

**THE ONE HUNDRED AND SECOND DAY**

---

CARSON CITY (Thursday), May 19, 2011

Senate called to order at 11:52 a.m.

President Krolicki presiding.

Roll called.

All present.

Prayer by the Chaplain, Pastor Christopher Amen.

Almighty God, You give us all that we need to support this body and life. Grant us faith to receive our challenges with boldness and confidence trusting not in ourselves but in Your mercy, through Jesus Christ, our Lord.

AMEN.

Pledge of Allegiance to the Flag.

Senator Wiener moved that further reading of the Journal be dispensed with, and the President and Secretary be authorized to make the necessary corrections and additions.

Motion carried.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Halseth moved that Assembly Bill No. 282 be taken from the Second Reading File and placed on the Second Reading File for the next legislative day.

Motion carried.

REPORTS OF COMMITTEES

*Mr. President:*

Your Committee on Education, to which were referred Assembly Bills Nos. 138, 227, 455, 456, 498, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MO DENIS, *Chair*

*Mr. President:*

Your Committee on Finance, to which were referred Assembly Bills Nos. 248, 481, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

STEVEN A. HORSFORD, *Chair*

*Mr. President:*

Your Committee on Natural Resources, to which was referred Assembly Bill No. 19, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Natural Resources, to which was referred Senate Concurrent Resolution No. 2, has had the same under consideration, and begs leave to report the same back with the recommendation: Be adopted.

MARK A. MANENDO, *Chair*

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, May 18, 2011

*To the Honorable the Senate:*

I have the honor to inform your honorable body that the Assembly on this day passed Senate Bills Nos. 7, 27, 44, 74, 81, 114, 131, 232, 280, 302, 318, 393, 396.

Also, I have the honor to inform your honorable body that the Assembly on this day adopted Senate Concurrent Resolution No. 11.

Also, I have the honor to inform your honorable body that the Assembly on this day concurred in the Senate Amendment No. 549 to Assembly Bill No. 201.

MATTHEW BAKER  
*Assistant Chief Clerk of the Assembly*

SECOND READING AND AMENDMENT

Senate Bill No. 206.

Bill read second time and ordered to third reading.

Assembly Bill No. 13.

Bill read second time and ordered to third reading.

Assembly Bill No. 17.

Bill read second time.

The following amendment was proposed by the Committee on Government Affairs:

Amendment No. 592.

"SUMMARY—Revises ~~the applicability of the Nevada Administrative Procedure Act to~~ **provisions concerning the judicial review of decisions of the Public Utilities Commission of Nevada. (BDR 18-455)**"

"AN ACT relating to administrative procedure; exempting the judicial review of decisions of the Public Utilities Commission of Nevada from the requirements of the Nevada Administrative Procedure Act; **revising provisions governing the procedure for the judicial review of decisions of the Commission;** and providing other matters properly relating thereto."

**Legislative Counsel's Digest:**

Existing law provides that the provisions of chapter 703 of NRS that relate to the judicial review of decisions of the Public Utilities Commission of Nevada prevail over the general provisions of the Nevada Administrative Procedure Act, which is contained in chapter 233B of NRS. (NRS 233B.039) ~~This~~ **Section 1 of this** bill removes that existing provision and instead provides that the provisions of the Nevada Administrative Procedure Act do not apply to the judicial review of decisions of the Commission.

**Existing law also sets forth provisions relating to the procedure for the judicial review of decisions of the Commission. (NRS 703.373) Section 1.7 of this bill revises various provisions relating to that procedure and: (1) requires a party seeking judicial review to exhaust all administrative remedies before the party is entitled to seek judicial review of a final decision of the Commission; (2) specifies certain periods in which certain documents must be filed with the court and served upon the parties involved in the judicial review; and (3) provides that a final decision of the Commission is deemed reasonable and lawful until reversed or set aside in whole or in part by the court.**

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

**Section 1.** NRS 233B.039 is hereby amended to read as follows:

233B.039 1. The following agencies are entirely exempted from the requirements of this chapter:

- (a) The Governor.
- (b) Except as otherwise provided in NRS 209.221, the Department of Corrections.
- (c) The Nevada System of Higher Education.
- (d) The Office of the Military.
- (e) The State Gaming Control Board.
- (f) Except as otherwise provided in NRS 368A.140, the Nevada Gaming Commission.
- (g) The Division of Welfare and Supportive Services of the Department of Health and Human Services.
- (h) Except as otherwise provided in NRS 422.390, the Division of Health Care Financing and Policy of the Department of Health and Human Services.
- (i) The State Board of Examiners acting pursuant to chapter 217 of NRS.
- (j) Except as otherwise provided in NRS 533.365, the Office of the State Engineer.
- (k) The Division of Industrial Relations of the Department of Business and Industry acting to enforce the provisions of NRS 618.375.
- (l) The Administrator of the Division of Industrial Relations of the Department of Business and Industry in establishing and adjusting the schedule of fees and charges for accident benefits pursuant to subsection 2 of NRS 616C.260.
- (m) The Board to Review Claims in adopting resolutions to carry out its duties pursuant to NRS 590.830.

2. Except as otherwise provided in subsection 5 and NRS 391.323, the Department of Education, the Board of the Public Employees' Benefits Program and the Commission on Professional Standards in Education are subject to the provisions of this chapter for the purpose of adopting regulations but not with respect to any contested case.

3. The special provisions of:

- (a) Chapter 612 of NRS for the distribution of regulations by and the judicial review of decisions of the Employment Security Division of the Department of Employment, Training and Rehabilitation;
- (b) Chapters 616A to 617, inclusive, of NRS for the determination of contested claims;
- (c) ~~Chapter 703 of NRS for the judicial review of decisions of the Public Utilities Commission of Nevada;~~
- ~~(d)~~ Chapter 91 of NRS for the judicial review of decisions of the Administrator of the Securities Division of the Office of the Secretary of State; and
- ~~(e)~~ **(d)** NRS 90.800 for the use of summary orders in contested cases,

↪ prevail over the general provisions of this chapter.

4. The provisions of NRS 233B.122, 233B.124, 233B.125 and 233B.126 do not apply to the Department of Health and Human Services in the adjudication of contested cases involving the issuance of letters of approval for health facilities and agencies.

5. The provisions of this chapter do not apply to:

(a) Any order for immediate action, including, but not limited to, quarantine and the treatment or cleansing of infected or infested animals, objects or premises, made under the authority of the State Board of Agriculture, the State Board of Health, or any other agency of this State in the discharge of a responsibility for the preservation of human or animal health or for insect or pest control;

(b) An extraordinary regulation of the State Board of Pharmacy adopted pursuant to NRS 453.2184; ~~for~~

(c) A regulation adopted by the State Board of Education pursuant to NRS 392.644 or 394.1694 ~~};~~ **or**

**(d) *The judicial review of decisions of the Public Utilities Commission of Nevada.***

6. The State Board of Parole Commissioners is subject to the provisions of this chapter for the purpose of adopting regulations but not with respect to any contested case.

**Sec. 1.3. NRS 703.330 is hereby amended to read as follows:**

703.330 1. A complete record must be kept of all hearings before the Commission. All testimony at such hearings must be taken down by the stenographer appointed by the Commission or, under the direction of any competent person appointed by the Commission, must be reported by sound recording equipment in the manner authorized for reporting testimony in district courts. The testimony reported by a stenographer must be transcribed, and the transcript filed with the record in the matter. The Commission may by regulation provide for the transcription or safekeeping of sound recordings. The costs of recording and transcribing testimony at any hearing, except those hearings ordered pursuant to NRS 703.310, must be paid by the applicant. If a complaint is made pursuant to NRS 703.310 by a customer or by a political subdivision of the State or municipal organization, the complainant is not liable for any costs. Otherwise, if there are several applicants or parties to any hearing, the Commission may apportion the costs among them in its discretion.

~~2. If a petition is served upon the Commission as provided in NRS 703.373 for the bringing of an action against the Commission, before the action is reached for trial, the Commission shall file a certified copy of all proceedings and testimony taken with the clerk of the court in which the action is pending.~~

~~3.~~ A copy of the proceedings and testimony must be furnished to any party, on payment of a reasonable amount to be fixed by the Commission, and the amount must be the same for all parties.

~~4-1~~ 3. The provisions of this section do not prohibit the Commission from:

(a) Restricting access to the records and transcripts of a hearing pursuant to paragraph (a) of subsection 3 of NRS 703.196.

(b) Protecting the confidentiality of information pursuant to NRS 704B.310, 704B.320 or 704B.325.

**Sec. 1.7. NRS 703.373 is hereby amended to read as follows:**

703.373 1. Any party of record to a proceeding before the Commission is entitled to judicial review of the final decision ~~but~~ upon the exhaustion of all administrative remedies by the party of record seeking judicial review.

2. Proceedings for review may be instituted by filing a petition for judicial review in the District Court in and for Carson City, in and for the county in which the party of record seeking judicial review resides, or in and for the county where the act on which the proceeding is based occurred.

3. A petition for judicial review must be filed within ~~90~~ 30 days after ~~the service of the~~ final ~~decision of~~ action by the Commission on reconsideration or, if a rehearing is held, or if the Commission takes no action on reconsideration or rehearing, within 30 days after the ~~decision thereon~~ date on which reconsideration or rehearing is deemed denied. Copies of the petition for judicial review must be served upon the Commission and all other parties of record.

~~3-1~~ 4. The Commission shall participate in the judicial review. Any party of record desiring to participate in the judicial review must file a statement of intent to participate in the petition for judicial review and serve the statement upon the Commission and every party within 15 days after service of the petition for judicial review.

5. Within 30 days after the service of the petition for judicial review or such time as is allowed by the court, the Commission shall transmit to the reviewing court a certified copy of the entire record of the proceeding under review, including a transcript of the evidence resulting in the final decision of the Commission. The record may be shortened by stipulation of the parties to the proceedings.

6. A petitioner who is seeking judicial review must serve and file a memorandum of points and authorities within 30 days after the Commission gives written notice to the parties that the record of the proceeding under review has been filed with the court.

7. The Commission and any other ~~defendants~~ respondents shall serve and file ~~their answers to the petition~~ a reply memorandum of points and authorities within 30 days after ~~the~~ service ~~thereof~~ of the memorandum of points and authorities, whereupon the action is at issue and ~~they~~ the parties must be ready for a hearing upon 20 days' notice. ~~to either party.~~

~~4—The~~ 8. Judicial review of a final decision of the Commission must be ~~conducted~~ :

(a) Conducted by the court without a jury ; and ~~be confined~~

(b) Confined to the record.

~~↪~~ In cases ~~of~~ concerning alleged irregularities in procedure before the Commission ~~if~~ that are not shown in the record, ~~proof thereon may be taken in~~ the court. ~~The court, upon request, shall hear oral argument and receive written briefs.~~

~~5~~ may receive evidence concerning the irregularities.

9. The final decision of the Commission shall be deemed reasonable and lawful until reversed or set aside in whole or in part by the court. The burden of proof is on the petitioner to show that the final decision is invalid pursuant to subsection 11.

10. All actions brought under this section have precedence over any civil action of a different nature pending in the court.

~~6~~ 11. The court shall not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact. The court may affirm the decision of the Commission or set it aside in whole or in part if substantial rights of the ~~appellant~~ petitioner have been prejudiced because the ~~administrative findings, inferences, conclusions or decisions are~~ final decision of the Commission is:

- (a) In violation of constitutional or statutory provisions;
- (b) In excess of the statutory authority of the Commission;
- (c) Made upon unlawful procedure;
- (d) Affected by other error of law;
- (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) Arbitrary or capricious or characterized by abuse of discretion.

**Sec. 2.** This act becomes effective upon passage and approval.

Senator Lee moved the adoption of the amendment.

Remarks by Senator Lee.

Amendment No. 592 to Assembly Bill No. 17 clarifies judicial review procedures of decisions made by the Public Utilities Commission of Nevada. Specifically, the amendment requires a party seeking judicial review to exhaust all administrative remedies before the party is entitled to seek judicial review of a final decision of the Public Utilities Commission of Nevada. It specifies certain timeframes during which certain documents, such as a petition for judicial review and the memorandum of points and authorities, must be served and filed with the court; and it provides that a final decision of the Public Utilities Commission of Nevada is deemed reasonable and lawful until reversed or set aside by the court.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Assembly Bill No. 29.

Bill read second time.

The following amendment was proposed by the Committee on Health and Human Services:

Amendment No. 586.

"SUMMARY—Revises provisions governing county hospitals and requires certain hospitals to report information concerning the transfers of

patients between hospitals to the Legislative Committee on Health Care. (BDR 40-343)"

"AN ACT relating to health care; increasing the compensation of members of hospital advisory boards; revising provisions governing the staff of physicians at public hospitals; requiring certain hospitals to report information concerning the transfers of patients between hospitals to the Legislative Committee on Health Care; and providing other matters properly relating thereto."

**Legislative Counsel's Digest:**

Existing law authorizes certain boards of hospital trustees of public hospitals to appoint advisory boards and limits the compensation for the service of members of advisory boards to not more than \$100 per month. (NRS 450.175) **Section 1** of this bill increases the limit on compensation to an amount not to exceed ~~(\$1,000)~~ **\$500** per month.

Existing law requires the board of hospital trustees of a public hospital to organize a staff of physicians composed of each regularly practicing physician, podiatric physician and dentist in the county who requests staff membership and prohibits the board from discriminating against a physician, podiatric physician or dentist. (NRS 450.440, 450.430) **Section 3** of this bill provides that the staff of physicians, podiatric physicians and dentists may be required to be affiliated with the University of Nevada School of Medicine or the University of Nevada, Las Vegas, School of Dental Medicine. **However, section 3 limits the number of physicians who may be required to be so affiliated to not more than 60 percent of the staff of physicians on or before January 1, 2013, and not more than 85 percent after that date but before January 1, 2018, and in such a percentage as the board of hospital trustees deems appropriate thereafter.** If so required, the physician, podiatric physician or dentist who requests staff membership must meet the standards in the regulations of the board of hospital trustees and hold and maintain a faculty or clinical appointment with one of the two Universities. An exception applies, however, if the board of hospital trustees enters into a contract with a physician or group of physicians to be the exclusive provider of certain services. **Section 2** of this bill further provides that if a physician loses privileges at a hospital because the physician no longer holds a faculty or clinical appointment with one of the Universities, that action shall not be deemed to be an adverse action against the physician.

Hospitals in this State are required to provide emergency services and care, and it is unlawful for a hospital or a physician working in a hospital emergency room to refuse to accept or treat a patient in need of emergency services and care. (NRS 439B.410) **Section 4** of this bill requires certain hospitals located in larger counties to provide a report of certain information to the Legislative Committee on Health Care concerning the transfer of patients from the hospital to another hospital and the availability of specialty medical services in the hospital. Such a report must be made quarterly

beginning on October 15, 2011, and cover the period from July 1, 2011, through September 30, 2012.

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

**Section 1.** NRS 450.175 is hereby amended to read as follows:

450.175 1. In counties where the board of county commissioners is the board of hospital trustees, the board of hospital trustees may appoint a hospital advisory board which shall exercise powers and duties delegated to the advisory board by the board of hospital trustees.

2. Members of a hospital advisory board must be appointed by a majority vote of the board of hospital trustees and shall serve at the pleasure of the board.

3. Members of the hospital advisory board may receive compensation for their services ~~of no more than \$100 per month~~ **in an amount not to exceed ~~the \$1,000~~ \$500 per month.**

**Sec. 2.** NRS 450.430 is hereby amended to read as follows:

450.430 1. ~~It is~~ **Except as otherwise provided in NRS 450.440, in** the management of the public hospital, no discrimination may be made against physicians, podiatric physicians or dentists licensed under the laws of this state or licensed practitioners of the allied health professions, and all such physicians, dentists, podiatric physicians and practitioners have privileges in treating patients in the hospital in accordance with their training and ability, except that practitioners of the allied health professions may not be members of the staff of physicians described in NRS 450.440. Practitioners of the allied health professions are subject to the bylaws and regulations established by the board of hospital trustees.

2. The patient has the right to employ, at the patient's own expense, his or her own physician, if that physician is a member of the hospital staff, or the patient's own nurse, and when acting for any patient in the hospital, the physician employed by the patient has charge of the care and treatment of the patient, and the nurses in the hospital shall comply with the directions of the physician concerning that patient, subject to the regulations established by the board of hospital trustees.

3. ***If a physician loses privileges at a hospital because the physician no longer holds a faculty or clinical appointment with the University of Nevada School of Medicine or the University of Nevada, Las Vegas, School of Dental Medicine, as required pursuant to NRS 450.440, that action shall not be deemed to be an adverse action by the hospital against the physician.***

**Sec. 3.** NRS 450.440 is hereby amended to read as follows:

450.440 1. ~~The~~ **Except as otherwise provided in subsection 2, the** board of hospital trustees shall organize a staff of physicians composed of each regular practicing physician, podiatric physician and dentist in the county in which the hospital is located who requests staff membership and meets the standards set forth in the regulations prescribed by the board of hospital trustees.



2. *The board of hospital trustees may, after consulting with the chief of staff of the hospital and the deans of the University of Nevada School of Medicine and the University of Nevada, Las Vegas, School of Dental Medicine, organize a staff of physicians composed ~~solely~~ of physicians, podiatric physicians and dentists who are affiliated with the University of Nevada School of Medicine or the University of Nevada, Las Vegas, School of Dental Medicine who request staff membership and meet the requirements set forth in subsection 3. If the board of hospital trustees organizes a staff of physicians in accordance with this subsection, the board of hospital trustees may require:*

*(a) Not more than 60 percent of the staff of physicians to be so affiliated before January 1, 2013.*

*(b) Not more than 85 percent of the staff of physicians to be so affiliated on or after January 1, 2013, and before January 1, 2018.*

*(c) The staff of physicians to have such an affiliation in such a percentage as the board of hospital trustees deems appropriate on or after January 1, 2018.*

3. *Except as otherwise provided in subsection 4, if the board of hospital trustees decides to organize the staff of physicians in accordance with subsection 2, a physician, podiatric physician or dentist who requests staff membership must:*

*(a) Meet the standards set forth in the regulations prescribed by the board of hospital trustees; and*

*(b) Hold a faculty or clinical appointment with the University of Nevada School of Medicine or the University of Nevada, Las Vegas, School of Dental Medicine and maintain that appointment while he or she is on the staff of physicians.*

4. *If the board of hospital trustees decides to organize the staff of physicians in accordance with subsection 2, the board of hospital trustees may enter into a contract with a physician or group of physicians who do not meet the requirements of subsection 3 if the physician or group of physicians will be the exclusive provider of certain services for the hospital. Such services may include, without limitation, radiology, pathology, emergency medicine and neonatology services.*

5. *The provisions of subsections 2 and 3 shall not be deemed to prohibit a physician, podiatric physician or dentist who is on the staff of physicians from being affiliated with another institution of higher education.*

6. *The staff shall organize in a manner prescribed by the board so that there is a rotation of service among the members of the staff to give proper medical and surgical attention and service to the indigent sick, injured or maimed who may be admitted to the hospital for treatment.*

~~††~~ 7. *The board of hospital trustees or the board of county commissioners may offer the following assistance to members of the staff to attract and retain them:*

*(a) Establishment of clinic or group practice;*

(b) Malpractice insurance coverage under the hospital's policy of professional liability insurance;

(c) Professional fee billing; and

(d) The opportunity to rent office space in facilities owned or operated by the hospital, as the space is available, if this opportunity is offered to all members of the staff on the same terms and conditions.

**Sec. 4.** 1. Each hospital located in a county whose population is 700,000 or more which is licensed to have more than 70 beds shall provide to the Legislative Committee on Health Care a report concerning the transfer of patients from one hospital to another hospital. Such information must include:

(a) The number of patients who are transferred from the hospital to another hospital;

(b) The number of patients who were received by the hospital and who were transferred from another hospital;

(c) The reason for each transfer of a patient to another hospital;

(d) The availability of specialty services and care in the hospital; and

(e) Whether each patient who was transferred from the hospital had insurance or some other guaranteed form of payment for services.

2. Each hospital subject to the provisions of subsection 1 shall provide a report to the Legislative Committee on Health Care with the information required at least once every 3 months, and the reports must include information from July 1, 2011, through September 30, 2012. The first report must be made by October 15, 2011, and must include information from July 1, 2011, through September 30, 2011. Subsequent reports must include information for the period since the last report.

3. The information reported pursuant to this section must be made available to each person or entity that provides information pursuant to this section to the extent that it is not required by law to be kept confidential.

4. The information reported pursuant to this section must be maintained and reported in a manner consistent with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

5. As used in this section, "specialty services" includes, without limitation:

(a) Cardiology services;

(b) Gastroenterological services;

(c) General surgical services;

(d) Neurosurgical services;

(e) Ophthalmology services;

(f) Oral and maxillofacial surgical services;

(g) Orthopedic services;

(h) Otolaryngology services; and

(i) Urological services.

**Sec. 5.** This act becomes effective on July 1, 2011.

Senator Copening moved the adoption of the amendment.

Remarks by Senator Copening.

Amendment No. 586 revises Assembly Bill No. 29 by reducing the compensation for the service of members of advisory boards to an amount not to exceed \$500 per month rather than \$1,000; and by limiting the number of physicians who may be required to be so affiliated with the University of Nevada School of Medicine or the University of Nevada, Las Vegas, School of Dental Medicine to not more than 60 percent of the staff of physicians on or before January 1, 2013, and not more than 85 percent after that date but before January 1, 2018, and in such a percentage as the board of hospital trustees deems appropriate thereafter.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Assembly Bill No. 56.

Bill read second time and ordered to third reading.

Assembly Bill No. 72.

Bill read second time and ordered to third reading.

Assembly Bill No. 76.

Bill read second time and ordered to third reading.

Assembly Bill No. 78.

Bill read second time and ordered to third reading.

Assembly Bill No. 117.

Bill read second time and ordered to third reading.

#### MOTIONS, RESOLUTIONS AND NOTICES

Senator Wiener moved that Assembly Bill No. 117 be re-referred to the Committee on Finance.

Motion carried.

#### SECOND READING AND AMENDMENT

Assembly Bill No. 135.

Bill read second time and ordered to third reading.

Assembly Bill No. 143.

Bill read second time and ordered to third reading.

Assembly Bill No. 154.

Bill read second time.

The following amendment was proposed by the Committee on Health and Human Services:

Amendment No. 587.

"SUMMARY—Enacts provisions which guarantee certain rights to children placed in foster homes in this State. (BDR 38-802)"

"AN ACT relating to the protection of children; establishing provisions which set forth certain rights of children who are placed in foster homes; requiring notice of those rights to children placed in foster homes; establishing a procedure for children who are placed in foster homes to report

alleged violations of those rights; and providing other matters properly relating thereto."

**Legislative Counsel's Digest:**

**Sections 3-5** of this bill establish certain rights of children who are placed in foster homes. **Section 6** of this bill requires a provider of family foster care which places a child in a foster home to inform the child of his or her rights and provide the child with a written copy of those rights. **Section 6** also requires each group foster home which provides care to more than six children to post a written copy of those rights in the group foster home. **Section 7** of this bill authorizes a provider of family foster care to place reasonable restrictions on the rights of a child based upon the time, place and manner of a child's exercise of those rights if such restrictions are necessary to preserve the order or safety of the foster home. **Section 8** of this bill authorizes a child placed in foster care who believes that his or her rights as set forth in this bill have been violated to raise and redress a grievance with any of a number of persons or institutions responsible for the child.

**Section 9** of this bill prohibits an employee of a school district from disclosing to any person who is not employed by the school district any information relating to a pupil who is placed in foster care.

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

**Section 1.** Chapter 432 of NRS is hereby amended by adding thereto the provisions set forth as sections 1.3 to 8, inclusive, of this act.

**Sec. 1.3.** *As used in sections 1.3 to 8, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 1.5, 1.7 and 1.9 of this act have the meanings ascribed to them in those sections.*

**Sec. 1.5.** *"Foster home" has the meaning ascribed to it in NRS 424.014.*

**Sec. 1.7.** *"Group foster home" has the meaning ascribed to it in NRS 424.015.*

**Sec. 1.9.** *"Provider of family foster care" has the meaning ascribed to it in NRS 424.017.*

**Sec. 2.** *It is the policy of this State that every child placed in a foster home by an agency which provides child welfare services have the rights set forth in sections 3, 4 and 5 of this act.*

**Sec. 3.** *A child placed in a foster home by an agency which provides child welfare services has the right:*

*1. To receive information concerning his or her rights set forth in this section and sections 4 and 5 of this act.*

*2. To be treated with dignity and respect.*

*3. To fair and equal access to services, placement, care, treatment and benefits.*

*4. To receive adequate, healthy, appropriate and accessible food.*

*5. To receive adequate, appropriate and accessible clothing and shelter.*

*6. To receive appropriate medical care, including, without limitation:*

(a) *Dental, vision and mental health services;*  
(b) *Medical and psychological screening, assessment and testing; and*  
(c) *Referral to and receipt of medical, emotional, psychological or psychiatric evaluation and treatment as soon as practicable after the need for such services has been identified.*

7. *To be free from:*

(a) *Abuse or neglect, as defined in NRS 432B.020;*  
(b) *Corporal punishment, as defined in NRS 388.5225;*  
(c) *Unreasonable searches of his or her personal belongings or other unreasonable invasions of privacy;*  
(d) *The administration of psychotropic medication unless the administration is consistent with NRS 432B.197 and the policies established pursuant thereto; and*  
(e) *Discrimination or harassment on the basis of his or her actual or perceived race, ethnicity, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability or exposure to the human immunodeficiency virus.*

8. *To attend religious services of his or her choice or to refuse to attend religious services.*

9. *Except for placement in a facility, as defined in NRS 432B.6072, not to be locked in any room, building or premise or to be subject to other physical restraint or isolation.*

10. *Except as otherwise prohibited by the agency which provides child welfare services:*

(a) *To send and receive unopened mail; and*  
(b) *To maintain a bank account and manage personal income, consistent with the age and developmental level of the child.*

11. *To complete an identification kit, including, without limitation, photographing, and include the identification kit and his or her photograph in a file maintained by ~~the licensee of the foster home and~~ the agency which provides child welfare services and any employee thereof who provides child welfare services to the child.*

12. *To communicate with other persons, including, without limitation, the right:*

(a) *To communicate regularly, but not less often than once each month, with an employee of the agency which provides child welfare services who provides child welfare services to the child;*

(b) *To communicate confidentially with the agency which provides child welfare services to the child concerning his or her care;*

(c) *To report any alleged violation of his or her rights pursuant to section 8 of this act without being threatened or punished;*

(d) *Except as otherwise prohibited by a court order, to contact a family member, social worker, attorney, advocate for children receiving foster care services or guardian ad litem appointed by a court or probation officer; and*

*(e) Except as otherwise prohibited by a court order, to contact and visit his or her siblings.*

*Sec. 4. With respect to the placement of a child in a foster home by an agency which provides child welfare services, the child has the right:*

*1. To live in a safe, healthy, stable and comfortable environment, including, without limitation, the right:*

*(a) If safe and appropriate, to remain in his or her home, be placed in the home of a relative or be placed in a home within his or her community;*

*(b) To be placed in an appropriate foster home best suited to meet the unique needs of the child, including, without limitation, any disability of the child;*

*(c) To be placed in a foster home where the licensee, employees and residents of the foster home who are 18 years of age or older have submitted to an investigation of their background and personal history in compliance with NRS 424.031; and*

*(d) To be placed with his or her siblings, whenever possible, and as required by law, if his or her siblings are also placed outside the home.*

*2. To receive and review information concerning his or her placement, including, without limitation, the right:*

*(a) To receive information concerning any plan for his or her permanent placement adopted pursuant to NRS 432B.553;*

*(b) To receive information concerning any changes made to his or her plan for permanent placement; and*

*(c) If the child is 12 years of age or older, to review the plan for his or her permanent placement.*

*3. To attend and participate in a court hearing which affects the child, to the extent authorized by law and appropriate given the age and experience of the child.*

*Sec. 5. With respect to the education and vocational training of a child placed in a foster home by an agency which provides child welfare services, the child has the right:*

*1. To receive fair and equal access to an education, including, without limitation, the right:*

*(a) To receive an education as required by law;*

*(b) To have stability in and minimal disruption to his or her education when the child is placed in a foster home;*

*(c) To attend the school and remain in the scholastic activities that he or she was enrolled in before placement in a foster home, to the extent practicable and if in the best interests of the child;*

*(d) To have educational records transferred in a timely manner from the school that he or she was enrolled in before placement in a foster home to a new school, if any;*

*(e) Not to be identified as a foster child to other students at his or her school by an employee of a school district, including, without limitation, a school administrator, teacher or instructional aide;*

*(f) To receive any educational screening, assessment or testing required by law;*

*(g) To be referred to and receive educational evaluation and services as soon as practicable after the need for such services has been identified, including, without limitation, access to special education and special services to meet the unique needs of a child with educational or behavioral disabilities or impairments that adversely affect the child's educational performance;*

*(h) To have access to information regarding relevant educational opportunities, including, without limitation, course work for vocational and postsecondary educational programs and financial aid for postsecondary education, once the child is 16 years of age or older; and*

*(i) To attend a class or program concerning independent living for which he or she is qualified that is offered by the agency which provides child welfare services or another agency or contractor of the State.*

*2. To participate in extracurricular, cultural and personal enrichment activities which are consistent with the age and developmental level of the child.*

*3. To work and to receive vocational training, to the extent permitted by statute and consistent with the age and developmental level of the child.*

*4. To have access to transportation, if practicable, to allow the child to participate in extracurricular, cultural, personal and work activities.*

*Sec. 6. 1. A provider of family foster care that places a child in a foster home shall:*

*(a) Inform the child of his or her rights set forth in sections 3, 4 and 5 of this act;*

*(b) Provide the child with a written copy of those rights; and*

*(c) Provide an additional written copy of those rights to the child upon request.*

*2. A group foster home shall post a written copy of the rights set forth in sections 3, 4 and 5 of this act in a conspicuous place inside the group foster home.*

*Sec. 7. A provider of family foster care may impose reasonable restrictions on the time, place and manner in which a child may exercise his or her rights set forth in sections 3, 4 and 5 of this act if the provider of family foster care determines that such restrictions are necessary to preserve the order, discipline or safety of the foster home.*

*Sec. 8. If a child believes that his or her rights set forth in sections 3, 4 and 5 of this act have been violated, the child may raise and redress a grievance with, without limitation:*

*1. A provider of foster care;*

*2. An employee of a family foster home, as defined in NRS 424.013, group foster home or specialized foster home;*

*3. An agency which provides child welfare services to the child, and any employee thereof;*

4. *A juvenile court with jurisdiction over the child;*
5. *A guardian ad litem for the child; or*
6. *An attorney for the child.*

**Sec. 9.** Chapter 391 of NRS is hereby amended by adding thereto a new section to read as follows:

*An employee of a school district, including, without limitation, a teacher, an administrator or an instructional aide, shall not disclose to any person who is not employed by the school district the fact that a pupil is a child who has been placed in a foster home or any related information.*

Senator Copening moved the adoption of the amendment.

Remarks by Senator Copening.

Senator Copening requested that her remarks be entered in the Journal.

Amendment No. 587 revises Assembly Bill No. 154 by clarifying that only the agency which provides child welfare services and any employee thereof who provides child welfare services to the child will maintain the identification kit in their file.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Assembly Bill No. 170.

Bill read second time.

The following amendment was proposed by the Committee on Health and Human Services:

Amendment No. 584.

"SUMMARY—Establishes provisions relating to warnings about the health hazards of smoking during pregnancy. (BDR 40-884)"

"AN ACT relating to public health; requiring each retail establishment in which cigarettes are sold or offered for sale to post a sign regarding the dangers of smoking tobacco during pregnancy; providing a civil penalty; and providing other matters properly relating thereto."

**Legislative Counsel's Digest:**

Existing law requires food establishments in which alcoholic beverages are sold for consumption on the premises to post at least one sign in a location conspicuous to the patrons of the establishment regarding the dangers of drinking alcoholic beverages during pregnancy. (NRS 446.842) Existing law also requires the owner of a retail establishment in which cigarettes or smokeless tobacco products are sold or offered for sale to display prominently at the point of sale a notice indicating that the sale of cigarettes and other tobacco products to minors is prohibited by law and that the retailer may ask for proof of age to comply with the prohibition. (NRS 202.2493)

This bill requires each retail establishment in which cigarettes are sold or offered for sale to post at least one sign regarding the dangers of smoking tobacco during pregnancy in a location conspicuous to the patrons of the establishment. A person who fails to post the sign is subject to a civil fine of not more than \$100.



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

**Section 1.** Chapter 442 of NRS is hereby amended by adding thereto a new section to read as follows:

1. *Each retail establishment in which cigarettes are sold or offered for sale shall post at least one sign that meets the requirements of this section in a location conspicuous to the patrons of the establishment. The contents of the warning may be included on any other sign which the retail establishment is required to post in a location conspicuous to the patrons of the establishment.*

2. *Each sign required by subsection 1 must be not less than ~~4 1/2 by 4 1/2~~ 8 by 5 1/2 inches in size and must contain a notice in boldface type that is clearly legible and, except as otherwise provided in ~~paragraph (a) of~~ subsection 4, is in substantially the following form:*

**HEALTH WARNING**

*Smoking tobacco during pregnancy can cause birth defects, premature birth and low birth weight.*

*¡ADVERTENCIA!*

*Fumar tabaco durante el embarazo puede causar daño a su bebé al nacer, que nazca prematuro y que nazca bajo de peso.*

3. *The letters in the words "HEALTH WARNING" and "¡ADVERTENCIA!" in the sign must be written in not less than 28-point type, and the letters in all other words in the sign must be written in not less than 24-point type.*

4. *The Health Division may ~~provide~~ ~~(a) Provide~~ provide by regulation for one or more alternative forms for the language of the warning to be included on the signs required by subsection 1 to increase the effectiveness of the signs. Each alternative form must contain substantially the same message as is stated in subsection 2.*

*~~(b) Solicit~~ The Health Division and the local boards of health may solicit and accept donations of signs that satisfy the requirements of this section from a nonprofit organization or any other source. To the extent that such signs are donated, the Health Division or the local boards of health, as applicable, shall distribute the signs upon request to retail establishments that are required to post such signs.*

**Sec. 2.** NRS 202.2493 is hereby amended to read as follows:

202.2493 1. A person shall not sell, distribute or offer to sell cigarettes or smokeless products made from tobacco in any form other than in an unopened package which originated with the manufacturer and bears any health warning required by federal law. A person who violates this subsection shall be punished by a fine of \$100 and a civil penalty of \$100.

2. Except as otherwise provided in subsections 3, 4 and 5, it is unlawful for any person to sell, distribute or offer to sell cigarettes, cigarette paper, tobacco of any description or products made from tobacco to any child under

the age of 18 years. A person who violates this subsection shall be punished by a fine of not more than \$500 and a civil penalty of not more than \$500.

3. A person shall be deemed to be in compliance with the provisions of subsection 2 if, before the person sells, distributes or offers to sell to another, cigarettes, cigarette paper, tobacco of any description or products made from tobacco, the person:

(a) Demands that the other person present a valid driver's license or other written or documentary evidence which shows that the other person is 18 years of age or older;

(b) Is presented a valid driver's license or other written or documentary evidence which shows that the other person is 18 years of age or older; and

(c) Reasonably relies upon the driver's license or written or documentary evidence presented by the other person.

4. The employer of a child who is under 18 years of age may, for the purpose of allowing the child to handle or transport tobacco or products made from tobacco in the course of the child's lawful employment, provide tobacco or products made from tobacco to the child.

5. With respect to any sale made by an employee of a retail establishment, the owner of the retail establishment shall be deemed to be in compliance with the provisions of subsection 2 if the owner:

(a) Had no actual knowledge of the sale; and

(b) Establishes and carries out a continuing program of training for employees which is reasonably designed to prevent violations of subsection 2.

6. The owner of a retail establishment shall, whenever any product made from tobacco is being sold or offered for sale at the establishment, display prominently at the point of sale ~~the~~:

*(a) A notice indicating that:*

~~the~~ *(1) The sale of cigarettes and other tobacco products to minors is prohibited by law; and*

~~the~~ *(2) The retailer may ask for proof of age to comply with this prohibition ~~the~~; and*

*(b) At least one sign that complies with the requirements of section 1 of this act.*

↪ A person who violates this subsection shall be punished by a fine of not more than \$100.

7. It is unlawful for any retailer to sell cigarettes through the use of any type of display:

(a) Which contains cigarettes and is located in any area to which customers are allowed access; and

(b) From which cigarettes are readily accessible to a customer without the assistance of the retailer,

↪ except a vending machine used in compliance with NRS 202.2494. A person who violates this subsection shall be punished by a fine of not more than \$500.

8. Any money recovered pursuant to this section as a civil penalty must be deposited in a separate account in the State General Fund to be used for the enforcement of this section and NRS 202.2494.

Senator Copenig moved the adoption of the amendment.

Remarks by Senator Copenig.

Senator Copenig requested that her remarks be entered in the Journal.

Amendment No. 584 revises Assembly Bill 170 by reducing the size of the required sign to 8 inches by 5-1/2 inches; and by authorizing the local board of health, in addition to the Health Division, to solicit and accept donations for signs and to distribute those signs to certain retail establishments.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Assembly Bill No. 192.

Bill read second time and ordered to third reading.

Assembly Bill No. 213.

Bill read second time and ordered to third reading.

Assembly Bill No. 246.

Bill read second time and ordered to third reading.

Assembly Bill No. 253.

Bill read second time.

The following amendment was proposed by the Committee on Commerce, Labor and Energy:

Amendment No. 596.

"SUMMARY—Makes various changes concerning fines and settlement agreements relating to occupational safety and health. (BDR 53-100)"

"AN ACT relating to occupational safety; revising certain fines for willful violations of the Nevada Occupational Safety and Health Act; authorizing citations and fines for violation of a settlement agreement; providing for a survey of salaries of safety and mechanical inspectors; and providing other matters properly relating thereto."

**Legislative Counsel's Digest:**

Existing law provides for the assessment of certain fines and punishments for violations of the Nevada Occupational Safety and Health Act. (NRS 618.625-618.715)

**Sections 1-4** of this bill include within the scope of behavior that may trigger certain fines or punishments the violation of any provision of a settlement agreement entered into that relates to the Nevada Occupational Safety and Health Act and which requires an employer to correct or modify a condition or practice in or relating to a place of employment, and authorize the Division of Industrial Relations of the Department of Business and Industry to take certain actions to enforce such a settlement agreement.

**Section 2** of this bill increases the maximum and minimum fines for willfully violating any requirement of the Nevada Occupational Safety and Health Act. **Section 4** of this bill revises the punishment for a willful violation of the Nevada Occupational Safety and Health Act that results in the death of an employee by revising the fine that may be assessed for each such violation.

**Section 5** of this bill requires the Department of Personnel to complete a survey of the salaries of safety and mechanical inspectors and report its findings to the Director of the Legislative Counsel Bureau by July 1, 2012.

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

**Section 1.** NRS 618.465 is hereby amended to read as follows:

618.465 1. If, upon inspection or investigation, the Administrator or the Administrator's authorized representative believes that an employer has violated ~~it~~:

(a) A requirement of this chapter, or any standard, rule or order adopted or issued pursuant to this chapter, ~~for any provision of a settlement agreement entered into relating to this chapter,~~ the Division shall with reasonable promptness issue a citation to the employer ~~it~~; or

(b) Any provision of a settlement agreement entered into relating to this chapter which requires the employer to correct or modify a condition or practice in or relating to a place of employment, the Division may issue a citation to the employer.

2. Each citation issued under this section must be in writing and describe with particularity the nature of the violation, including a reference to the section of this chapter, ~~or~~ the provision of the standard, rule, regulation or order, or the provision of the settlement agreement alleged to have been violated. In addition the citation must fix a reasonable time for the abatement of the violation. The Administrator may prescribe procedures for the issuance of a notice in lieu of a citation with respect to:

(a) Minor violations which have no direct or immediate relationship to safety or health; and

(b) Violations which are not serious and which the employer agrees to correct within a reasonable time.

~~2.~~ 3. Each citation issued under this section, or a copy or copies thereof, must be prominently posted as prescribed in regulations adopted by the Administrator at or near each place a violation referred to in the citation occurred.

~~3.~~ 4. No citation may be issued under this section after 6 months following the occurrence of any violation.

**Sec. 1.3.** NRS 618.515 is hereby amended to read as follows:

618.515 If any person disobeys an order of the Division, any provision of a settlement agreement entered into relating to this chapter ~~it~~ which requires the employer to correct or modify a condition or practice in or relating to a place of employment, or a subpoena issued by ~~it~~ the Division

or one of its representatives, refuses to permit an inspection or refuses to testify as a witness to any matter regarding which the person may be lawfully interrogated, ~~then~~ the district judge of the county in which the person resides, on application of the Administrator or the Administrator's representative, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of the requirements of subpoenas issued from the court on a refusal to testify therein.

**Sec. 1.7.** NRS 618.525 is hereby amended to read as follows:

618.525 1. The Division may prosecute, defend and maintain actions in the name of the Division for the enforcement of the provisions of this chapter *or any settlement agreement entered into relating to this chapter ~~if~~ which requires the employer to correct or modify a condition or practice in or relating to a place of employment*, and is entitled to all extraordinary writs *or other relief* provided by the Constitution of the State of Nevada, the statutes of this State and the Nevada Rules of Civil Procedure in connection therewith for the enforcement thereof.

2. Verification of any pleading, affidavit or other paper required may be made by the Division.

3. In any action or proceeding or in the prosecution of any appeal by the Division, no bond or undertaking may be required to be furnished by the Division.

**Sec. 2.** NRS 618.635 is hereby amended to read as follows:

618.635 Any employer who ~~willfully~~ ~~or repeatedly~~ ~~:~~

**1. Willfully** violates any requirements of this chapter, any standard, rule, regulation or order promulgated or prescribed pursuant to this chapter, *or any provision of a settlement agreement entered into relating to this chapter which requires the employer to correct or modify a condition or practice in or relating to a place of employment*, may be assessed an administrative fine of not more than ~~100,000~~ ~~for each violation, but~~ ***\$100,000*** and not less than ~~5,000~~ ***\$8,000*** for each willful violation.

**2. Repeatedly violates any requirements of this chapter, any standard, rule, regulation or order promulgated or prescribed pursuant to this chapter, or any provision of a settlement agreement entered into relating to this chapter which requires the employer to correct or modify a condition or practice in or relating to a place of employment**, may be assessed an administrative fine of not more than ***\$70,000*** and not less than ***\$5,000*** for each repeated violation.

**Sec. 3.** NRS 618.645 is hereby amended to read as follows:

618.645 Any employer who has received a citation for a serious violation of any requirement of this chapter, ~~or~~ any standard, rule, regulation or order promulgated or prescribed pursuant to this chapter, *or any provision of a settlement agreement entered into relating to this chapter which requires the employer to correct or modify a condition or practice in or relating to a place of employment*, must be assessed an administrative fine of not more than \$7,000 for each such violation. If a violation is specifically determined

to be of a nonserious nature an administrative fine of not more than \$7,000 may be assessed.

**Sec. 4.** NRS 618.685 is hereby amended to read as follows:

618.685 Any employer who willfully violates any requirement of this chapter, ~~or~~ any standard, rule, regulation or order promulgated or prescribed pursuant to this chapter, *or any provision of a settlement agreement entered into relating to this chapter ~~+~~ which requires the employer to correct or modify a condition or practice in or relating to a place of employment* where the violation causes the death of any employee, shall be punished:

1. For a first offense, by a fine of not more than ~~+\$50,000~~ ***\$100,000 and not less than \$50,000***, or by imprisonment in the county jail for not more than 6 months, or by both fine and imprisonment.

2. For a second or subsequent offense, by a fine of not more than ~~+\$100,000~~ ***\$250,000 and not less than \$50,000***, or by imprisonment in the county jail for not more than 1 year, or by both fine and imprisonment.

**Sec. 5.** 1. The Department of Personnel shall conduct a survey of the salaries of safety and mechanical inspectors employed by the Division of Industrial Relations of the Department of Business and Industry, including, without limitation, salaries for similar positions within the private sector.

2. The Department of Personnel shall seek to obtain relevant information from public and private employers as part of the survey. Any such information obtained by the Department may be used only for the purpose of conducting the survey.

3. The Department of Personnel shall complete the survey and submit a copy of its findings and recommendations on or before July 1, 2012, to the Director of the Legislative Counsel Bureau for distribution to the Interim Finance Committee.

**Sec. 6.** This act becomes effective on January 1, 2012.

Senator Schneider moved the adoption of the amendment.

Remarks by Senator Schneider.

Senator Schneider requested that his remarks be entered in the Journal.

Amendment No. 596 to Assembly Bill No. 253 authorizes the Administrator of the Division of Industrial Relations (the Division) to issue a citation to an employer who has entered into a settlement agreement with the Division requiring the employer to correct or modify a condition or practice, and who then violates any provision of the agreement.

The amendment also authorizes the Administrator to impose certain administrative fines for repeated violations of the applicable statutes, regulations, administrative orders or settlement agreements.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Assembly Bill No. 254.

Bill read second time.

The following amendment was proposed by the Committee on Commerce, Labor and Energy:

Amendment No. 595.

"SUMMARY—Revises provisions relating to the issuance of a citation for certain occupational safety and health violations. (BDR 53-101)"

"AN ACT relating to occupational safety; revising provisions governing the grounds for the issuance of a citation for certain occupational safety and health violations; providing for the issuance of a citation for certain occupational safety and health violations upon a determination by the Administrator of the Division of Industrial Relations of the Department of Business and Industry or the Administrator's authorized representative that any employee has access to a hazard; and providing other matters properly relating thereto."

**Legislative Counsel's Digest:**

Existing law provides that if, upon inspection or investigation, the Administrator of the Division of Industrial Relations of the Department of Business and Industry or the Administrator's authorized representative believes an employer is in violation of the Nevada Occupational Safety and Health Act, the Division shall issue a citation to the employer for the violation. (NRS 618.465)

~~This~~ **Section 1 of this** bill provides that the Administrator or the authorized representative may find a violation to have occurred based upon a determination of the Administrator or authorized representative that any employee has access to a hazard. ~~This~~ **Sections 1, 1.3 and 1.7 of this** bill also ~~includes~~ **include** within the scope of behavior for which a citation may be issued the violation of any provision of a settlement agreement entered into that relates to the Nevada Occupational Safety and Health Act ~~it~~ **and that requires an employer to correct or modify a condition or practice in or relating to a place of employment and authorize the Division to take certain actions to enforce such a settlement agreement.**

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

**Section 1.** NRS 618.465 is hereby amended to read as follows:

618.465 1. If, upon inspection or investigation, the Administrator or the Administrator's authorized representative believes that an employer has violated ~~it~~:

(a) A requirement of this chapter, or any standard, rule or order adopted or issued pursuant to this chapter, ~~for any provision of a settlement agreement entered into relating to this chapter.~~ the Division shall with reasonable promptness issue a citation to the employer ~~it~~; **or**

(b) Any provision of a settlement agreement entered into relating to this chapter which requires the employer to correct or modify a condition or practice in or relating to a place of employment, the Division may issue a citation to the employer.

2. Each citation issued under this section must be in writing and describe with particularity the nature of the violation, including a reference to the section of this chapter, ~~for~~ the provision of the standard, rule, regulation or order, **or the provision of the settlement agreement** alleged to have been violated. In addition the citation must fix a reasonable time for the abatement of the violation. The Administrator may prescribe procedures for the issuance of a notice in lieu of a citation with respect to:

(a) Minor violations which have no direct or immediate relationship to safety or health; and

(b) Violations which are not serious and which the employer agrees to correct within a reasonable time.

~~2-1~~ 3. *A citation issued under this section may be based upon a determination of the Administrator or the Administrator's authorized representative that any employee has access to a hazard.*

~~2-1~~ 4. Each citation issued under this section, or a copy or copies thereof, must be prominently posted as prescribed in regulations adopted by the Administrator at or near each place a violation referred to in the citation occurred.

~~3-1~~ ~~4-1~~ 5. No citation may be issued under this section after 6 months following the occurrence of any violation.

~~5-1~~ 6. *The Administrator may adopt regulations to carry out the provisions of this section.*

**Sec. 1.3. NRS 618.515 is hereby amended to read as follows:**

618.515 If any person disobeys an order of the Division, any provision of a settlement agreement entered into relating to this chapter which requires the employer to correct or modify a condition or practice in or relating to a place of employment, or a subpoena issued by ~~the~~ the Division or one of its representatives, refuses to permit an inspection or refuses to testify as a witness to any matter regarding which the person may be lawfully interrogated, ~~then~~ the district judge of the county in which the person resides, on application of the Administrator or the Administrator's representative, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of the requirements of subpoenas issued from the court on a refusal to testify therein.

**Sec. 1.7. NRS 618.525 is hereby amended to read as follows:**

618.525 1. The Division may prosecute, defend and maintain actions in the name of the Division for the enforcement of the provisions of this chapter or any settlement agreement entered into relating to this chapter which requires the employer to correct or modify a condition or practice in or relating to a place of employment, and is entitled to all extraordinary writs or other relief provided by the Constitution of the State of Nevada, the statutes of this State and the Nevada Rules of Civil Procedure in connection therewith for the enforcement thereof.

2. Verification of any pleading, affidavit or other paper required may be made by the Division.



3. In any action or proceeding or in the prosecution of any appeal by the Division, no bond or undertaking may be required to be furnished by the Division.

**Sec. 2.** This act becomes effective on January 1, 2012.

Senator Schneider moved the adoption of the amendment.

Remarks by Senator Schneider.

Senator Schneider requested that his remarks be entered in the Journal.

Amendment No. 595 to Assembly Bill No. 254 authorizes the Administrator of the Division of Industrial Relations (the Division) to issue a citation to an employer who has entered into a settlement agreement with the Division of Industrial Relations requiring the employer to correct or modify a condition or practice, and who then violates any provision of the agreement.

The Administrator may seek contempt proceedings in district court if any person disobeys an order of the Division or a settlement agreement, or refuses to permit an inspection or to testify as a witness.

The amendment also authorizes the Division to prosecute, defend, and maintain actions in the name of the Division to enforce applicable laws or settlement agreements.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Assembly Bill No. 276.

Bill read second time and ordered to third reading.

Assembly Bill No. 292.

Bill read second time and ordered to third reading.

Assembly Bill No. 313.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 572.

"SUMMARY—Revises provisions governing the custody and visitation of children for persons who are members of the military. (BDR 11-627)"

"AN ACT relating to child custody; providing for the expiration by operation of law of certain orders modifying custody and visitation of children for persons who are members of the military; authorizing a court to delegate the visitation rights of a member of the military to a family member of the member of the military under certain circumstances; requiring a court, under certain circumstances, to provide an expedited hearing concerning custody or visitation matters to allow participation in such a hearing by affidavit or electronic means, or to both hold an expedited hearing and allow such participation; and providing other matters properly relating thereto."

**Legislative Counsel's Digest:**

Existing law provides that an award of child custody or visitation may only be made by considering the best interest of the child. (NRS 125.480, 125C.010) Existing law further provides that the court is authorized, with certain exceptions, to modify its order at any time. (NRS 125.510) **Section 10** of this bill prohibits a court from entering a final order modifying the terms of an existing custody or visitation order of a parent or legal

guardian who is a member of the military and who has received mandatory written orders for deployment until 90 days after the deployment ends. **Section 11** of this bill provides that deployment or the potential for future deployment of a parent or legal guardian must not, by itself, constitute a substantial change sufficient to justify a permanent modification of a custody or visitation order.

**Section 12** of this bill authorizes a court to modify a custody or visitation order to reasonably accommodate the deployment of a parent or legal guardian and deems any such modification to be a temporary order. **Section 13** of this bill provides, with certain exceptions, that such a temporary order expires automatically upon the completion of the deployment and the custody or visitation order that was in place before the order was modified by the temporary order is automatically reinstated.

**Section 15** of this bill authorizes a court to delegate the visitation rights of the parent or legal guardian who is deployed to a family member of the parent or legal guardian under certain circumstances.

**Section 14** of this bill requires a court, upon a motion of a parent or legal guardian who is deployed or has received mandatory written orders for deployment and ~~who is prevented by military duties from appearing~~ **whose ability, or anticipated ability, to appear** in person at a regularly scheduled hearing concerning custody or visitation matters, ~~if~~ **is materially affected by his or her military duties,** to: (1) hold an expedited hearing; (2) allow the parent or legal guardian to present testimony and evidence by affidavit or electronic means; or (3) both hold an expedited hearing and allow testimony and evidence to be presented by affidavit or electronic means.

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

**Section 1.** NRS 125.510 is hereby amended to read as follows:

125.510 1. In determining the custody of a minor child in an action brought pursuant to this chapter, the court may, except as otherwise provided in this section and chapter 130 of NRS ~~if~~ **and sections 3 to 20, inclusive, of this act:**

(a) During the pendency of the action, at the final hearing or at any time thereafter during the minority of any of the children of the marriage, make such an order for the custody, care, education, maintenance and support of the minor children as appears in their best interest; and

(b) At any time modify or vacate its order, even if the divorce was obtained by default without an appearance in the action by one of the parties.  
↪ The party seeking such an order shall submit to the jurisdiction of the court for the purposes of this subsection. The court may make such an order upon the application of one of the parties or the legal guardian of the minor.

2. Any order for joint custody may be modified or terminated by the court upon the petition of one or both parents or on the court's own motion if it is shown that the best interest of the child requires the modification or

termination. The court shall state in its decision the reasons for the order of modification or termination if either parent opposes it.

3. Any order for custody of a minor child or children of a marriage entered by a court of another state may, subject to *the provisions of sections 3 to 20, inclusive, of this act and to* the jurisdictional requirements in chapter 125A of NRS, be modified at any time to an order of joint custody.

4. A party may proceed pursuant to this section without counsel.

5. Any order awarding a party a limited right of custody to a child must define that right with sufficient particularity to ensure that the rights of the parties can be properly enforced and that the best interest of the child is achieved. The order must include all specific times and other terms of the limited right of custody. As used in this subsection, "sufficient particularity" means a statement of the rights in absolute terms and not by the use of the term "reasonable" or other similar term which is susceptible to different interpretations by the parties.

6. All orders authorized by this section must be made in accordance with the provisions of chapter 125A of NRS *and sections 3 to 20, inclusive, of this act* and must contain the following language:

PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN NRS 193.130. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having no right of custody to the child who willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this court, or removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation is subject to being punished for a category D felony as provided in NRS 193.130.

7. In addition to the language required pursuant to subsection 6, all orders authorized by this section must specify that the terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague Conference on Private International Law, apply if a parent abducts or wrongfully retains a child in a foreign country.

8. If a parent of the child lives in a foreign country or has significant commitments in a foreign country:

(a) The parties may agree, and the court shall include in the order for custody of the child, that the United States is the country of habitual residence of the child for the purposes of applying the terms of the Hague Convention as set forth in subsection 7.

(b) Upon motion of one of the parties, the court may order the parent to post a bond if the court determines that the parent poses an imminent risk of wrongfully removing or concealing the child outside the country of habitual residence. The bond must be in an amount determined by the court and may be used only to pay for the cost of locating the child and returning the child

to his or her habitual residence if the child is wrongfully removed from or concealed outside the country of habitual residence. The fact that a parent has significant commitments in a foreign country does not create a presumption that the parent poses an imminent risk of wrongfully removing or concealing the child.

9. Except where a contract providing otherwise has been executed pursuant to NRS 123.080, the obligation for care, education, maintenance and support of any minor child created by any order entered pursuant to this section ceases:

- (a) Upon the death of the person to whom the order was directed; or
- (b) When the child reaches 18 years of age if the child is no longer enrolled in high school, otherwise, when the child reaches 19 years of age.

10. As used in this section, a parent has "significant commitments in a foreign country" if the parent:

- (a) Is a citizen of a foreign country;
- (b) Possesses a passport in his or her name from a foreign country;
- (c) Became a citizen of the United States after marrying the other parent of the child; or
- (d) Frequently travels to a foreign country.

**Sec. 2.** Chapter 125C of NRS is hereby amended by adding thereto the provisions set forth as sections 3 to 20, inclusive, of this act.

**Sec. 3.** *As used in sections 3 to 20, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 4 to 9, inclusive, of this act have the meanings ascribed to them in those sections.*

**Sec. 4.** *"Custody or visitation order" means:*

*1. A judgment, decree or order issued by a court of competent jurisdiction in this State which provides for custody or visitation with respect to a child; and*

*2. A judgment, decree or order issued by a court of another state which provides for custody or visitation with respect to a child if the judgment, decree or order has been registered in this State pursuant to NRS 125A.465.*

**Sec. 5.** *"Deployment" means the transfer or reassignment of a member of the military, unaccompanied by any family member, on active duty status in support of combat or another military operation, including, without limitation, temporary duty. The term does not include annual training of a reserve component of the Armed Forces of the United States or of the National Guard.*

**Sec. 6.** *"Member of the military" means a person who is presently serving in the Armed Forces of the United States, a reserve component thereof or the National Guard.*

**Sec. 7.** *"Parent" means a parent or legal guardian of a child under the age of 18 years.*

Sec. 8. *"Parent who received orders for deployment" means a parent who has received mandatory written orders for deployment and who is awaiting deployment or has been deployed pursuant to those orders.*

Sec. 9. *"Temporary duty" means the transfer of a member of the military, unaccompanied by any family member, from a military base to a different location, including, without limitation, another military base, for a limited time to accomplish training or to assist in the performance of a combat mission.*

Sec. 10. 1. *Except as otherwise provided in subsection 2, if a parent who is a member of the military and who has been awarded sole or joint custody or visitation of a child receives mandatory written orders for deployment, the court shall not enter a final order modifying the terms of the existing custody or visitation order until 90 days after the termination of the parent's deployment.*

2. *If the matter was fully adjudicated by a court before the parent's deployment, the court may enter such a final order at any time.*

Sec. 11. *Deployment or the potential for future deployment must not, by itself, constitute a substantial change in circumstances sufficient to warrant a permanent modification of a custody or visitation order.*

Sec. 12. 1. *The court may temporarily modify a custody or visitation order to reasonably accommodate the deployment of a parent. Any such modification by the court of a custody or visitation order shall be deemed a temporary order.*

2. *A temporary order issued pursuant to subsection 1 must:*

(a) *Unless the court determines it is not in the best interest of the child, grant the parent who received orders for deployment reasonable custody or visitation during periods of approved military leave if the existing custody or visitation order granted that parent custody or visitation before deployment;*

(b) *Include any restrictions concerning custody or visitation set forth in the existing custody or visitation order;*

(c) *Specify that deployment is the reason for the modification of the existing custody or visitation order; and*

(d) *Require the other parent to provide the court and the parent who received orders for deployment with written notice of any change of his or her address or telephone number as soon as practicable but not later than 30 days after such change.*

3. *In issuing a temporary order pursuant to subsection 1, the court shall consider issuing any such appropriate temporary order as will ensure the ability of the parent who received orders for deployment to maintain frequent and continuing contact with the child by means that are reasonably available.*

Sec. 13. 1. *Except as otherwise provided in subsection 2, a temporary order issued pursuant to section 12 of this act expires by operation of law*

*upon the completion of the parent's deployment and the previous custody or visitation order is reinstated.*

*2. The court may, upon a motion alleging immediate danger of irreparable harm to the child, hold an expedited hearing concerning custody or visitation upon the completion of the parent's deployment.*

*Sec. 14. 1. If the military duties ~~prevent~~ of a parent who received orders for deployment ~~from appearing~~ have a material effect on the ability, or anticipated ability, of the parent to appear in person at a regularly scheduled hearing concerning any custody or visitation matters, the court shall, upon a motion of that parent and for good cause shown:*

*(a) Hold an expedited hearing;*

*(b) Allow the parent who received orders for deployment to present testimony and evidence by affidavit or electronic means; or*

*(c) Both hold an expedited hearing pursuant to paragraph (a) and allow testimony and evidence to be presented pursuant to paragraph (b).*

*2. As used in this section, "electronic means" includes, without limitation, telephone, videoconference or the Internet.*

*Sec. 15. 1. Upon a motion by the parent who received orders for deployment, the court may delegate his or her visitation rights, or a portion of those rights, to a family member of that parent who has a substantial relationship with the child if the court determines that such delegated visitation is in the best interest of the child.*

*2. In determining whether visitation rights should be delegated to a family member pursuant to subsection 1, the court shall consider the factors set forth in paragraphs (a) to (i), inclusive, of subsection 6 of NRS 125C.050.*

*3. Any visitation rights delegated to a family member pursuant to subsection 1 terminate upon:*

*(a) The expiration of a temporary order pursuant to section 13 of this act; or*

*(b) A showing that the delegated visitation is no longer in the best interest of the child.*

*4. Nothing in this section increases the authority of a family member who is delegated visitation rights pursuant to subsection 1 to seek separate visitation rights of the child pursuant to NRS 125C.050.*

*Sec. 16. If a custody or visitation order has not been issued and a parent's deployment is imminent, the court shall, upon a motion of either parent, hold an expedited hearing for the purpose of issuing a temporary order establishing the custody and visitation arrangement in accordance with sections 3 to 20, inclusive, of this act.*

*Sec. 17. 1. If military necessity precludes court adjudication before deployment, the parent who received orders for deployment and the other parent shall cooperate with and provide information to each other in an effort to reach a mutually agreeable resolution with regard to custody and visitation matters.*

*2. Except as otherwise provided in this subsection, the parent who received orders for deployment shall, within 10 days after receiving the orders, provide a copy of the orders to the other parent. If the date of deployment is less than 10 days after receipt of the orders, a copy of the orders must be provided immediately to the other parent.*

**Sec. 18. 1.** *If a court in this State has issued a custody or visitation order, the absence of a child from this State during the deployment of a parent shall be deemed a temporary absence for the purposes of NRS 125A.085 and 125A.135 and this State retains exclusive, continuing jurisdiction as provided in NRS 125A.315.*

*2. The deployment of a parent may not be used as a basis to assert the issue of inconvenient forum pursuant to NRS 125A.365.*

**Sec. 19.** *In making a determination pursuant to sections 3 to 20, inclusive, of this act, a court may award costs and reasonable attorney's fees against any parent:*

- 1. Who the court determines caused unreasonable delays;*
- 2. Who failed to provide any information required pursuant to sections 3 to 20, inclusive, of this act; and*
- 3. In such other circumstances as the court deems proper.*

**Sec. 20.** *The provisions of sections 3 to 20, inclusive, of this act do not apply to any custody or visitation arrangement requested in a verified application for a temporary or extended order for protection against domestic violence filed pursuant to NRS 33.020.*

Senator Wiener moved the adoption of the amendment.

Remarks by Senator Wiener.

Senator Wiener requested that her remarks be entered in the Journal.

The amendment adds Senator Gustavson as the primary Senate sponsor and makes two other changes to the bill.

First, it adds a provision in Section 12 that when issuing a temporary custody or visitation order that accommodates deployment of a parent serving in the military, the court must consider ensuring that the parent who received deployment orders is able to maintain frequent and continuing contact to a reasonable extent; and second, it amends Section 14 to authorize the parent who is being deployed to seek an expedited hearing and/or present testimony by affidavit or electronic means, if the military duties of that parent have a material affect on the ability of the parent to appear in person at the hearing.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Assembly Bill No. 317.

Bill read second time and ordered to third reading.

Assembly Bill No. 318.

Bill read second time and ordered to third reading.

Assembly Bill No. 362.

Bill read second time.

The following amendment was proposed by the Committee on Health and Human Services:

Amendment No. 610.

"SUMMARY—Revises provisions governing education. (BDR 38-782)"

"AN ACT relating to education; establishing the Interim Task Force on Out-of-School-Time Programs; requiring the Task Force to prescribe standards for out-of-school-time programs and to make certain recommendations relating to out-of-school-time programs; exempting an out-of-school-time program from licensure and regulation as a child care facility; authorizing an out-of-school-time program to report certain information to the Bureau of Services for Child Care of the Division of Child and Family Services of the Department of Health and Human Services; and providing other matters properly relating thereto."

**Legislative Counsel's Digest:**

**Section 2** of this bill defines an "out-of-school-time program" as a program that operates for 10 or more hours per week, is offered on a continuing basis, provides supervision of children who are of school age and provides regularly scheduled, structured and supervised activities where learning opportunities take place during times when a child is not in school. **Section 5** of this bill exempts an out-of-school-time program from the licensing requirements for and regulation as a child care facility by excluding an out-of-school-time program from the definition of a "child care facility." **Sections 6-8** of this bill ensure that the existing definition of "child care facility" is not changed for certain other purposes.

**Section 9** of this bill establishes the Interim Task Force on Out-of-School-Time Programs and requires the Task Force to prescribe standards for out-of-school-time programs and make certain other recommendations concerning out-of-school-time programs. **Section 9** also requires the Task Force to submit a report of its recommendations to the Governor and to the Director of the Legislative Counsel Bureau for transmittal to the 77th Session of the Nevada Legislature.

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

**Section 1.** Chapter 432A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

**Sec. 2.** ~~##~~ *"Out-of-school-time program" means a program that operates for 10 or more hours per week, is offered on a continuing basis, provides supervision of children who are of ~~school~~ the age to attend school from kindergarten through 12th grade and provides regularly scheduled, structured and supervised activities where learning opportunities take place:*

~~##~~ *1. Before or after school;*

~~##~~ *2. On the weekend;*

*3. During the summer or other seasonal breaks in the school calendar;*

*or*



~~4.~~ **4.** *Between sessions for children who attend a school which operates on a year-round calendar.*

~~2. The term does not include programs for children which have a single focus or activity, which may include, without limitation, religious education, instruction in music, participation in a sport, tutoring or participation in a club.~~

Sec. 3. (Deleted by amendment.)

Sec. 4. NRS 432A.020 is hereby amended to read as follows:

432A.020 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 432A.0205 to 432A.028, inclusive, **and section 2 of this act** have the meanings ascribed to them in those sections.

Sec. 5. NRS 432A.024 is hereby amended to read as follows:

432A.024 1. "Child care facility" means:

(a) An establishment operated and maintained for the purpose of furnishing care on a temporary or permanent basis, during the day or overnight, to five or more children under 18 years of age, if compensation is received for the care of any of those children;

(b) An on-site child care facility;

(c) A child care institution; or

(d) An outdoor youth program.

2. "Child care facility" does not include:

(a) The home of a natural parent or guardian, foster home as defined in NRS 424.014 or maternity home;

(b) A home in which the only children received, cared for and maintained are related within the third degree of consanguinity or affinity by blood, adoption or marriage to the person operating the facility; ~~or~~

(c) A home in which a person provides care for the children of a friend or neighbor for not more than 4 weeks if the person who provides the care does not regularly engage in that activity ~~or~~; **or**

**(d) A location at which an out-of-school-time program is operated.**

Sec. 6. NRS 202.2483 is hereby amended to read as follows:

202.2483 1. Except as otherwise provided in subsection 3, smoking tobacco in any form is prohibited within indoor places of employment including, but not limited to, the following:

(a) Child care facilities;

(b) Movie theatres;

(c) Video arcades;

(d) Government buildings and public places;

(e) Malls and retail establishments;

(f) All areas of grocery stores; and

(g) All indoor areas within restaurants.

2. Without exception, smoking tobacco in any form is prohibited within school buildings and on school property.

3. Smoking tobacco is not prohibited in:

(a) Areas within casinos where loitering by minors is already prohibited by state law pursuant to NRS 463.350;

(b) Stand-alone bars, taverns and saloons;

(c) Strip clubs or brothels;

(d) Retail tobacco stores;

(e) Private residences, including private residences which may serve as an office workplace, except if used as a child care, an adult day care or a health care facility; and

(f) The area of a convention facility in which a meeting or trade show is being held, during the time the meeting or trade show is occurring, if the meeting or trade show:

(1) Is not open to the public;

(2) Is being produced or organized by a business relating to tobacco or a professional association for convenience stores; and

(3) Involves the display of tobacco products.

4. In areas or establishments where smoking is not prohibited by this section, nothing in state law shall be construed to prohibit the owners of said establishments from voluntarily creating nonsmoking sections or designating the entire establishment as smoke free.

5. Nothing in state law shall be construed to restrict local control or otherwise prohibit a county, city or town from adopting and enforcing local tobacco control measures that meet or exceed the minimum applicable standards set forth in this section.

6. "No Smoking" signs or the international "No Smoking" symbol shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this section. Each public place and place of employment where smoking is prohibited shall post, at every entrance, a conspicuous sign clearly stating that smoking is prohibited. All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited.

7. Health authorities, police officers of cities or towns, sheriffs and their deputies shall, within their respective jurisdictions, enforce the provisions of this section and shall issue citations for violations of this section pursuant to NRS 202.2492 and 202.24925.

8. No person or employer shall retaliate against an employee, applicant or customer for exercising any rights afforded by, or attempts to prosecute a violation of, this section.

9. For the purposes of this section, the following terms have the following definitions:

(a) "Casino" means an entity that contains a building or large room devoted to gambling games or wagering on a variety of events. A casino must possess a nonrestricted gaming license as described in NRS 463.0177 and typically uses the word 'casino' as part of its proper name.

(b) "Child care facility" has the meaning ascribed to it in NRS ~~432A.024~~ **441A.030**.

(c) "Completely enclosed area" means an area that is enclosed on all sides by any combination of solid walls, windows or doors that extend from the floor to the ceiling.

(d) "Government building" means any building or office space owned or occupied by:

(1) Any component of the Nevada System of Higher Education and used for any purpose related to the System;

(2) The State of Nevada and used for any public purpose; or

(3) Any county, city, school district or other political subdivision of the State and used for any public purpose.

(e) "Health authority" has the meaning ascribed to it in NRS 202.2485.

(f) "Incidental food service or sales" means the service of prepackaged food items including, but not limited to, peanuts, popcorn, chips, pretzels or any other incidental food items that are exempt from food licensing requirements pursuant to subsection 2 of NRS 446.870.

(g) "Place of employment" means any enclosed area under the control of a public or private employer which employees frequent during the course of employment including, but not limited to, work areas, restrooms, hallways, employee lounges, cafeterias, conference and meeting rooms, lobbies and reception areas.

(h) "Public places" means any enclosed areas to which the public is invited or in which the public is permitted.

(i) "Restaurant" means a business which gives or offers for sale food, with or without alcoholic beverages, to the public, guests or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere.

(j) "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

(k) "School building" means all buildings on the grounds of any public school described in NRS 388.020 and any private school as defined in NRS 394.103.

(l) "School property" means the grounds of any public school described in NRS 388.020 and any private school as defined in NRS 394.103.

(m) "Stand-alone bar, tavern or saloon" means an establishment devoted primarily to the sale of alcoholic beverages to be consumed on the premises, in which food service is incidental to its operation, and provided that smoke from such establishments does not infiltrate into areas where smoking is prohibited under the provisions of this section. In addition, a stand-alone bar, tavern or saloon must be housed in either:

(1) A physically independent building that does not share a common entryway or indoor area with a restaurant, public place or any other indoor workplaces where smoking is prohibited by this section; or

(2) A completely enclosed area of a larger structure, such as a strip mall or an airport, provided that indoor windows must remain shut at all times and doors must remain closed when not actively in use.

(n) "Video arcade" has the meaning ascribed to it in paragraph (d) of subsection 3 of NRS 453.3345.

10. Any statute or regulation inconsistent with this section is null and void.

11. The provisions of this section are severable. If any provision of this section or the application thereof is declared by a court of competent jurisdiction to be invalid or unconstitutional, such declaration shall not affect the validity of the section as a whole or any provision thereof other than the part declared to be invalid or unconstitutional.

**Sec. 7.** NRS 441A.030 is hereby amended to read as follows:

441A.030 *1.* "Child care facility" ~~has the meaning ascribed to it in NRS 432A.024.~~ **means:**

*(a) An establishment operated and maintained for the purpose of furnishing care on a temporary or permanent basis, during the day or overnight, to five or more children under 18 years of age, if compensation is received for the care of any of those children;*

*(b) An on-site child care facility as defined in NRS 432A.0275;*

*(c) A child care institution as defined in NRS 432A.0245; or*

*(d) An outdoor youth program as defined in NRS 432A.028.*

*2. "Child care facility" does not include:*

*(a) The home of a natural parent or guardian, foster home as defined in NRS 424.014 or maternity home;*

*(b) A home in which the only children received, cared for and maintained are related within the third degree of consanguinity or affinity by blood, adoption or marriage to the person operating the facility; or*

*(c) A home in which a person provides care for the children of a friend or neighbor for not more than 4 weeks if the person who provides the care does not regularly engage in that activity.*

**Sec. 8.** NRS 444.065 is hereby amended to read as follows:

444.065 *1.* Except as otherwise provided in subsection 2, as used in NRS 444.065 to 444.120, inclusive, "public swimming pool" means any structure containing an artificial body of water that is intended to be used collectively by persons for swimming or bathing, regardless of whether a fee is charged for its use.

*2.* The term does not include any such structure at:

*(a)* A private residence if the structure is controlled by the owner or other authorized occupant of the residence and the use of the structure is limited to members of the family of the owner or authorized occupant of the residence or invited guests of the owner or authorized occupant of the residence.

*(b)* A family foster home as defined in NRS 424.013.

*(c)* A child care facility, as defined in NRS ~~432A.024,~~ **441A.030**, furnishing care to 12 children or less.

(d) Any other residence or facility as determined by the State Board of Health.

(e) Any location if the structure is a privately owned pool used by members of a private club or invited guests of the members.

**Sec. 9.** 1. There is hereby created the Interim Task Force on Out-of-School-Time Programs. The Task Force is composed of the following 12 members:

(a) A representative of the Bureau of Services for Child Care of the Division of Child and Family Services of the Department of Health and Human Services, appointed by the Administrator of the Division;

(b) A representative of local governmental agencies that provide public services for children, appointed by the Nevada Association of Counties or its successor organization;

(c) A representative of the Nevada System of Higher Education, appointed by the Board of Regents of the University of Nevada;

(d) A representative of the public schools in this State, appointed by the State Board of Education;

(e) A representative of a national nonprofit organization that provides services to children, appointed by the Legislative Commission;

(f) A representative of a nonprofit organization that is located in Nevada and provides services to children, appointed by the Legislative Commission;

(g) A representative of a nonprofit organization that is located in Nevada and provides support to an out-of-school-time program, appointed by the Legislative Commission;

(h) A representative of a private, for profit organization that is located in Nevada and provides services to children, appointed by the Legislative Commission;

(i) A representative of an agency that provides resources and referrals to out-of-school-time programs, appointed by the Legislative Commission;

(j) A representative of a faith-based organization that provides services to children, appointed by the Legislative Commission; and

(k) Two members who are parents of children in this State, appointed by the Legislative Commission.

2. The Administrator of the Division of Child and Family Services of the Department of Health and Human Services, the Nevada Association of Counties, the Board of Regents of the University of Nevada, the State Board of Education and the Legislative Commission shall appoint the members of the Task Force as soon as practicable after July 1, 2011. A vacancy on the Task Force must be filled in the same manner as the original appointment.

3. The Task Force shall meet on or before October 1, 2011, and at its first meeting the members of the Task Force shall elect a Chair from among the members. A majority of the members of the Task Force constitutes a quorum for the transaction of business, and a majority of those members present at any meeting is sufficient for any official action taken by the Task Force.

4. The Task Force shall meet at least once every 3 months and at the call of the Chair or a majority of the members of the Task Force.

5. Each member of the Task Force serves without compensation. Each member of the Task Force who is an officer or employee of the State or a local government must be relieved from his or her duties without loss of his or her regular compensation to prepare for and attend meetings of the Task Force and perform any work necessary to carry out the duties of the Task Force in the most timely manner practicable. A state agency or local government shall not require an officer or employee who is a member of the Task Force to make up the time the member is absent from work to carry out his or her duties as a member and shall not require the member to take annual vacation or compensatory time for the absence.

6. The Bureau of Services for Child Care of the Division of Child and Family Services of the Department of Health and Human Services shall provide administrative support to the Task Force and may accept assistance from a nonprofit organization in providing such support.

7. The Task Force shall:

- (a) Prescribe standards for out-of-school-time programs;
- (b) Make recommendations concerning out-of-school-time programs and the implementation of the standards prescribed by the Task Force, including, without limitation, recommendations for a pilot program for the standards; and
- (c) Make recommendations concerning whether out-of-school-time programs should be licensed and regulated by the Bureau of Services for Child Care.

8. The Task Force shall, on or before June 30, 2012, submit a report to the Governor and to the Director of the Legislative Counsel Bureau for transmittal to the 77th Session of the Nevada Legislature. The report must include, without limitation:

- (a) A full and detailed description of the standards for out-of-school-time programs prescribed by the Task Force;
- (b) Recommendations concerning the establishment of a pilot program for the standards prescribed by the Task Force;
- (c) Recommendations concerning whether out-of-school-time programs should be licensed and regulated by the Bureau of Services for Child Care; and
- (d) Any other recommendations for legislation relating to out-of-school-time programs.

9. An out-of-school-time program may register with the Bureau of Services for Child Care or other entity designated by the Bureau. By registering with the Bureau, the out-of-school-time program agrees to comply with the standards established by the Task Force and to participate in any pilot project established pursuant to subsection 8.

10. As used in this section, "out-of-school-time program" has the meaning ascribed to it in section 2 of this act.

- Sec. 10.** 1. This act becomes effective on July 1, 2011.  
2. Section 9 of this act expires by limitation on June 30, 2013.

Senator Copening moved the adoption of the amendment.

Remarks by Senator Copening.

Senator Copening requested that her remarks be entered in the Journal.

Amendment No. 610 revises Assembly Bill No. 362 by specifying that the programs provide for the supervision of children who attend school from kindergarten through 12th grade and that the activities where learning opportunities take place may be on the weekend. It removes the language that specified that certain programs are not included in the definition of an "out-of-school-time program." This change is to address concerns that by specifying that the term did not include programs for children who have a single focus or activity, an implication may be made that these programs are not exempt from the requirement to be licensed as a childcare facility.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Assembly Bill No. 365.

Bill read second time and ordered to third reading.

Assembly Bill No. 373.

Bill read second time and ordered to third reading.

Assembly Bill No. 410.

Bill read second time.

The following amendment was proposed by the Committee on Government Affairs:

Amendment No. 590.

"SUMMARY—Revises provisions relating to the filing by a governmental entity of a protest against the granting of certain applications relating to water rights. (BDR 48-360)"

"AN ACT relating to water; requiring that protests against the granting of certain applications relating to water rights by a government, governmental agency or political subdivision of a government be verified or signed by the person in charge of the government, agency or political subdivision; and providing other matters properly relating thereto."

**Legislative Counsel's Digest:**

Under existing law, any interested person, including a governmental entity, is authorized to file a written protest with the State Engineer against the granting of an application for a permit to appropriate water or to change the place of diversion, the manner of use or the place of use of water already appropriated. (NRS 533.010, 533.325, 533.365) In addition, any person, including a governmental entity, who may be adversely affected by a project for the recharge, storage and recovery of water is authorized under existing law to file a written protest with the State Engineer against the granting of an application for a permit to operate the project. (NRS 534.014, 534.250, 534.270)

This bill requires that any protest which is filed by a government, governmental agency or political subdivision against the granting of an application for a permit to change the place of diversion, the manner of use or the place of use of water already appropriated within the same basin or for a permit to operate a project for the recharge, storage and recovery of water be verified or signed by the director, administrator, chief, head or other person in charge of that government, governmental agency or political subdivision. However, this bill does not change the requirements under existing law for a protest by a government, governmental agency or political subdivision against the granting of an application for a permit to appropriate water or an application that involves an interbasin transfer of groundwater. (NRS 533.365)

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

**Section 1.** NRS 533.365 is hereby amended to read as follows:

533.365 1. Any person interested may, within 30 days after the date of last publication of the notice of application, file with the State Engineer a written protest against the granting of the application, setting forth with reasonable certainty the grounds of such protest, which, *except as otherwise provided in subsection 2*, must be verified by the affidavit of the protestant, or an agent or attorney thereof.

2. *If the application is for a permit to change the place of diversion, manner of use or place of use of water already appropriated within the same basin, a protest filed against the granting of such an application by a government, governmental agency or political subdivision of a government must be verified by the affidavit of:*

(a) *Except as otherwise provided in paragraph (b), the director, administrator, chief, head or other person in charge of the government, governmental agency or political subdivision; or*

(b) *If the governmental agency or political subdivision is a division or other part of a department, the director or other person in charge of that department in this State, including, without limitation:*

(1) *~~The Forest Supervisor for the Humboldt-Toiyabe National Forest,~~ Regional Forester for the Intermountain Region, if the protest is filed by the United States Forest Service;*

(2) *The State Director of the Nevada State Office of the Bureau of Land Management, if the protest is filed by the Bureau of Land Management;*

(3) *The Regional Director of the Pacific Southwest Region, if the protest is filed by the United States Fish and Wildlife Service;*

(4) *The Regional Director of the Pacific West Region, if the protest is filed by the National Park Service;*

(5) *The Director of the State Department of Conservation and Natural Resources, if the protest is filed by any division of that Department; or*



~~45~~ **(6)** *The chair of the board of county commissioners, if the protest is filed by a county.*

**3.** On receipt of a protest ~~4~~ *that complies with the requirements of subsection 1 or 2*, the State Engineer shall advise the applicant whose application has been protested of the fact that the protest has been filed with the State Engineer, which advice must be sent by certified mail.

~~3~~ **4.** The State Engineer shall consider the protest, and may, in his or her discretion, hold hearings and require the filing of such evidence as the State Engineer may deem necessary to a full understanding of the rights involved. The State Engineer shall give notice of the hearing by certified mail to both the applicant and the protestant. The notice must state the time and place at which the hearing is to be held and must be mailed at least 15 days before the date set for the hearing.

~~4~~ **5.** Each applicant and each protestant shall, in accordance with a schedule established by the State Engineer, provide to the State Engineer and to each protestant and each applicant information required by the State Engineer relating to the application or protest.

~~5~~ **6.** If the State Engineer holds a hearing pursuant to subsection ~~3~~ **4**, the State Engineer shall render a decision on each application not later than 240 days after the later of:

(a) The date all transcripts of the hearing become available to the State Engineer; or

(b) The date specified by the State Engineer for the filing of any additional information, evidence, studies or compilations requested by the State Engineer. The State Engineer may, for good cause shown, extend any applicable period.

~~6~~ **7.** The State Engineer shall adopt rules of practice regarding the conduct of a hearing held pursuant to subsection ~~3~~ **4**. The rules of practice must be adopted in accordance with the provisions of NRS 233B.040 to 233B.120, inclusive, and codified in the Nevada Administrative Code. The technical rules of evidence do not apply at such a hearing.

~~7~~ **8.** The provisions of this section do not prohibit the noticing of a new period of 45 days in which a person may file with the State Engineer a written protest against the granting of the application, if such notification is required to be given pursuant to subsection 8 of NRS 533.370.

**Sec. 2.** NRS 534.270 is hereby amended to read as follows:

534.270 1. Upon receipt of an application for a permit to operate a project, the State Engineer shall endorse on the application the date it was received and keep a record of the application. The State Engineer shall conduct an initial review of the application within 45 days after receipt of the application. If the State Engineer determines in the initial review that the application is incomplete, the State Engineer shall notify the applicant. The application is incomplete until the applicant files all the information requested in the application. The State Engineer shall determine whether the application is correct within 180 days after receipt of a complete application.

The State Engineer may request additional information from the applicant. The State Engineer may conduct such independent investigations as are necessary to determine whether the application should be approved or rejected.

2. If the application is determined to be complete and correct, the State Engineer, within 30 days after such a determination or a longer period if requested by the applicant, shall cause notice of the application to be given once each week for 2 consecutive weeks in a newspaper of general circulation in the county or counties in which persons reside who could reasonably be expected to be affected by the project. The notice must state:

- (a) The legal description of the location of the proposed project;
- (b) A brief description of the proposed project including its capacity;
- (c) That any person who may be adversely affected by the project may file a written protest with the State Engineer within 30 days after the last publication of the notice;
- (d) The date of the last publication;
- (e) That the grounds for protesting the project are limited to whether the project would be in compliance with subsection 2 of NRS 534.250;
- (f) The name of the applicant; and
- (g) That a protest must:
  - (1) State the name and mailing address of the protester;
  - (2) Clearly set forth the reason why the permit should not be issued; and
  - (3) Be signed by the protester or the protester's agent or attorney ~~††~~ *or, if the protester is a government, governmental agency or political subdivision of a government, be approved and signed in the manner specified in paragraph (g) of subsection 3.*

3. A protest to a proposed project:

- (a) May be made by any person who may be adversely affected by the project;
- (b) Must be in writing;
- (c) Must be filed with the State Engineer within 30 days after the last publication of the notice;
- (d) Must be upon a ground listed in subsection 2 of NRS 534.250;
- (e) Must state the name and mailing address of the protester;
- (f) Must clearly set forth the reason why the permit should not be issued; and
- (g) ~~Must~~ *Except as otherwise provided in this paragraph, must* be signed by the protester or the protester's agent or attorney. *If the protester is a government, governmental agency or political subdivision of a government, the protest must be:*

*(1) Except as otherwise provided in subparagraph (2), approved and signed by the director, administrator, chief, head or other person in charge of the government, governmental agency or political subdivision; or*

*(2) If the governmental agency or political subdivision is a division or other part of a department, approved and signed by the director or other*

person in charge of that department in this State, including, without limitation:

~~(I) The Forest Supervisor for the Humboldt-Toiyabe National Forest,~~ Regional Forester for the Intermountain Region, if the protest is filed by the United States Forest Service;

(II) The State Director of the Nevada State Office of the Bureau of Land Management, if the protest is filed by the Bureau of Land Management;

(III) The Regional Director of the Pacific Southwest Region, if the protest is filed by the United States Fish and Wildlife Service;

(IV) The Regional Director of the Pacific West Region, if the protest is filed by the National Park Service;

(V) The Director of the State Department of Conservation and Natural Resources, if the protest is filed by any division of that Department; or

~~(VI)~~ (VI) The chair of the board of county commissioners, if the protest is filed by a county.

4. Upon receipt of a protest, the State Engineer shall advise the applicant by certified mail that a protest has been filed.

5. Upon receipt of a protest, or upon the motion of the State Engineer, the State Engineer may hold a hearing. Not less than 30 days before the hearing, the State Engineer shall send by certified mail notice of the hearing to the applicant and any person who filed a protest.

6. The State Engineer shall either approve or deny each application within 1 year after the final date for filing a protest, unless the State Engineer has received a written request from the applicant to postpone making a decision or, in the case of a protested application, from both the protester and the applicant. The State Engineer may delay action on the application pursuant to paragraph (c) of subsection 2 of NRS 533.370.

7. Any person aggrieved by any decision of the State Engineer made pursuant to subsection 6 may appeal that decision to the district court pursuant to NRS 533.450.

**Sec. 3.** This act becomes effective on July 1, 2011.

Senator Lee moved the adoption of the amendment.

Remarks by Senator Lee.

Senator Lee requested that his remarks be entered in the Journal.

Amendment No. 590 to Assembly Bill No. 410 clarifies, for those water application protests filed by the U.S. Forest Service, that the protest affidavit must be verified by the Intermountain Regional Office of the Director of Lands and Minerals. It also clarifies, for those water application protests filed by the National Park Service, that the protest affidavit must be verified by the Regional Director of the Pacific West Region of the National Park Service.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Assembly Bill No. 477.

Bill read second time and ordered to third reading.

Assembly Bill No. 533.

Bill read second time.

The following amendment was proposed by the Committee on Health and Human Services:

Amendment No. 588.

"SUMMARY—Provides certain financial protections for residents of group homes and similar facilities. (BDR 40-673)"

"AN ACT relating to group homes; providing certain financial protections for residents of group homes and similar facilities; **providing a penalty**; and providing other matters properly relating thereto."

**Legislative Counsel's Digest:**

**Section 1** of this bill prohibits the owner or administrator of a medical facility, facility for the dependent or home for individual residential care from receiving: (1) money or property devised by the will of a current or former resident of the facility or home; and (2) proceeds from a life insurance policy upon the life or body of a current or former resident of the facility or home. Under **section 1**, such an owner or administrator is deemed to have predeceased the resident and, as a result, the money, property and proceeds are then distributed to other devisees (in the case of a will) or other beneficiaries (in the case of a life insurance policy). In the event that there is no other devisee or beneficiary, the laws of this State pertaining to testate and intestate succession would control. **Section 1** does not apply in the instance in which the owner or administrator of the facility or home is the spouse, legal guardian or next of kin of the resident or former resident.

Under existing law, a principal may not name his or her provider of health care, an employee of the provider of health care or an operator or employee of a health care facility as his or her agent in a power of attorney for health care; however, an exception is set forth if the provider, operator or employee is the principal's spouse, legal guardian or next of kin. (NRS 162A.840) **Section 3** of this bill establishes a broader prohibition in the context of group homes and similar facilities, providing that a person who resides or is about to reside in a hospital, assisted living facility or facility for skilled nursing may not name such a facility or an owner, operator or employee of such a facility as his or her agent in any power of attorney for any purpose. The prohibition set forth in **section 3** does not apply if the owner, operator or employee is the resident's (principal's) spouse, legal guardian or next of kin ~~or~~ **or, when certain conditions are met, if the owner, operator or employee is assisting the principal to establish eligibility for Medicaid. Section 3 further makes it a category C felony to use a power of attorney which is created for the purpose of assisting a principal to establish eligibility for Medicaid for any other purpose or in a manner inconsistent with the provisions of the power of attorney.**

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

**Section 1.** Chapter 449 of NRS is hereby amended by adding thereto a new section to read as follows:

**1. Except as otherwise provided in subsection 3 and notwithstanding any other provision of law, an owner or administrator of a medical facility, facility for the dependent or home for individual residential care is not entitled to receive, and must not receive:**

**(a) Any money, personal property or real property that is devised or bequeathed by will to the owner or administrator by a resident or former resident of the facility or home, as applicable.**

**(b) Any proceeds from a life insurance policy upon the life or body of a resident or former resident of the facility or home, as applicable.**

**2. Except as otherwise provided in subsection 3, any money, property, proceeds or interest therein that is described in subsection 1 passes in accordance with law as if the owner or administrator of the medical facility, facility for the dependent or home for individual residential care had predeceased the decedent resident or former resident.**

**3. The provisions of subsections 1 and 2 do not apply if the owner or administrator of the medical facility, facility for the dependent or home for individual residential care is the spouse, legal guardian or next of kin of the resident or former resident of the facility or home, as applicable.**

**Sec. 2.** NRS 449.730 is hereby amended to read as follows:

449.730 1. Every medical facility, facility for the dependent and home for individual residential care shall inform each patient or the patient's legal representative, upon the admission of the patient to the facility or home, of the patient's rights as listed in NRS 449.700, 449.710, 449.715 , ~~and~~ 449.720 ~~+~~ **and section 1 of this act.**

2. In addition to the requirements of subsection 1, if a person with a disability is a patient at a facility, as that term is defined in NRS 449.771, the facility shall inform the patient of his or her rights pursuant to NRS 449.765 to 449.786, inclusive.

3. In addition to the requirements of subsections 1 and 2, every hospital shall, upon the admission of a patient to the hospital, provide to the patient or the patient's legal representative a written disclosure approved by the Director **of the Department of Health and Human Services**, which written disclosure must set forth:

(a) Notice of the existence of the Bureau for Hospital Patients created pursuant to NRS 223.575;

(b) The address and telephone number of the Bureau; and

(c) An explanation of the services provided by the Bureau, including, without limitation, the services for dispute resolution described in subsection 3 of NRS 223.575.

4. In addition to the requirements of subsections 1, 2 and 3, every hospital shall, upon the discharge of a patient from the hospital, provide to

the patient or the patient's legal representative a written disclosure approved by the Director, which written disclosure must set forth:

(a) If the hospital is a major hospital:

(1) Notice of the reduction or discount available pursuant to NRS 439B.260, including, without limitation, notice of the criteria a patient must satisfy to qualify for a reduction or discount under that section; and

(2) Notice of any policies and procedures the hospital may have adopted to reduce charges for services provided to persons or to provide discounted services to persons, which policies and procedures are in addition to any reduction or discount required to be provided pursuant to NRS 439B.260. The notice required by this subparagraph must describe the criteria a patient must satisfy to qualify for the additional reduction or discount, including, without limitation, any relevant limitations on income and any relevant requirements as to the period within which the patient must arrange to make payment.

(b) If the hospital is not a major hospital, notice of any policies and procedures the hospital may have adopted to reduce charges for services provided to persons or to provide discounted services to persons. The notice required by this paragraph must describe the criteria a patient must satisfy to qualify for the reduction or discount, including, without limitation, any relevant limitations on income and any relevant requirements as to the period within which the patient must arrange to make payment.

➔ As used in this subsection, "major hospital" has the meaning ascribed to it in NRS 439B.115.

5. In addition to the requirements of subsections 1 to 4, inclusive, every hospital shall post in a conspicuous place in each public waiting room in the hospital a legible sign or notice in 14-point type or larger, which sign or notice must:

(a) Provide a brief description of any policies and procedures the hospital may have adopted to reduce charges for services provided to persons or to provide discounted services to persons, including, without limitation:

(1) Instructions for receiving additional information regarding such policies and procedures; and

(2) Instructions for arranging to make payment;

(b) Be written in language that is easy to understand; and

(c) Be written in English and Spanish.

**Sec. 3.** NRS 162A.220 is hereby amended to read as follows:

162A.220 1. A power of attorney must be signed by the principal or, in the principal's conscious presence, by another individual directed by the principal to sign the principal's name on the power of attorney. A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments.

2. If the principal resides in a hospital, assisted living facility or facility for skilled nursing at the time of execution of the power of attorney, a

certification of competency of the principal from a physician, psychologist or psychiatrist must be attached to the power of attorney.

3. *If the principal resides or is about to reside in a hospital, assisted living facility or facility for skilled nursing at the time of execution of the power of attorney, in addition to the prohibition set forth in NRS 162A.840 and except as otherwise provided in subsection 4, the principal may not name as agent in any power of attorney for any purpose:*

- (a) The hospital, assisted living facility or facility for skilled nursing;*
- (b) An owner or operator of the hospital, assisted living facility or facility for skilled nursing; or*
- (c) An employee of the hospital, assisted living facility or facility for skilled nursing.*

4. *The principal may name as agent any person identified in subsection 3 if that person is ~~the~~ :*

- (a) The spouse, legal guardian or next of kin of the principal ~~is~~ ; or*
- (b) Named only for the purpose of assisting the principal to establish eligibility for Medicaid and the power of attorney complies with the provisions of subsection 5.*

5. *A person may be named as agent pursuant to paragraph (b) of subsection 4 only if:*

- (a) A valid financial power of attorney for the principal does not exist;*
- (b) The agent has made a good faith effort to contact each family member of the principal identified in the records of the hospital, assisted living facility or facility for skilled nursing, as applicable, to request that the family member establish a financial power of attorney for the principal and has documented his or her effort;*

*(c) The power of attorney specifies that the agent is only authorized to access financial documents of the principal which are necessary to prove eligibility of the principal for Medicaid as described in the application for Medicaid and specifies that any request for such documentation must be accompanied by a copy of the application for Medicaid or by other proof that the document is necessary to prove eligibility for Medicaid;*

*(d) The power of attorney specifies that the agent does not have authority to access money or any other asset of the principal for any purpose; and*

*(e) The power of attorney specifies that the power of attorney is only valid until eligibility of the principal for Medicaid is determined or 6 months after the power of attorney is signed, whichever is sooner.*

6. *A person who is named as agent pursuant to paragraph (b) of subsection 4 shall not use the power of attorney for any purpose other than to assist the principal to establish eligibility for Medicaid and shall not use the power of attorney in a manner inconsistent with the provisions of subsection 5. A person who violates the provisions of this subsection is guilty of a category C felony and shall be punished as provided in NRS 193.130.*

7. As used in this section:

(a) "Assisted living facility" has the meaning ascribed to it in NRS 422.2708.

(b) "Facility for skilled nursing" has the meaning ascribed to it in NRS 449.0039.

(c) "Hospital" has the meaning ascribed to it in NRS 449.012.

**Sec. 4.** Except as otherwise provided in this act:

1. This act applies to a life insurance policy, power of attorney or will created before, on or after July 1, 2011.

2. This act applies to a judicial proceeding concerning a life insurance policy, power of attorney or will commenced on or after July 1, 2011.

3. This act applies to a judicial proceeding concerning a life insurance policy, power of attorney or will commenced before July 1, 2011, unless the court finds that the application of a provision of this act would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies.

4. An act done before July 1, 2011, is not affected by this act.

**Sec. 5.** This act becomes effective on July 1, 2011.

Senator Copenig moved the adoption of the amendment.

Remarks by Senator Copenig.

Senator Copenig requested that her remarks be entered in the Journal.

Amendment No. 588 revises Assembly Bill No. 533 by authorizing the owner, operator, or employees of certain facilities to be named as a resident's agent in a power of attorney for the specific purpose of establishing eligibility for Medicaid under certain specific circumstances.

The measure makes it a category C felony to use such a power of attorney for any other purpose or in a manner inconsistent with the provisions of the power of attorney.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 534.

Bill read second time and ordered to third reading.

Assembly Bill No. 535.

Bill read second time.

The following amendment was proposed by the Committee on Health and Human Services:

Amendment No. 589.

"SUMMARY—Revises provisions governing the referral of persons to residential facilities for groups. (BDR 40-674)"

"AN ACT relating to residential facilities for groups; revising provisions governing the referral of persons to such facilities; requiring the State Board of Health to track certain violations and to disseminate certain information to the public; providing a civil penalty; and providing other matters properly relating thereto."



**Legislative Counsel's Digest:**

To operate a business which provides referrals to residential facilities for groups, existing law provides that a person must obtain a license from the State Board of Health. Also under existing law, a business so licensed and its employees are prohibited from referring a person to a residential facility for groups if the facility is unlicensed or if the facility is owned by the same person who owns the business. A person who violates that prohibition is subject to a civil penalty. Existing law does not address referrals to residential facilities for groups that are made directly by individual providers of health care, and specifically exempts medical facilities that were already licensed as of October 1, 1999. (NRS 449.0305)

**Section 3** of this bill adds to the list of activities in which a business licensed to provide referrals to residential facilities for groups, and its employees, may not engage by prohibiting a business so licensed and its employees from referring a person to a residential facility for groups if the business or its employee knows or reasonably should know that the facility or its services are not appropriate for the condition of the person being referred. **Section 1** of this bill prohibits a licensed medical facility and its employees from: (1) referring a person to a residential facility for groups that is not licensed ~~by~~ **by the Health Division of the Department of Health and Human Services;** and (2) referring a person to a residential facility for groups if the licensed medical facility or its employee knows or reasonably should know that the residential facility for groups, or the services provided by the residential facility for groups, are not appropriate for the condition of the person being referred. **"Licensed medical facility" is defined to include medical facilities and facilities for the dependent that are licensed by the Health Division and other facilities that provide medical care and treatment and which are required to be licensed by the State Board of Health.** If a licensed medical facility or an employee of the licensed medical facility violates the prohibitions established by **section 1**, the licensed medical facility is liable to the State Board of Health for a civil penalty of not more than \$10,000 for a first offense, and of not less than \$10,000 or more than \$20,000 for a second or subsequent offense. **Section 1** also requires the State Board of Health to establish and maintain a system to track violations of **section 1** and NRS 449.0305, and directs the Board to educate the public regarding the requirements and prohibitions set forth in those sections.

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

**Section 1.** Chapter 449 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. In addition to the requirements and prohibitions set forth in NRS 449.0305, and notwithstanding any exceptions set forth in that section, a licensed medical facility or an employee of such a medical facility shall not:*

*(a) Refer a person to a residential facility for groups that is not licensed ~~to~~ by the Health Division;*

*(b) Refer a person to a residential facility for groups if the licensed medical facility or its employee knows or reasonably should know that the residential facility for groups, or the services provided by the residential facility for groups, are not appropriate for the condition of the person being referred.*

*2. If a licensed medical facility or an employee of such a medical facility violates the provisions of subsection 1, the licensed medical facility is liable for a civil penalty to be recovered by the Attorney General in the name of the Board for the first offense of not more than \$10,000 and for a second or subsequent offense of not less than \$10,000 or more than \$20,000. Unless otherwise required by federal law, the Board shall deposit all civil penalties collected pursuant to this section into a separate account in the State General Fund to be used for the enforcement of this section and the protection of the health, safety, well-being and property of residents of residential facilities for groups.*

*3. The Board shall:*

*(a) Establish and maintain a system to track violations of this section and NRS 449.0305. Except as otherwise provided in this paragraph, records created by or for the system are public records and are available for public inspection. The following information is confidential:*

*(1) Any personally identifying information relating to a person who is referred to a residential facility for groups.*

*(2) Information which may not be disclosed under federal law.*

*(b) Educate the public regarding the requirements and prohibitions set forth in this section and NRS 449.0305.*

*4. As used in this section, "licensed medical facility" means:*

*(a) A medical facility that is required to be licensed pursuant to this section and NRS 449.001 to 449.240, inclusive.*

*(b) A facility for the dependent that is required to be licensed pursuant to this section and NRS 449.001 to 449.240, inclusive.*

*(c) A facility that provides medical care or treatment and is required by regulation of the Board to be licensed pursuant to NRS 449.038.*

**Sec. 2.** NRS 449.030 is hereby amended to read as follows:

449.030 1. No person, state or local government or agency thereof may operate or maintain in this State any medical facility or facility for the dependent without first obtaining a license therefor as provided in NRS 449.001 to 449.240, inclusive ~~to~~, **and section 1 of this act.**

2. Unless licensed as a facility for hospice care, a person, state or local government or agency thereof shall not operate a program of hospice care without first obtaining a license for the program from the Board.

**Sec. 3.** NRS 449.0305 is hereby amended to read as follows:

449.0305 1. Except as otherwise provided in subsection 5, a person must obtain a license from the Board to operate a business that provides referrals to residential facilities for groups.

2. The Board shall adopt:

- (a) Standards for the licensing of businesses that provide referrals to residential facilities for groups;
- (b) Standards relating to the fees charged by such businesses;
- (c) Regulations governing the licensing of such businesses; and
- (d) Regulations establishing requirements for training the employees of such businesses.

3. A licensed nurse, social worker, physician or hospital, or a provider of geriatric care who is licensed as a nurse or social worker, may provide referrals to residential facilities for groups through a business that is licensed pursuant to this section. The Board may, by regulation, authorize a public guardian or any other person it determines appropriate to provide referrals to residential facilities for groups through a business that is licensed pursuant to this section.

4. A business that is licensed pursuant to this section or an employee of such a business shall not:

- (a) Refer a person to a residential facility for groups that is not licensed.
- (b) ***Refer a person to a residential facility for groups if the business or its employee knows or reasonably should know that the facility, or the services provided by the facility, are not appropriate for the condition of the person being referred.***
- (c) Refer a person to a residential facility for groups that is owned by the same person who owns the business.

↪ A person who violates the provisions of this subsection is liable for a civil penalty to be recovered by the Attorney General in the name of the ~~{State}~~ Board ~~{of Health}~~ for the first offense of not more than \$10,000 and for a second or subsequent offense of not less than \$10,000 nor more than \$20,000. Unless otherwise required by federal law, the ~~{State}~~ Board ~~{of Health}~~ shall deposit all civil penalties collected pursuant to this section into a separate account in the State General Fund to be used for the enforcement of this section and the protection of the health, safety, well-being and property of residents of residential facilities for groups.

5. This section does not apply to a medical facility that is licensed pursuant to NRS 449.001 to 449.240, inclusive, **and section 1 of this act** on October 1, 1999.

**Sec. 4.** NRS 654.190 is hereby amended to read as follows:

654.190 1. The Board may, after notice and a hearing as required by law, impose an administrative fine of not more than \$10,000 for each violation on, recover reasonable investigative fees and costs incurred from, suspend, revoke, deny the issuance or renewal of or place conditions on the license of, and place on probation or impose any combination of the

foregoing on any nursing facility administrator or administrator of a residential facility for groups who:

(a) Is convicted of a felony relating to the practice of administering a nursing facility or residential facility or of any offense involving moral turpitude.

(b) Has obtained his or her license by the use of fraud or deceit.

(c) Violates any of the provisions of this chapter.

(d) Aids or abets any person in the violation of any of the provisions of NRS 449.001 to 449.240, inclusive, *or section 1 of this act*, as those provisions pertain to a facility for skilled nursing, facility for intermediate care or residential facility for groups.

(e) Violates any regulation of the Board prescribing additional standards of conduct for nursing facility administrators or administrators of residential facilities for groups, including, without limitation, a code of ethics.

(f) Engages in conduct that violates the trust of a patient or resident or exploits the relationship between the nursing facility administrator or administrator of a residential facility for groups and the patient or resident for the financial or other gain of the licensee.

2. The Board shall give a licensee against whom proceedings are brought pursuant to this section written notice of a hearing pursuant to NRS 233B.121 and 241.034. A licensee may waive, in writing, his or her right to attend the hearing.

3. The Board may compel the attendance of witnesses or the production of documents or objects by subpoena. The Board may adopt regulations that set forth a procedure pursuant to which the Chair of the Board may issue subpoenas on behalf of the Board. Any person who is subpoenaed pursuant to this subsection may request the Board to modify the terms of the subpoena or grant additional time for compliance.

4. An order that imposes discipline and the findings of fact and conclusions of law supporting that order are public records.

5. The expiration of a license by operation of law or by order or decision of the Board or a court, or the voluntary surrender of a license, does not deprive the Board of jurisdiction to proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

**Sec. 5.** This act becomes effective on July 1, 2011.

Senator Copenig moved the adoption of the amendment.

Remarks by Senator Copenig.

Senator Copenig requested that her remarks be entered in the Journal.

Amendment No. 589 revises Assembly Bill No. 535 by specifying that the facility, to which someone may be referred, must be licensed by the Health Division, Division of Health and Human Services and by clarifying that licensed "medical facility" for the purpose of the measure refers to a facility for the dependent in addition to a medical facility.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 564.

Bill read second time and ordered to third reading.

MOTIONS, RESOLUTIONS AND NOTICES

Mr. President announced that if there were no objections, the Senate would recess subject to the call of the Chair.

Senate in recess at 12:31 p.m.

SENATE IN SESSION

At 1:27 p.m.

President Krolicki presiding.

Quorum present.

MOTIONS, RESOLUTIONS AND NOTICES

By Senators Kihuen, Denis, Breeden, Brower, Cegavske, Copening, Gustavson, Halseth, Hardy, Horsford, Kieckhefer, Lee, Leslie, Manendo, McGinness, Parks, Rhoads, Roberson, Schneider, Settlemeyer, Wiener; Assemblymen Diaz, Segerblom, Bustamante Adams, Benitez-Thompson, Brooks, Aizley, Anderson, Atkinson, Bobzien, Carlton, Carrillo, Conklin, Daly, Dondero Loop, Ellison, Flores, Frierson, Goedhart, Goicoechea, Grady, Hambrick, Hammond, Hansen, Hardy, Hickey, Hogan, Horne, Kirkpatrick, Kirner, Kite, Livermore, Mastroluca, McArthur, Munford, Neal, Ocegüera, Ohrenschall, Pierce, Sherwood, Smith, Stewart and Woodbury:

Senate Concurrent Resolution No. 12—Memorializing visionary leader, businessman and advocate Edmundo "Eddie" Escobedo, Sr.

WHEREAS, With great sadness and expressions of tremendous loss, Nevadans mourned the passing of Edmundo "Eddie" Escobedo, Sr., on October 15, 2010; and

WHEREAS, Eddie was born in Mexico in 1932 and after moving to El Paso, Texas, enlisted in the United States Air Force and served at Nellis Air Force Base, where he worked with sheet metal and as a jet mechanic and parachute rigger, sometimes packing parachutes for the world-famous Thunderbirds; and

WHEREAS, After his honorable discharge, this energetic young man adopted Las Vegas as his hometown, worked two jobs for several years, saved his money and entered the entertainment arena as a promoter of movie stars and performers in various arts; and

WHEREAS, Eddie later opened a movie theater and was elected three times as President of the Spanish Pictures Exhibitors Association, and while serving in that role, brought to Las Vegas the annual conventions that are the Spanish version of the Oscars; and

WHEREAS, In 1980, Eddie took a step into the world of written media when he and his eldest son began publishing a small weekly newspaper, *El Mundo*, which began with 16 pages and advertising that was practically given away but today has a circulation of close to 40,000 and is an undisputed voice of Hispanics in Nevada; and

WHEREAS, Because of the tremendous success of *El Mundo*, Eddie was chosen as President of the National Association of Hispanic Publications and President of the National Hispanic Press Foundation, and in that capacity, he raised large amounts of money for scholarships and internships; and

WHEREAS, Other business endeavors in Las Vegas included co-ownership of a highly successful radio station in the Spanish language, investments in real estate and construction of the Escobedo Professional Plaza; and

WHEREAS, While this visionary leader, businessman and advocate for the Hispanic community was the epitome of the American Dream, he was never too busy living that dream to spend countless hours to support, encourage and inspire others through individual efforts, through the establishment and promotion of community organizations and events and in the political sphere, volunteering in campaigns and encouraging people to vote; and

WHEREAS, Among the abundant awards Eddie received are the Premio Ohtli, one of the highest awards given by the Mexican Government, the Gentleman of Excellence award for community leaders and the prestigious Lifetime Achievement Award from the National Association of Hispanic Publications; and

WHEREAS, A few of the honors bestowed upon him were his selection as Hispanic of the Month by the City of Las Vegas and Hispanic of the Year by the Latin Chamber of Commerce and, in 2005, the enduring honor of having a middle school named after him; now, therefore, be it

RESOLVED BY THE SENATE OF THE STATE OF NEVADA, THE ASSEMBLY CONCURRING, That the members of the 76th Session of the Nevada Legislature do hereby extend their earnest condolences to the family and friends of Edmundo Escobedo, Sr.; and be it further

RESOLVED, That Edmundo Escobedo will forever remain in the hearts and minds of all whose lives he touched and enriched, and his name will never be forgotten in the annals of our State; and be it further

RESOLVED, That the Secretary of the Senate prepare and transmit a copy of this resolution to Eddie's beloved wife of over 50 years, Maria, and to his children Edmundo, Jr., Nicolas, Hilda and Victor.

Senator Kihuen moved the adoption of the resolution.

Remarks by Senators Kihuen and Denis.

Senator Kihuen requested that the following remarks be entered in the Journal.

SENATOR KIHUEN:

Thank you, Mr. President. The resolution does an excellent job of illustrating Mr. Escobedo's life. Most of us from southern Nevada remember Mr. Escobedo as the founder and owner of *El Mundo* newspaper. What many of us do not remember is that he was not just a successful businessman, but Mr. Escobedo was also a veteran of the U.S. Armed Forces. He was a radio and television personality. He was a wonderful husband and father. To me, personally, he was a great mentor and a trustworthy friend who I relied on constantly for advice both in my professional and my personal life. He gave me advice about relationships. He was married for over 50 years, so his advice was well taken.

I had the pleasure of meeting Mr. Escobedo while I was in high school and was playing soccer. I was Player of the Year and he was the first person to give me newspaper coverage. He put me on the front page of the newspaper. He took me under his wing.

Mr. Escobedo was one of the pioneers of the Hispanic community. He came to Las Vegas in the 1950s. He was known as the Godfather of the Hispanic community. Elected officials from both the Republican and Democratic sides visited him at his office to ask for his support. His newspaper is the largest Spanish newspaper in the State. President Obama and Hillary Clinton had his personal cell phone number. They knew him by his first name. Every candidate who wanted to run for office and who wanted to earn the vote in east Las Vegas visited him. He would listen and then he would make his endorsements. Those endorsements came out in the *El Mundo* newspaper for hundreds of thousands to see. For many of us, Mr. Escobedo was important to us not only for the work he did in the community but because he was a close friend.

Mr. Escobedo used to organize events and one of them was Navidad en el Barrio, Christmas in the Barrio. He would provide free toys and free food to thousands of families. The recession has caused much suffering for families and the past celebrations served at least 5,000 families who stood in line from 4:30 a.m. to 3:00 p.m. He did that for many years. He provided toys and food for those families who had no money.

The Hispanic population in Clark County is at nearly 33 percent. Cinco de Mayo and the Mexican Independence Day celebration in Las Vegas are important. The people who live here and attend these events are Americanized. They love this country, but they do want to celebrate some of their traditions. Mr. Escobedo organized the Cinco de Mayo celebrations as well as the Mexican Independence Day celebrations. When you go to the celebrations and you stand on the stage to give a speech, you see 5,000 to 10,000 people at these celebrations. These are people who knew Mr. Escobedo, were there to support him and their community. When I think of Mr. Escobedo, I think of those events. At this past Cinco de Mayo, I spoke at the celebration. I was very emotional because this was the first celebration I attended without Mr. Escobedo being there. He was respected by both Republicans and Democrats. We will really miss him.

We have a Hispanic caucus in the Legislature. For the first time in many years, there are more than two members in the Hispanic caucus. We have eight members, actually nine with Shelia Leslie as an honorary member. The work Mr. Escobedo did throughout the years for Las Vegas and the State of Nevada helped pave the way for people such as myself and Senator Denis. We have known Mr. Escobedo for a long time.

Before Mr. Escobedo was the successful man that he became, he worked at the Sahara Hotel and Casino, which recently closed its doors. He was a bartender and that is how he met Congresswoman Shelley Berkley in the 1970s when she was a waitress. Little did they know at that time that they would go on to become some of the most prominent residents of our State. Until his death, Rep. Berkley called him once a month to make certain he was all right. When he was sick, she would call him and so would President Obama to ask how he was doing.

Mr. Escobedo was not an average citizen. He influenced hundreds of thousands of families, including my own. Before I was born, Mr. Escobedo was contributing to our State. He was paving the way for the young, immigrant Mexican kid who could come to this country to succeed and to have the same opportunities as everyone else. He was a friend. He was a second father. As the first Hispanic immigrant to serve in this body, I would like to recognize one of the people who helped pave the way for me. Thank you, Mr. President.

SENATOR DENIS:

I knew Mr. Escobedo for many years. We called him Eddie. He was a great example to all of us who serve in the community. He talked about his family and about the things he would do with his family, but he was always at a community event trying to help others. I am thankful that I had an opportunity to get to know Eddie. I am thankful for the work that he did. We can never fill his shoes, but we can carry on his legacy in the work that we do.

Thank you.

Resolution adopted.

Senator Kihuen moved that all necessary rules be suspended and that Senate Concurrent Resolution No. 12 be immediately transmitted to the Assembly.

Motion carried unanimously.

GENERAL FILE AND THIRD READING

Senate Bill No. 442.

Bill read third time.

Roll call on Senate Bill No. 442:

YEAS—21.

NAYS—None.

Senate Bill No. 442 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

## MOTIONS, RESOLUTIONS AND NOTICES

Senator Wiener moved that Assembly Bills Nos. 23, 39, 40, 110, 113, 115, 130, 141, 145, 146, 182, 196, 200, 233, 237, 249, 280, 290, 306, 368, 395, 396, 420, 422, 451, 454, 472, 480, 544, 551; Assembly Joint Resolution No. 1, be taken from the General File and placed on the General File for the next legislative day.

Motion carried.

## UNFINISHED BUSINESS

## SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the President and Secretary signed Senate Bills Nos. 14, 35, 51, 229; Senate Joint Resolution No. 8; Senate Concurrent Resolution No. 10; Assembly Bill No. 201.

## GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Gustavson, the privilege of the Floor of the Senate Chamber for this day was extended to the following students and adults from the North Valley High School: Guadalupe Lopez, Janna Magana, Roy Foreman, Charles Retherford, Berea Robinson, Cameron Rogers, Troy Wise, Leanne White, Maria Diaz, Nancy Falcon, Yaneli Pintor, Johanna Richards, Madelanine Troeger, Dhalia Trujillo Silva, Tayzia Watson, Gretchen Baumann, Douglas Carrion, Daisy Castellon Morales, Jasmin Gonzalez, Raul Gutierrez-Trujillo, Myles Marantette, Frida Molina Rojas, Lilly Roth, Taylor Thomas, Monica Vega, Rebecca Wiltermood, Cassandran Aaronson, Lauren Acevedo, Rene Alfaro Hernandez, Kaylyn Dazel and teacher: Shawn Lear.

On request of Senator Kihuen, the privilege of the Floor of the Senate Chamber for this day was extended to Eddie Escobedo Jr, Panfila "Maria" Escobedo, Jose Nicolas Escobedo and Hilda Escobedo.

On request of Senator Lee, the privilege of the Floor of the Senate Chamber for this day was extended to Ray Tuntland.

On request of Senator Schneider, the privilege of the Floor of the Senate Chamber for this day was extended to Mary Bashelier, Tony Bashelier and Danielle Lauren Liebsack.

Senator Horsford moved that the Senate adjourn until Friday, May 20, 2011, at 11 a.m.

Motion carried.

Senate adjourned at 1:44 p.m.

Approved:

BRIAN K. KROLICKI  
*President of the Senate*

Attest: DAVID A. BYERMAN  
*Secretary of the Senate*