's last known address.

(b) The landlord may charge and collect the reasonable and actual costs of inventory, moving and safe storage, if necessary, before releasing the abandoned personal property to the tenant or his or her authorized representative rightfully claiming the abandoned personal property within the appropriate period set forth in paragraph (a).

(c) Vehicles must be disposed of in the manner provided in chapter 487 of NRS for abandoned vehicles.

2. A tenant of commercial premises is presumed to have abandoned the premises if:

(a) Goods, equipment or other property, in an amount substantial enough to indicate a probable intent to abandon the commercial premises, is being or has been removed from the commercial premises; and

(b) The removal is not within the normal course of business of the tenant.

3. If a written agreement between a landlord and a person who has an ownership interest in any abandoned personal property of the tenant contains provisions which relate to the removal and disposal of abandoned personal property, the provisions of the agreement determine the rights and obligations of the landlord and the person with respect to the removal and disposal of the abandoned personal property.

4. Any dispute relating to the amount of the costs claimed by the landlord pursuant to paragraph (b) of subsection 1 may be resolved using the procedure provided in subsection 7 of NRS 40.253.

Secs. 17-24. (Deleted by amendment.)

Sec. 25. NRS 118.171 is hereby amended to read as follows:

118.171 As used in NRS 118.171 to ~~118.207,~~ 118.205, inclusive, unless the context otherwise requires:



1. ~~["Abandoned personal property" means any personal property which is left unattended on any commercial premises after the termination of the tenancy and which is not removed by the tenant or a person who has a perfected lien on, or perfected security interest in, the personal property within 14 days after the later of the date on which the landlord:~~

~~—(a) Mailed, by certified mail, return receipt requested, notice of the landlord's intention to dispose of the personal property, as required by subparagraph (1) of paragraph (a) of subsection 1 of NRS 118.207; or~~

~~—(b) Provided notice to a person who has a perfected lien on, or a perfected security interest in, the personal property that the personal property has been left on the premises, as required by subparagraph (2) of paragraph (a) of subsection 1 of NRS 118.207.~~

~~2.] "Real property" includes an apartment, a dwelling, a mobile home that is owned by a landlord and located on property owned by the landlord and commercial premises.~~

~~[3.] 2. "Rental agreement" means an agreement to lease or sublease real property for a term less than life which provides for the periodic payment of rent.~~

~~[4.] 3. "Tenant" means a person who has the right to possess real property pursuant to a rental agreement.~~

Sec. 26. NRS 40.253 is hereby amended to read as follows:

40.253 1. Except as otherwise provided in subsection 10, in addition to the remedy provided in NRS 40.2512 and 40.290 to 40.420, inclusive, when the tenant of any dwelling, apartment, mobile home, recreational vehicle or commercial premises with periodic rent reserved by the month or any shorter period is in default in payment of the rent, the landlord or the landlord's agent, unless otherwise agreed in writing, may serve or have served a notice in writing, requiring in the alternative the payment of the rent or the surrender of the premises:

(a) At or before noon of the fifth full day following the day of service; or

(b) If the landlord chooses not to proceed in the manner set forth in paragraph (a) and the rent is reserved by a period of 1 week or less and the tenancy has not continued for more than 45 days, at or before noon of the fourth full day following the day of service.

↳ As used in this subsection, "day of service" means the day the landlord or the landlord's agent personally delivers the notice to the tenant. If personal service was not so delivered, the "day of service" means the day the notice is delivered, after posting and mailing pursuant to subsection 2, to the sheriff or constable for service if the



request for service is made before noon. If the request for service by the sheriff or constable is made after noon, the "day of service" shall be deemed to be the day next following the day that the request is made for service by the sheriff or constable.

2. A landlord or the landlord's agent who serves a notice to a tenant pursuant to paragraph (b) of subsection 1 shall attempt to deliver the notice in person in the manner set forth in paragraph (a) of subsection 1 of NRS 40.280. If the notice cannot be delivered in person, the landlord or the landlord's agent:

(a) Shall post a copy of the notice in a conspicuous place on the premises and mail the notice by overnight mail; and

(b) After the notice has been posted and mailed, may deliver the notice to the sheriff or constable for service in the manner set forth in subsection 1 of NRS 40.280. The sheriff or constable shall not accept the notice for service unless it is accompanied by written evidence, signed by the tenant when the tenant took possession of the premises, that the landlord or the landlord's agent informed the tenant of the provisions of this section which set forth the lawful procedures for eviction from a short-term tenancy. Upon acceptance, the sheriff or constable shall serve the notice within 48 hours after the request for service was made by the landlord or the landlord's agent.

3. A notice served pursuant to subsection 1 or 2 must:

(a) Identify the court that has jurisdiction over the matter; and

(b) Advise the tenant of the tenant's right to contest the matter by filing, within the time specified in subsection 1 for the payment of the rent or surrender of the premises, an affidavit with the court that has jurisdiction over the matter stating that the tenant has tendered payment or is not in default in the payment of the rent.

4. If the tenant files such an affidavit at or before the time stated in the notice, the landlord or the landlord's agent, after receipt of a file-stamped copy of the affidavit which was filed, shall not provide for the nonadmittance of the tenant to the premises by locking or otherwise.

5. Upon noncompliance with the notice:

(a) The landlord or the landlord's agent may apply by affidavit of complaint for eviction to the justice court of the township in which the dwelling, apartment, mobile home or commercial premises are located or to the district court of the county in which the dwelling, apartment, mobile home or commercial premises are located, whichever has jurisdiction over the matter. The court may thereupon issue an order directing the sheriff or constable of the



county to remove the tenant within 24 hours after receipt of the order. The affidavit must state or contain:

- (1) The date the tenancy commenced.
- (2) The amount of periodic rent reserved.
- (3) The amounts of any cleaning, security or rent deposits paid in advance, in excess of the first month's rent, by the tenant.
- (4) The date the rental payments became delinquent.
- (5) The length of time the tenant has remained in possession without paying rent.
- (6) The amount of rent claimed due and delinquent.
- (7) A statement that the written notice was served on the tenant in accordance with NRS 40.280.
- (8) A copy of the written notice served on the tenant.
- (9) A copy of the signed written rental agreement, if any.

(b) Except when the tenant has timely filed the affidavit described in subsection 3 and a file-stamped copy of it has been received by the landlord or the landlord's agent, and except when the landlord is prohibited pursuant to NRS 118A.480, the landlord or the landlord's agent may, in a peaceable manner, provide for the nonadmittance of the tenant to the premises by locking or otherwise.

6. Upon the filing by the tenant of the affidavit permitted in subsection 3, regardless of the information contained in the affidavit, and the filing by the landlord of the affidavit permitted by subsection 5, the justice court or the district court shall hold a hearing, after service of notice of the hearing upon the parties, to determine the truthfulness and sufficiency of any affidavit or notice provided for in this section. If the court determines that there is no legal defense as to the alleged unlawful detainer and the tenant is guilty of an unlawful detainer, the court may issue a summary order for removal of the tenant or an order providing for the nonadmittance of the tenant. If the court determines that there is a legal defense as to the alleged unlawful detainer, the court shall refuse to grant either party any relief, and, except as otherwise provided in this subsection, shall require that any further proceedings be conducted pursuant to NRS 40.290 to 40.420, inclusive. The issuance of a summary order for removal of the tenant does not preclude an action by the tenant for any damages or other relief to which the tenant may be entitled. If the alleged unlawful detainer was based upon subsection 5 of NRS 40.2514, the refusal by the court to grant relief does not preclude the landlord thereafter from pursuing an action for unlawful detainer in accordance with NRS 40.251.



7. The tenant may, upon payment of the appropriate fees relating to the filing and service of a motion, file a motion with the court, on a form provided by the clerk of the court, to dispute the amount of the costs, if any, claimed by the landlord pursuant to NRS ~~[118.207-01]~~ 118A.460 *or section 16 of this act* for the inventory, moving and storage of personal property left on the premises. The motion must be filed within 20 days after the summary order for removal of the tenant or the abandonment of the premises by the tenant, or within 20 days after:

(a) The tenant has vacated or been removed from the premises; and

(b) A copy of those charges has been requested by or provided to the tenant,

↳ whichever is later.

8. Upon the filing of a motion pursuant to subsection 7, the court shall schedule a hearing on the motion. The hearing must be held within 10 days after the filing of the motion. The court shall affix the date of the hearing to the motion and order a copy served upon the landlord by the sheriff, constable or other process server. At the hearing, the court may:

(a) Determine the costs, if any, claimed by the landlord pursuant to NRS ~~[118.207-01]~~ 118A.460 *or section 16 of this act* and any accumulating daily costs; and

(b) Order the release of the tenant's property upon the payment of the charges determined to be due or if no charges are determined to be due.

9. A landlord shall not refuse to accept rent from a tenant that is submitted after the landlord or the landlord's agent has served or had served a notice pursuant to subsection 1 if the refusal is based on the fact that the tenant has not paid collection fees, attorney's fees or other costs other than rent, a reasonable charge for late payments of rent or dishonored checks, or a security. As used in this subsection, "security" has the meaning ascribed to it in NRS 118A.240.

10. This section does not apply to the tenant of a mobile home lot in a mobile home park or to the tenant of a recreational vehicle lot in an area of a mobile home park in this State other than an area designated as a recreational vehicle lot pursuant to the provisions of subsection 6 of NRS 40.215.

Sec. 26.3. NRS 40.385 is hereby amended to read as follows:

40.385 Upon an appeal from an order entered pursuant to NRS 40.253:



1. Except as otherwise provided in this subsection, a stay of execution may be obtained by filing with the trial court a bond in the amount of \$250 to cover the expected costs on appeal. ~~[In an action concerning a lease of commercial property or any other property for which the monthly rent exceeds \$1,000, the court may, upon its own motion or that of a party, and upon a showing of good cause, order an additional bond to be posted to cover the expected costs on appeal.]~~ A surety upon the bond submits to the jurisdiction of the appellate court and irrevocably appoints the clerk of that court as the surety's agent upon whom papers affecting the surety's liability upon the bond may be served. Liability of a surety may be enforced, or the bond may be released, on motion in the appellate court without independent action. *A tenant of commercial property may obtain a stay of execution only upon the issuance of a stay pursuant to Rule 8 of the Nevada Rules of Appellate Procedure and the posting of a supersedeas bond in the amount of 100 percent of the unpaid rent claim of the landlord.*

2. A tenant who retains possession of the premises that are the subject of the appeal during the pendency of the appeal shall pay to the landlord rent in the amount provided in the underlying contract between the tenant and the landlord as it becomes due. If the tenant fails to pay such rent, the landlord may initiate new proceedings for a summary eviction by serving the tenant with a new notice pursuant to NRS 40.253.

Sec. 26.5. NRS 40.430 is hereby amended to read as follows:

40.430 1. Except in cases where a person proceeds under subsection 2 of NRS 40.495 or subsection 1 of NRS 40.512, *and except as otherwise provided in section 15.5 of this act*, there may be but one action for the recovery of any debt, or for the enforcement of any right secured by a mortgage or other lien upon real estate. That action must be in accordance with the provisions of NRS 40.430 to 40.459, inclusive. In that action, the judgment must be rendered for the amount found due the plaintiff, and the court, by its decree or judgment, may direct a sale of the encumbered property, or such part thereof as is necessary, and apply the proceeds of the sale as provided in NRS 40.462.

2. This section must be construed to permit a secured creditor to realize upon the collateral for a debt or other obligation agreed upon by the debtor and creditor when the debt or other obligation was incurred.

3. At any time not later than 5 business days before the date of sale directed by the court, if the deficiency resulting in the action for the recovery of the debt has arisen by failure to make a payment



required by the mortgage or other lien, the deficiency may be made good by payment of the deficient sum and by payment of any costs, fees and expenses incident to making the deficiency good. If a deficiency is made good pursuant to this subsection, the sale may not occur.

4. A sale directed by the court pursuant to subsection 1 must be conducted in the same manner as the sale of real property upon execution, by the sheriff of the county in which the encumbered land is situated, and if the encumbered land is situated in two or more counties, the court shall direct the sheriff of one of the counties to conduct the sale with like proceedings and effect as if the whole of the encumbered land were situated in that county.

5. Within 30 days after a sale of property is conducted pursuant to this section, the sheriff who conducted the sale shall record the sale of the property in the office of the county recorder of the county in which the property is located.

6. As used in this section, an "action" does not include any act or proceeding:

(a) To appoint a receiver for, or obtain possession of, any real or personal collateral for the debt or as provided in NRS 32.015.

(b) To enforce a security interest in, or the assignment of, any rents, issues, profits or other income of any real or personal property.

(c) To enforce a mortgage or other lien upon any real or personal collateral located outside of the State which does not, except as required under the laws of that jurisdiction, result in a personal judgment against the debtor.

(d) For the recovery of damages arising from the commission of a tort, including a recovery under NRS 40.750, or the recovery of any declaratory or equitable relief.

(e) For the exercise of a power of sale pursuant to NRS 107.080.

(f) For the exercise of any right or remedy authorized by chapter 104 of NRS or by the Uniform Commercial Code as enacted in any other state.

(g) For the exercise of any right to set off, or to enforce a pledge in, a deposit account pursuant to a written agreement or pledge.

(h) To draw under a letter of credit.

(i) To enforce an agreement with a surety or guarantor if enforcement of the mortgage or other lien has been automatically stayed pursuant to 11 U.S.C. § 362 or pursuant to an order of a federal bankruptcy court under any other provision of the United States Bankruptcy Code for not less than 120 days following the



mailing of notice to the surety or guarantor pursuant to subsection 1 of NRS 107.095.

(j) To collect any debt, or enforce any right, secured by a mortgage or other lien on real property if the property has been sold to a person other than the creditor to satisfy, in whole or in part, a debt or other right secured by a senior mortgage or other senior lien on the property.

(k) Relating to any proceeding in bankruptcy, including the filing of a proof of claim, seeking relief from an automatic stay and any other action to determine the amount or validity of a debt.

(l) For filing a claim pursuant to chapter 147 of NRS or to enforce such a claim which has been disallowed.

(m) Which does not include the collection of the debt or realization of the collateral securing the debt.

(n) Pursuant to NRS 40.507 or 40.508.

(o) Which is exempted from the provisions of this section by specific statute.

(p) To recover costs of suit, costs and expenses of sale, attorneys' fees and other incidental relief in connection with any action authorized by this subsection.

Sec. 27. NRS 118.207 is hereby repealed.

