

**THE ONE HUNDRED AND ELEVENTH DAY**

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CARSON CITY (Saturday), May 28, 2011

Senate called to order at 10:37 a.m.

President Krolicki presiding.

Roll called.

All present.

Prayer by Valerie Wiener, RScP.

As we stand in this place, in the power and presence of God, taking in that breath of life, we know that God is the source of all life, that it is God that breathes each of us.

The magnificence of the One is the center and source of the Universe and all that is. God is life, joy, love, and peace and, in all that we are, we demonstrate these qualities as the ideas of God.

Today we think, believe in, and know the wisdom and intelligence of what we do and how we do it.

We demonstrate this Highest Power in all that we think, in all the ways that we express, and how we experience who we are.

As we share our ideas, knowing that we do this in the best interest of the people we serve, the people who call Nevada home, we do it as ideas of God. We are the demonstration of this Highest Power and Presence that express, in, of, and as each of us, in all that we do and all that we are.

For this I am so grateful, knowing that each step we take this day, and the days ahead, we are doing so with wisdom, intelligence, and love.

And so it is,

AMEN.

Pledge of Allegiance to the Flag.

Senator Horsford 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.

## REPORTS OF COMMITTEES

*Mr. President:*

Your Committee on Finance, to which were re-referred Senate Bills Nos. 207, 437, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

STEVEN A. HORSFORD, *Chair*

*Mr. President:*

Your Committee on Natural Resources, to which were referred Assembly Bill No. 322; Assembly Joint Resolution No. 5, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MARK A. MANENDO, *Chair*

*Mr. President:*

Your Committee on Transportation, to which were referred Assembly Bills Nos. 152, 204, 212, 232, 384, 463, 508, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Transportation, to which were referred Assembly Bills Nos. 2, 53, 328, 374, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

SHIRLEY A. BREEDEN, *Chair*

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, May 27, 2011

*To the Honorable the Senate:*

I have the honor to inform your honorable body that the Assembly on this day passed, as amended, Assembly Bill No. 552.

Also, I have the honor to inform your honorable body that the Assembly on this day adopted Senate Concurrent Resolution No. 13; Assembly Concurrent Resolution No. 10.

Also, I have the honor to inform your honorable body that the Assembly on this day concurred in the Senate Amendment No. 571 to Assembly Bill No. 196.

Also, I have the honor to inform your honorable body that the Assembly on this day concurred in the Senate Amendment No. 576 to Assembly Bill No. 282 and respectfully refused to concur in Senate Amendment No. 780 to Assembly Bill No. 282.

Also, I have the honor to inform your honorable body that the Assembly on this day respectfully refused to concur in the Senate Amendment No. 621 to Assembly Bill No. 498.

MATTHEW BAKER

*Assistant Chief Clerk of the Assembly*

MOTIONS, RESOLUTIONS AND NOTICES

Assembly Concurrent Resolution No. 10.

Senator Wiener moved that the resolution be referred to the Committee on Legislative Operations and Elections.

Motion carried.

INTRODUCTION, FIRST READING AND REFERENCE

Assembly Bill No. 552.

Senator Wiener moved that the bill be referred to the Committee on Judiciary.

Motion carried.

SECOND READING AND AMENDMENT

Senate Bill No. 54.

Bill read second time.

The following amendment was proposed by the Committee on Finance:  
Amendment No. 795.

"SUMMARY—Revises provisions governing the Fund to Increase the Quality of Nursing Care. (BDR 38-444)"

"AN ACT relating to nursing facilities; revising provisions governing the Fund to Increase the Quality of Nursing Care; and providing other matters properly relating thereto."

**Legislative Counsel's Digest:**

Under existing law, each nursing facility that is licensed in this State is required to pay a fee to the Division of Health Care Financing and Policy of the Department of Health and Human Services in an amount determined by the Division. (NRS 422.3775) The fees collected by the Division are required to be deposited in the Fund to Increase the Quality of Nursing Care and used to increase rates paid to nursing facilities for providing services to Medicaid

recipients and to administer the assessment of the fees. Existing law prohibits the money in the Fund from being used to replace existing state expenditures paid to nursing facilities. (NRS 422.3785) This bill removes that prohibition.

Existing law further provides that if federal law or regulation prohibits the money in the Fund from being used in the manner specified by statute, the rates must be set at certain amounts. (NRS 422.3785) ~~This~~ **Section 1 of this bill** instead provides that in such circumstances, the rates must be changed to the rates provided by the Division. **Section 2 of this bill expires the provisions of the bill on July 1, 2013.**

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

**Section 1.** NRS 422.3785 is hereby amended to read as follows:

422.3785 1. There is hereby created in the State Treasury the Fund to Increase the Quality of Nursing Care, to be administered by the Division.

2. The Fund to Increase the Quality of Nursing Care must be a separate and continuing fund, and no money in the Fund reverts to the State General Fund at any time. The interest and income on the money in the Fund, after deducting any applicable charges, must be credited to the Fund.

3. Any money received by the Division pursuant to NRS 422.3755 to 422.379, inclusive, must be deposited in the State Treasury for credit to the Fund to Increase the Quality of Nursing Care, and must be expended, to the extent authorized by federal law, to obtain federal financial participation in the Medicaid Program, and in the manner set forth in subsection 4.

4. Expenditures from the Fund to Increase the Quality of Nursing Care must be used only:

(a) To increase the rates paid to nursing facilities for providing services pursuant to the Medicaid Program; ~~and may not be used to replace existing state expenditures paid to nursing facilities for providing services pursuant to the Medicaid Program;~~ and

(b) To administer the provisions of NRS 422.3755 to 422.379, inclusive. The amount expended pursuant to this paragraph must not exceed 1 percent of the money received from the fees assessed pursuant to NRS 422.3755 to 422.379, inclusive, and must not exceed the amount authorized for expenditure by the Legislature for administrative expenses in a fiscal year.

5. If federal law or regulation prohibits the money in the Fund to Increase the Quality of Nursing Care from being used in the manner set forth in this section, the rates paid to nursing facilities for providing services pursuant to the Medicaid Program must be changed ~~+~~

~~—(a) Except as otherwise provided in paragraph (b), to the rates paid to such facilities on June 30, 2003; or~~

~~—(b) If the Legislature or the Division has on or after July 1, 2003, changed the rates paid to such facilities through a manner other than the use of expenditures from the Fund to Increase the Quality of Nursing Care;~~ to the rates provided for by the ~~Legislature or the~~ Division.

**Sec. 2.** This act becomes effective upon passage and approval ~~it~~ **and expires by limitation on July 1, 2013.**

Senator Horsford moved the adoption of the amendment.

Remarks by Senator Horsford.

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

The amendment adds a sunset to the bill, which expires the provisions on July 1, 2013.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 429.

Bill read second time.

The following amendment was proposed by the Committee on Finance:

Amendment No. 796.

"SUMMARY—Revises the authority of the Department of Health and Human Services to contract for transportation services for the recipients of services under the Children's Health Insurance Program. (BDR 38-1197)"

"AN ACT relating to the Children's Health Insurance Program; revising provisions relating to the authority of the Department of Health and Human Services to contract for transportation services for the recipients of services under the Program; and providing other matters properly relating thereto."

**Legislative Counsel's Digest:**

Under existing law, the Department of Health and Human Services is required, to the extent authorized by federal law, to contract with certain motor carriers or others to provide transportation services to certain recipients of services pursuant to the Children's Health Insurance Program when those recipients are traveling to and from providers of services under those programs. (NRS 422.2705) ~~This~~ **Section 1 of this bill** makes contracting by the Department for such transportation services discretionary.

**Section 2 of this bill provides that the amendatory provisions of this bill expire by limitation on June 30, 2013.**

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

**Section 1.** NRS 422.2705 is hereby amended to read as follows:

422.2705 1. The Department shall, to the extent authorized by federal law, contract with a common motor carrier, a contract motor carrier or a broker for the provision of transportation services to recipients of Medicaid ~~for recipients of services pursuant to the Children's Health Insurance Program~~ traveling to and returning from providers of services under the State Plan for Medicaid. ~~for the Children's Health Insurance Program.~~

2. *The Department may, to the extent authorized by federal law, contract with a common motor carrier, a contract motor carrier or a broker for the provision of transportation services to recipients of services pursuant to the Children's Health Insurance Program traveling to and*

*returning from providers of services under the Children's Health Insurance Program.*

3. The Director may adopt regulations concerning the qualifications of persons who may contract with the Department to provide transportation services pursuant to this section.

~~3-3~~ 4. The Director shall:

(a) Require each motor carrier that has contracted with the Department to provide transportation services pursuant to this section to submit proof to the Department of a liability insurance policy, certificate of insurance or surety which is substantially equivalent in form to and is in the same amount or in a greater amount than the policy, certificate or surety required by the Department of Motor Vehicles pursuant to NRS 706.291 for a similarly situated motor carrier; and

(b) Establish a program, with the assistance of the Nevada Transportation Authority of the Department of Business and Industry, to inspect the vehicles which are used to provide transportation services pursuant to this section to ensure that the vehicles and their operation are safe.

~~4-4~~ 5. As used in this section:

(a) "Broker" has the meaning ascribed to it in NRS 706.021.

(b) "Common motor carrier" has the meaning ascribed to it in NRS 706.036.

(c) "Contract motor carrier" has the meaning ascribed to it in NRS 706.051.

**Sec. 2.** This act becomes effective upon passage and approval ~~it~~ **and expires by limitation on June 30, 2013.**

Senator Horsford moved the adoption of the amendment.

Remarks by Senator Horsford.

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

This amendment adds a sunset provision for the provisions to expire June 30, 2013.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 265.

Bill read second time.

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

Amendment No. 800.

"SUMMARY—Revises provisions governing the rights of peace officers. (BDR 23-716)"

"AN ACT relating to peace officers; revising the circumstances under which a law enforcement agency is prohibited from suspending a peace officer without pay during an investigation; authorizing a representative of a peace officer to attend an interview with the peace officer under certain circumstances; requiring a law enforcement agency to revise a peace officer's

work schedule for attending certain hearings and administrative proceedings; prohibiting the use in a criminal proceeding of a statement or answer of a peace officer obtained during an investigation under certain circumstances; and providing other matters properly relating thereto."

**Legislative Counsel's Digest:**

Existing law authorizes a law enforcement agency to conduct an investigation of a peace officer in response to a complaint or allegation that the peace officer has engaged in activities which may result in punitive action. Existing law prohibits the law enforcement agency from suspending the peace officer without pay during the investigation until all investigations relating to the matter have concluded. (NRS 289.057) **Section 1** of this bill prohibits the law enforcement agency from suspending the peace officer without pay except as otherwise provided in a collective bargaining agreement.

Existing law requires a law enforcement agency to notify a peace officer not later than 48 hours before conducting any interrogation or hearing relating to an investigation of the peace officer. (NRS 289.060) **Section 1.5** of this bill imposes additional requirements by requiring the law enforcement agency to provide a written notice to any other peace officer the law enforcement agency believes has any knowledge of any fact relating to the complaint or allegation against the peace officer who is the subject of the investigation. The written notice must advise the peace officer that he or she must appear and be interviewed as a witness in connection with the investigation. **Section 1.5** also limits the use of certain evidence discovered during the course of an investigation or hearing and prohibits the use of certain statements or answers made by a peace officer in any subsequent criminal proceeding.

~~Finally, existing~~ **Existing** law **further** provides that, if a peace officer is the subject of an investigation of alleged misconduct, a law enforcement agency must interrogate the peace officer during his or her regular working hours, if practical, or compensate the peace officer for his or her time based on the peace officer's wages, if no charges arise from the interrogation. (NRS 289.060) **Section 1.5** of this bill deletes the requirement for the payment of compensation to the peace officer and instead requires the law enforcement agency to revise the peace officer's work schedule to allow any time that is required for the interrogation to be deemed a part of the peace officer's regular working hours. If the law enforcement agency does not interrogate the peace officer during his or her regular working hours and the peace officer receives a notice to appear for an interrogation at a time that he or she is off duty, **section 1.5** requires the peace officer to be compensated for appearing at the interrogation based on his or her wages and any other benefits he or she is entitled to receive. **Section 1.5 also applies these provisions to a peace officer who is interviewed as a witness in connection with an investigation.**

**Existing law authorizes a peace officer who is the subject of an investigation of alleged misconduct to have two representatives present during the interrogation and hearing concerning the investigation. Any such representative is required, except under certain circumstances, to keep all information he or she learns concerning the investigation confidential. (NRS 289.080) Section 1.7 of this bill authorizes a peace officer who is a witness in an investigation to have two representatives present during an interview conducted concerning the investigation. Section 1.7 also requires any such representative to keep all information he or she learns concerning the investigation confidential.**

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

**Section 1.** NRS 289.057 is hereby amended to read as follows:

289.057 1. An investigation of a peace officer may be conducted in response to a complaint or allegation that the peace officer has engaged in activities which could result in punitive action.

2. ~~{A}~~ *Except as otherwise provided in a collective bargaining agreement, a law enforcement agency shall not suspend a peace officer without pay during or pursuant to an investigation conducted pursuant to this section until all investigations relating to the matter have concluded.*

3. After the conclusion of the investigation:

(a) If the investigation causes a law enforcement agency to impose punitive action against the peace officer who was the subject of the investigation and the peace officer has received notice of the imposition of the punitive action, the peace officer or a representative authorized by the peace officer may, except as otherwise prohibited by federal or state law, review any administrative or investigative file maintained by the law enforcement agency relating to the investigation, including any recordings, notes, transcripts of interviews and documents.

(b) If, pursuant to a policy of a law enforcement agency or a labor agreement, the record of the investigation or the imposition of punitive action is subject to being removed from any administrative file relating to the peace officer maintained by the law enforcement agency, the law enforcement agency shall not, except as otherwise required by federal or state law, keep or make a record of the investigation or the imposition of punitive action after the record is required to be removed from the administrative file.

**Sec. 1.5.** NRS 289.060 is hereby amended to read as follows:

289.060 1. Except as otherwise provided in this subsection, a law enforcement agency shall, not later than 48 hours before any interrogation or hearing is held relating to an investigation conducted pursuant to NRS 289.057, provide *a* written notice to the peace officer ~~{A}~~ *who is the subject of the investigation. If the law enforcement agency believes that any other peace officer has any knowledge of any fact relating to the complaint or allegation against the peace officer who is the subject of the investigation, the law enforcement agency shall provide a written notice to*

*the peace officer advising the peace officer that he or she must appear and be interviewed as a witness in connection with the investigation. Any peace officer who serves as a witness during an interview must be allowed a reasonable opportunity to arrange for ~~fa representative chosen by the peace officer to attend the interview with the peace officer. Such a representative must not include the peace officer who is the subject of the investigation or any other witness who the law enforcement agency believes may have knowledge of any fact relating to the investigation.~~ **the presence and assistance of a representative authorized by NRS 289.080.** Any peace officer *specified in this subsection* may waive the notice required pursuant to this section.*

2. The notice *provided to the peace officer who is the subject of the investigation* must include:

- (a) A description of the nature of the investigation;
- (b) A summary of alleged misconduct of the peace officer ~~; *and any other peace officer whom the law enforcement agency is investigating in connection with the complaint or allegation.*~~
- (c) The date, time and place of the interrogation or hearing;
- (d) The name and rank of the officer in charge of the investigation and the officers who will conduct any interrogation ~~;~~ **or hearing;**
- (e) The name of any other person who will be present at any interrogation or hearing; and
- (f) A statement setting forth the provisions of subsection 1 of NRS 289.080.

3. The law enforcement agency shall:

(a) ~~Interrogate~~ **Interview or interrogation** the peace officer during the peace officer's regular working hours, if reasonably practicable, or ~~compensate the peace officer for that time based on the peace officer's regular wages if no charges arise from the interrogation.~~ ***revise the peace officer's work schedule to allow any time that is required for the interview or interrogation ~~for for any hearing~~ to be deemed a part of the peace officer's regular working hours. Any such time must be calculated based on the peace officer's regular wages for his or her regularly scheduled working hours. If the peace officer is not interviewed or interrogated during his or her regular working hours or if his or her work schedule is not revised pursuant to this paragraph and the law enforcement agency notifies the peace officer to appear at a time when he or she is off duty, the peace officer must be compensated for appearing at the interview or interrogation based on the wages and any other benefits the peace officer is entitled to receive for appearing at the time set forth in the notice.***

(b) Immediately before ~~the~~ **any** interrogation or hearing begins, inform the peace officer **who is the subject of the investigation** orally on the record that:

- (1) The peace officer is required to provide a statement and answer questions related to the peace officer's alleged misconduct; and



(2) If the peace officer fails to provide such a statement or to answer any such questions, the agency may charge the peace officer with insubordination.

(c) Limit the scope of the questions during the interrogation or hearing to the alleged misconduct of the peace officer ~~+~~ ***who is the subject of the investigation. If any evidence is discovered during the course of an investigation or hearing which establishes or may establish any other possible misconduct engaged in by the peace officer, the law enforcement agency shall notify the peace officer of that fact and shall not conduct any further interrogation of the peace officer concerning the possible misconduct until a subsequent notice of that evidence and possible misconduct is provided to the peace officer pursuant to this chapter.***

(d) Allow the peace officer ***who is the subject of the investigation or who is a witness in the investigation*** to explain an answer or refute a negative implication which results from questioning during an ***interview***, interrogation or hearing.

***4. If a peace officer provides a statement or answers a question relating to the alleged misconduct of a peace officer who is the subject of an investigation pursuant to NRS 289.057 after the peace officer is informed that failing to provide the statement or answer may result in punitive action against him or her, the statement or answer must not be used against the peace officer who provided the statement or answer in any subsequent criminal proceeding.***

***Sec. 1.7. NRS 289.080 is hereby amended to read as follows:***

289.080 1. Except as otherwise provided in subsection ~~3~~ ***4***, a peace officer ***who is the subject of an investigation conducted pursuant to NRS 289.057*** may upon request have two representatives of the peace officer's choosing present with the peace officer during any phase of an interrogation or hearing relating to ~~+~~ ***the investigation, conducted pursuant to NRS 289.057,*** including, without limitation, a lawyer, a representative of a labor union or another peace officer.

***2. Except as otherwise provided in subsection 4, a peace officer who is a witness in an investigation conducted pursuant to NRS 289.057 may upon request have two representatives of the peace officer's choosing present with the peace officer during an interview relating to the investigation, including, without limitation, a lawyer, a representative of a labor union or another peace officer. The presence of the second representative must not create an undue delay in either the scheduling or conducting of the interview.***

***3.*** A representative of a peace officer must assist the peace officer during the ***interview***, interrogation or hearing. The law enforcement agency conducting the ***interview***, interrogation or hearing shall allow a representative of the peace officer to explain an answer provided by the peace officer or refute a negative implication which results from questioning of the peace

officer but may require such explanation to be provided after the agency has concluded its initial questioning of the peace officer.

~~13~~ 4. A representative must not otherwise be connected to, or the subject of, the same investigation.

~~14~~ 5. Any information that a representative obtains from the peace officer *who is a witness* concerning the investigation is confidential and must not be disclosed.

6. *Any information that a representative obtains from the peace officer who is the subject of the investigation is confidential and must not be disclosed* except upon the:

- (a) Request of the peace officer; or
- (b) Lawful order of a court of competent jurisdiction.

↪ A law enforcement agency shall not take punitive action against a representative for the representative's failure or refusal to disclose such information.

~~15~~ 7. The peace officer, any representative of the peace officer or the law enforcement agency may make a stenographic, digital or magnetic record of the *interview*, interrogation or hearing. If the agency records the proceedings, the agency shall at the peace officer's request and expense provide a copy of the:

- (a) Stenographic transcript of the proceedings; or
- (b) Recording on the digital or magnetic tape.

~~16~~ 8. After the conclusion of the investigation, the peace officer who was the subject of the investigation or any representative of the peace officer may, if the peace officer appeals a recommendation to impose punitive action, review and copy the entire file concerning the internal investigation, including, without limitation, any recordings, notes, transcripts of interviews and documents contained in the file.

**Sec. 2.** (Deleted by amendment.)

**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. 800 to Assembly Bill No. 265 clarifies that a peace officer serving as a witness during an investigative interview must be allowed a reasonable opportunity to arrange for the presence and assistance of a representative.

It clarifies what is to be included in a notice for an investigative hearing. The amendment deletes "or for any hearing" as it relates to the circumstances under which a peace officer's work schedule may be revised for purposes of the investigative interview or interrogation.

It clarifies that a peace officer witness may, upon request, have up to two representatives of the peace officer's choosing at the interview and declares that any information a representative obtains from the peace officer who is a witness in an investigation is confidential and must not be disclosed; and adds the term "interview" throughout the bill to complement the terms "interrogation or hearing" and to codify what typically takes place in the administrative investigation process.

Amendment adopted.

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

Assembly Bill No. 504.

Bill read second time.

The following amendment was proposed by the Committee on Revenue:

Amendment No. 738.

"SUMMARY—Revises provisions governing delinquent taxes. (BDR 32-922)"

"AN ACT relating to taxation; requiring the Department of Taxation to provide an annual report to the Nevada Tax Commission of delinquent taxes owed to the Department; requiring the Nevada Tax Commission to request that the State Board of Examiners designate certain delinquent taxes owed to the Department as bad debt; **revising the interest rate for the payment of certain delinquent taxes**; and providing other matters properly relating thereto."

**Legislative Counsel's Digest:**

~~This~~ **Section 1** of this bill requires the Department of Taxation to prepare and furnish an annual report to the Nevada Tax Commission that shows debts to the Department incurred by delinquent taxpayers during the immediately preceding year. ~~This bill~~ **Section 1** also requires the Department to include the amount of any delinquent taxes that the Department determines is impossible or impractical to collect. ~~This bill~~ **Section 1** further requires the Nevada Tax Commission to request that the State Board of Examiners designate any such amount of delinquent taxes as bad debt.

**Sections 2 and 6 of this bill reduce the interest rate on the overpayment of certain taxes from 0.5 percent per month to 0.25 percent per month. Sections 3, 4 and 9 of this bill reduce the interest rate on late payments of certain taxes from 1 percent per month to 0.75 percent per month. Sections 5, 7, 8 and 10-12 of this bill reduce the interest rate on the overpayment of certain taxes and certain illegally collected taxes from 6 percent per annum to 3 percent per annum.**

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

**Section 1.** Chapter 360 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. On or before January 15 of each year, the Department shall prepare and furnish to the Nevada Tax Commission a report that shows all money owed to the Department for delinquent payments of any tax administered by the Department during the preceding year.*

*2. The Department shall include in the report prepared to pursuant to subsection 1 the amount of any delinquent taxes that the Department determines is impossible or impractical to collect.*

*3. If the Department determines that it is impossible or impractical to collect any amount of delinquent taxes, the Nevada Tax Commission shall*

*request that the State Board of Examiners designate such amount as a bad debt. The State Board of Examiners, by an affirmative vote of the majority of the members of the Board, may designate the delinquent taxes as a bad debt if the Board is satisfied that the collection of the delinquent taxes is impossible or impractical. If the amount of the delinquent taxes is not more than \$50, the State Board of Examiners may delegate to its Clerk the authority to designate delinquent taxes as a bad debt. The Nevada Tax Commission may appeal to the State Board of Examiners a denial by the Clerk of a request to designate delinquent taxes as a bad debt.*

*4. Upon the designation of delinquent taxes as a bad debt pursuant to this section, the State Board of Examiners or its Clerk shall immediately notify the State Controller thereof. Upon receiving the notification, the State Controller shall direct the removal of the bad debt from the books of account of the State of Nevada. A bad debt that is removed pursuant to this section remains a legal and binding obligation owed by the debtor to the State of Nevada.*

*5. The State Controller shall keep a master file of all delinquent taxes that are designated as bad debts pursuant to this section. For each such debt, the State Controller shall record the name of the debtor, the amount of the debt, the date on which the debt was incurred and the date on which it was removed from the records and books of account of the State of Nevada, and any other information concerning the debt that the State Controller determines is necessary.*

**Sec. 2. NRS 360.2937 is hereby amended to read as follows:**

360.2937 1. Except as otherwise provided in this section, NRS 360.320 or any other specific statute, and notwithstanding the provisions of NRS 360.2935, interest must be paid upon an overpayment of any tax provided for in chapter 362, 363A, 363B, 369, 370, 372, 374, 377 or 377A of NRS, any fee provided for in NRS 444A.090 or 482.313, or any assessment provided for in NRS 585.497, at the rate of ~~10.51~~ **0.25** percent per month from the last day of the calendar month following the period for which the overpayment was made.

2. No refund or credit may be made of any interest imposed on the person making the overpayment with respect to the amount being refunded or credited.

3. The interest must be paid:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if the person has not already filed a claim, is notified by the Department that a claim may be filed or the date upon which the claim is certified to the State Board of Examiners, whichever is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or the amount against which the credit is applied.

**Sec. 3. NRS 360.295 is hereby amended to read as follows:**

360.295 Except as otherwise specifically provided in this title, if the Department grants an extension of the time for paying any amount required to be paid under this title, a person who pays the amount within the period for which the extension is granted shall pay, in addition to the amount owing, interest at the rate of ~~HH~~ 0.75 percent per month from the date the amount would have been due without the extension until the date of payment.

**Sec. 4. NRS 360.417 is hereby amended to read as follows:**

360.417 Except as otherwise provided in NRS 360.232 and 360.320, and unless a different penalty or rate of interest is specifically provided by statute, any person who fails to pay any tax provided for in chapter 362, 363A, 363B, 369, 370, 372, 374, 377, 377A, 444A or 585 of NRS, or any fee provided for in NRS 482.313, and any person or governmental entity that fails to pay any fee provided for in NRS 360.787, to the State or a county within the time required, shall pay a penalty of not more than 10 percent of the amount of the tax or fee which is owed, as determined by the Department, in addition to the tax or fee, plus interest at the rate of ~~HH~~ 0.75 percent per month, or fraction of a month, from the last day of the month following the period for which the amount or any portion of the amount should have been reported until the date of payment. The amount of any penalty imposed must be based on a graduated schedule adopted by the Nevada Tax Commission which takes into consideration the length of time the tax or fee remained unpaid.

**Sec. 5. NRS 361.420 is hereby amended to read as follows:**

361.420 1. Any property owner whose taxes are in excess of the amount which the owner claims justly to be due may pay each installment of taxes as it becomes due under protest in writing. The protest must be in the form of a separate, signed statement from the property owner and filed with the tax receiver at the time of the payment of the installment of taxes.

2. The property owner, having protested the payment of taxes as provided in subsection 1 and having been denied relief by the State Board of Equalization, may commence a suit in any court of competent jurisdiction in the State of Nevada against the State and county in which the taxes were paid, and, in a proper case, both the Nevada Tax Commission and the Department may be joined as a defendant for a recovery of the difference between the amount of taxes paid and the amount which the owner claims justly to be due, and the owner may complain upon any of the grounds contained in subsection 4.

3. Every action commenced under the provisions of this section must be commenced within 3 months after the date of the payment of the last installment of taxes, and if not so commenced is forever barred. If the tax complained of is paid in full and under the written protest provided for in this section, at the time of the payment of the first installment of taxes, suit for the recovery of the difference between the amount paid and the amount claimed to be justly due must be commenced within 3 months after the date of the full payment of the tax or the issuance of the decision of the State

Board of Equalization denying relief, whichever occurs later, and if not so commenced is forever barred.

4. In any suit brought under the provisions of this section, the person assessed may complain or defend upon any of the following grounds:

- (a) That the taxes have been paid before the suit;
- (b) That the property is exempt from taxation under the provisions of the revenue or tax laws of the State, specifying in detail the claim of exemption;
- (c) That the person assessed was not the owner and had no right, title or interest in the property assessed at the time of assessment;
- (d) That the property is situate in and has been assessed in another county, and the taxes thereon paid;
- (e) That there was fraud in the assessment or that the assessment is out of proportion to and above the taxable cash value of the property assessed;
- (f) That the assessment is out of proportion to and above the valuation fixed by the Nevada Tax Commission for the year in which the taxes were levied and the property assessed; or
- (g) That the assessment complained of is discriminatory in that it is not in accordance with a uniform and equal rate of assessment and taxation, but is at a higher rate of the taxable value of the property so assessed than that at which the other property in the State is assessed.

5. In a suit based upon any one of the grounds mentioned in paragraphs (e), (f) and (g) of subsection 4, the court shall conduct the trial without a jury and confine its review to the record before the State Board of Equalization. Where procedural irregularities by the Board are alleged and are not shown in the record, the court may take evidence respecting the allegation and, upon the request of either party, shall hear oral argument and receive written briefs on the matter.

6. In all cases mentioned in this section where the complaint is based upon any grounds mentioned in subsection 4, the entire assessment must not be declared void but is void only as to the excess in valuation.

7. In any judgment recovered by the taxpayer under this section, the court may provide for interest thereon not to exceed ~~16~~ 3 percent per annum from and after the date of payment of the tax complained of.

**Sec. 6. NRS 361.486 is hereby amended to read as follows:**

361.486 1. Except as otherwise provided in subsection 2 and NRS 361.485, interest must be paid on an overpayment of the taxes imposed by this chapter at the rate of ~~10.5~~ 0.25 percent per month, or fraction thereof, from the last day of the calendar month in which the overpayment was made to the last day of the calendar month in which a refund is made.

2. No interest is allowed:

- (a) On a refund of any penalty or interest paid by a taxpayer; or
- (b) If the ex officio tax receiver determines that the overpayment was made intentionally or by reason of carelessness.

**Sec. 7. NRS 363A.210 is hereby amended to read as follows:**

363A.210 In any judgment, interest must be allowed at the rate of ~~16~~3 percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment, or to a date preceding the date of the refund warrant by not more than 30 days. The date must be determined by the Department.

**Sec. 8. NRS 363B.200 is hereby amended to read as follows:**

363B.200 In any judgment, interest must be allowed at the rate of ~~16~~3 percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment, or to a date preceding the date of the refund warrant by not more than 30 days. The date must be determined by the Department.

**Sec. 9. NRS 368A.230 is hereby amended to read as follows:**

368A.230 Upon written application made before the date on which payment must be made, the Board or the Department may, for good cause, extend by 30 days the time within which a taxpayer is required to pay the tax imposed by this chapter. If the tax is paid during the period of extension, no penalty or late charge may be imposed for failure to pay at the time required, but the taxpayer shall pay interest at the rate of ~~11~~0.75 percent per month from the date on which the amount would have been due without the extension until the date of payment, unless otherwise provided in NRS 360.232 or 360.320.

**Sec. 10. NRS 368A.310 is hereby amended to read as follows:**

368A.310 In any judgment, interest must be allowed at the rate of ~~16~~3 percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment, or to a date preceding the date of the refund warrant by not more than 30 days. The date must be determined by the Board or the Department.

**Sec. 11. NRS 372.695 is hereby amended to read as follows:**

372.695 In any judgment, interest must be allowed at the rate of ~~16~~3 percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment, or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the Department.

**Sec. 12. NRS 374.700 is hereby amended to read as follows:**

374.700 In any judgment, interest shall be allowed at the rate of ~~16~~3 percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment, or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the Department.

~~Sec. 21~~ **Sec. 13.** This act becomes effective on July 1, 2011.

Senator Leslie moved the adoption of the amendment.

Remarks by Senator Leslie.

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

This amendment was brought to the Committee on behalf of the Department of Taxation.

Amendment No. 738 to Assembly Bill No. 504 lowers the interest rate that is paid to the State by taxpayers for any late payment or underpayment of taxes administered by the Department of Taxation. The amendment lowers the interest rate paid to the State from 1 percent per month or 12 percent annually, to 0.75 percent per month or 9 percent annually.

The amendment also lowers the interest rate that is paid by the State to taxpayers for any overpayment or refund of taxes administered by the Department of Taxation. The amendment lowers the interest rate paid to taxpayers from 0.5 percent per month or 6 percent annually to 0.25 percent per month or 3 percent annually.

The lower interest rates would apply prospectively to both new and existing deficiencies or refund claims.

This adjustment was made in order to better reflect current economic conditions.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senator Horsford moved that the Senate recess until 12 p.m.

Motion carried.

Senate in recess at 10:51 a.m.

#### SENATE IN SESSION

At 12:11 p.m.

President Krolicki presiding.

Quorum present.

#### REPORTS OF COMMITTEES

*Mr. President:*

Your Select Committee on Economic Growth and Employment, to which was referred Assembly Bill No. 202, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

RUBEN J. KIHUEN, *Chair*

#### MOTIONS, RESOLUTIONS AND NOTICES

Senator Wiener moved that Senate Bill No. 208; Assembly Bills Nos. 199, 240, 301, 360, be taken from the General File and placed on the General File for the next legislative day.

Motion carried.

Senator Wiener moved that Senate Joint Resolution No. 15 be taken from its position on the General File and placed at the bottom of the General File.

Motion carried.

Senator Wiener moved that Assembly Bills Nos. 223, 260, 291, 299, 410, be taken from the General File and placed on the Secretary's desk.

Motion carried.

#### GENERAL FILE AND THIRD READING

Senate Bill No. 231.

Bill read third time.



Remarks by Senators Lee and Leslie.

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

SENATOR LEE:

Senate Bill No. 231 authorizes a person who holds a concealed weapon permit to carry a concealed firearm while on the property of the Nevada System of Higher Education (NSHE) except while attending any event held at a sporting venue with a seating capacity of 1,000 or more that is located on NSHE property. The Board of Regents must establish policies and procedures regarding how to implement this restriction in relation to parking and gathering for such dormitories or residence halls located on NSHE property. Finally, Senate Bill No. 231 authorizes a county sheriff and the police department for NSHE to provide to concealed weapon permit holders information concerning instructors and organizations that offer courses in firearm safety which focus on issues relating to firearm safety in an educational environment.

This bill will go to the Assembly. There are some modifications that might take place on this bill.

SENATOR LESLIE:

Thank you, Mr. President. This bill prevents the System of Higher Education from setting policies concerning concealed weapons on campus. Currently, if you want to carry a concealed weapon and you have a good reason, you can go to the System, and you can request the ability to do so. It may or may not be granted. That policy is currently in place. This bill would force NSHE to revoke all policies that monitor the presence of concealed weapons on its campuses.

The main argument in favor of the bill seems to be that the bill is necessary for public safety. However, numerous studies of the issue of gun safety on campus have found just the opposite, including the official report of the Virginia Tech inquiry following the tragic shooting there in 2007. That report suggested the best way to ensure safety on campus is to reduce the number, or prevent entirely, the presence of unauthorized guns on campus. The Brady Center, which researches gun safety, has also produced a lengthy report on campus gun safety and found such measures as Senate Bill No. 231 increase the risk of a violent event on campus.

Closer to home, our own criminologists at the University of Nevada Las Vegas (UNLV) have analyzed the pros and cons of this bill in an empirical fashion and found the arguments in favor of this bill do not hold up.

Assumption number 1 is that more guns leads to less crime. There is no sound empirical evidence to support this claim.

Assumption number 2 is that violent offenders are rational and will be deterred by armed students. The typical mass murderer in school shootings is often so mentally impaired that he is unable to make rational decisions. Many are already prepared to die for their acts, so the supposed deterrent of armed students is of no use. In addition, the ability of a non-professional to use a firearm to terminate an attack is severely limited by the spontaneity, unpredictability, and gravity of violent situations.

Assumption number 3 is that the benefits of arming students exceed the costs. Science shows there are collateral consequences to increased gun presence on campus including, an increase in deaths and serious injuries due to accidental discharge of weapons or overreaction to violent situations in public places. There is an increased risk of death and injury to fellow students and faculty from "friendly fire" during the state of chaos of a violent attack in a public place.

Assumption number 4 is even more basic. College campuses are dangerous places. This is not true. College students are about 20 times more likely to be victimized by a violent crime when they are away from campus than when they are on campus. Nearly 94 percent of violent incidents involving college students occur away from campus.

The criminologists concluded that there are many scientifically based "best practices," regarding crime prevention that would be far more effective if we are trying to make schools safer from violence.

In short, there is simply no need for this bill, but there is much danger in it. I urge you to vote "no."

SENATOR LEE:

The average age of a person in higher education is 24 years old. You cannot have a concealed weapon permit unless you are 21 years old, a non-felon, and you have experience with a gun and you have been trained and have qualified to have it. Then you have to requalify every five years.

The interesting thing about the first point the Senator brought up is that only one person at the campus at UNR has ever been authorized to carry a concealed weapon. She was Amanda Collins, who was raped 100 yards from the police substation on campus. Predators realize these are defenseless-victim zones. There is nothing there that can allow these students, who leave class late at night, to have a sense of security. Even though a student might not carry or have a concealed weapon, this bill would send a message to people who victimize in this area that someone could have a firearm to protect themselves. A female, leaving a class at night, may avail themselves of the program where you can call a security officer to come to your class and take you to edge of the campus property. I do not believe they escort you to your car if it is off site. Sometimes a student might have to wait 20 minutes for that assistance.

There is another program in the Higher Education System that teaches you how to protect yourself when there is a shooter on campus. You are supposed to immediately lock the door, hide in the farthest corner with everyone lying on each other while someone calls 911. We have better systems than that to protect ourselves. This bill does not allow you as a concealed weapon holder to become part of the police force on campus, but it does allow you the chance to protect yourself from an aggressor, a rapist or a killer who might come towards you.

Most people with a concealed weapon permit carry the gun for the first 30 days, then after that they store it in their car, then they worry someone might steal it, so they store it at home in a safe. It is at those times when a person feels a need to be protected, such as while taking a late class at the University, that this will allow a person some personal protection. I ask each member here to consider the fact that if it was late at night and you were walking in an unlit area, would you rather have the safety of this piece of armament or just your hands as a defense? I ask you to consider this as you vote.

Roll call on Senate Bill No. 231:

YEAS—15.

NAYS—Breedon, Horsford, Kihuen, Leslie, Schneider, Wiener—6.

Senate Bill No. 231 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 98.

Bill read third time.

Roll call on Assembly Bill No. 98:

YEAS—21.

NAYS—None.

Assembly Bill No. 98 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 198.

Bill read third time.

Roll call on Assembly Bill No. 198:

YEAS—21.

NAYS—None.

Assembly Bill No. 198 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 304.

Bill read third time.

Roll call on Assembly Bill No. 304:

YEAS—14.

NAYS—Brower, Cegavske, Gustavson, Halseth, McGinness, Roberson, Settelmeyer—7.

Assembly Bill No. 304 having received a two-thirds majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

#### MOTIONS, RESOLUTIONS AND NOTICES

Senator Horsford moved that Senate Joint Resolution No. 15; Assembly Bills Nos. 308, 393, 398, 419, 500, 501, 519, 521, 545, be taken from the General File and placed on the General File on the next agenda.

Motion carried.

Senator Horsford moved that the Senate recess until 3 p.m.

Motion carried.

Senate in recess at 12:28 p.m.

#### SENATE IN SESSION

At 3:59 p.m.

President Krolicki presiding.

Quorum present.

#### MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, May 28, 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. 37, 97, 152, 182, 201, 226, 277, 317, 420, 444, 450, 481; Assembly Bills Nos. 570, 573.

Also, I have the honor to inform your honorable body that the Assembly amended, and on this day passed, as amended, Senate Bill No. 128, Amendment No. 660; Senate Bill No. 190, Amendment No. 721; Senate Bill No. 210, Amendment No. 702; Senate Bill No. 221, Amendment No. 743; Senate Bill No. 234, Amendment No. 669; Senate Bill No. 237, Amendment No. 638; Senate Bill No. 246, Amendment No. 703; Senate Bill No. 273, Amendment No. 718; Senate Bill No. 300, Amendment No. 712; Senate Bill No. 323, Amendment No. 672; Senate Bill No. 339, Amendment No. 711; Senate Bill No. 358, Amendment No. 642; Senate Joint Resolution No. 3, Amendment No. 627, and respectfully requests your honorable body to concur in said amendments.

MATTHEW BAKER

*Assistant Chief Clerk of the Assembly*

#### MOTIONS, RESOLUTIONS AND NOTICES

Senator Horsford moved that Senate Bill No. 207 be placed on the Second Reading File.

Motion carried.

## INTRODUCTION, FIRST READING AND REFERENCE

Assembly Bill No. 570.

Senator Wiener moved that the bill be referred to the Committee on Legislative Operations and Elections.

Motion carried.

Assembly Bill No. 573.

Senator Wiener moved that the bill be referred to the Committee on Legislative Operations and Elections.

Motion carried.

## GENERAL FILE AND THIRD READING

Assembly Bill No. 308.

Bill read third time.

Roll call on Assembly Bill No. 308:

YEAS—21.

NAYS—None.

Assembly Bill No. 308 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 393.

Bill read third time.

Remarks by Senator Denis.

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

Assembly Bill No. 393 requires an applicant for renewal of a license in education to undergo a criminal background investigation, which includes the processing of the applicant's fingerprints by the Central Repository for Nevada Records of Criminal History and the Federal Bureau of Investigation. The Commission on Professional Standards in Education must set the fees for renewal of a license to include the fees for processing the fingerprints. The measure also requires that school district boards of trustees and charter school governing bodies adopt policies for self-reporting by their licensed educators concerning arrests for, or convictions of certain crimes. The policy must include: the crimes that must be reported; the person to whom the report must be made; and the time period within which the report must be made.

We heard this measure in Committee. We offered an amendment. We found out that none of the school districts that we know of have policies for self reporting. If a teacher is arrested, they have no way to self report. This will help in that it also requires they do the fingerprints more often. I urge your support.

Roll call on Assembly Bill No. 393:

YEAS—21.

NAYS—None.

Assembly Bill No. 393 having received a two-thirds majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 398.

Bill read third time.

Roll call on Assembly Bill No. 398:

YEAS—21.

NAYS—None.

Assembly Bill No. 398 having received a constitutional majority,  
Mr. President declared it passed, as amended.  
Bill ordered transmitted to the Assembly.

Assembly Bill No. 419.

Bill read third time.

Roll call on Assembly Bill No. 419:

YEAS—21.

NAYS—None.

Assembly Bill No. 419 having received a constitutional majority,  
Mr. President declared it passed, as amended.  
Bill ordered transmitted to the Assembly.

Assembly Bill No. 500.

Bill read third time.

Roll call on Assembly Bill No. 500:

YEAS—21.

NAYS—None.

Assembly Bill No. 500 having received a constitutional majority,  
Mr. President declared it passed.  
Bill ordered transmitted to the Assembly.

Assembly Bill No. 501.

Bill read third time.

Roll call on Assembly Bill No. 501:

YEAS—11.

NAYS—Brower, Cegavske, Gustavson, Halseth, Hardy, Kieckhefer, McGinness, Rhoads,  
Roberson, Settlemeyer—10.

Assembly Bill No. 501 having received a constitutional majority,  
Mr. President declared it passed, as amended.  
Bill ordered transmitted to the Assembly.

Assembly Bill No. 519.

Bill read third time.

Roll call on Assembly Bill No. 519:

YEAS—21.

NAYS—None.

Assembly Bill No. 519 having received a constitutional majority,  
Mr. President declared it passed.  
Bill ordered transmitted to the Assembly.

Assembly Bill No. 521.

Bill read third time.

Roll call on Assembly Bill No. 521:

YEAS—21.

NAYS—None.

Assembly Bill No. 521 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

#### MOTIONS, RESOLUTIONS AND NOTICES

Senator Rhoads moved that Senate Joint Resolution No. 15 be taken from the General File and placed on the General File on the next agenda.

Motion carried.

#### GENERAL FILE AND THIRD READING

Assembly Bill No. 545.

Bill read third time.

Roll call on Assembly Bill No. 545:

YEAS—20.

NAYS—None.

NOT VOTING—Halseth.

Assembly Bill No. 545 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

#### UNFINISHED BUSINESS

##### RECEDE FROM SENATE AMENDMENTS

Senator Wiener moved that the Senate do not recede from its action on Assembly Bill No. 282, that a conference be requested, and that Mr. President appoint a Conference Committee consisting of three members to meet with a like committee of the Assembly.

Motion carried.

Bill ordered transmitted to the Assembly.

#### APPOINTMENT OF CONFERENCE COMMITTEES

President Krolicki appointed Senators Kihuen, McGinness and Copening as a Conference Committee to meet with a like committee of the Assembly for the further consideration of Assembly Bill No. 282.

#### SECOND READING AND AMENDMENT

Senate Bill No. 207.

Bill read second time.

The following amendment was proposed by the Committee on Finance:

Amendment No. 814.

"SUMMARY—Authorizes the imposition of an administrative penalty against an employer ~~who misclassifies an employee as an independent contractor.~~ **under certain circumstances.** (BDR 53-165)"

"AN ACT relating to employment; authorizing the imposition of an administrative penalty against an employer who misclassifies an employee as an independent contractor ~~or~~ **or otherwise fails to properly classify a**

person as an employee of the employer under certain circumstances; and providing other matters properly relating thereto."

**Legislative Counsel's Digest:**

Under existing law, the Labor Commissioner is required to enforce the labor laws and regulations of the State of Nevada. In carrying out that requirement, the Labor Commissioner may take any appropriate action against a person who violates those laws or regulations. Before enforcing an administrative penalty against the person, the Labor Commissioner is required to provide the person with notice and an opportunity for a hearing. (NRS 607.160) ~~¶ This~~ **Section 1 of this** bill confers upon the Labor Commissioner the authority to impose an administrative penalty against an employer who ~~¶, regardless of the employer's intent,~~ misclassifies an employee as an independent contractor ~~¶. This bill~~ **or otherwise fails to properly classify a person as an employee of the employer. Section 1** sets forth the required amount of any administrative penalty imposed by the Labor Commissioner against the employer and, if the violation is a third or subsequent offense, requires the Secretary of State to revoke or suspend the state business license of the employer for not more than 3 years as determined by the Labor Commissioner. ~~¶ This bill~~ **Section 1 also** authorizes the Labor Commissioner to impose the administrative penalty against the employer if the employer fails to prove to the satisfaction of the Labor Commissioner that the employee is not misclassified as an independent contractor ~~¶, or the employer did not otherwise fail to properly classify the person as an employee of the employer.~~

**Under existing law, an employer is required to post a notice upon his or her premises identifying the employer's industrial insurer and setting forth certain other information concerning the employer. (NRS 616A.490) Section 2 of this bill requires the employer to include in the notice the definitions of the terms "employee" and "independent contractor."**

**Section 3 of this bill subjects a person to liability in a civil action brought by the Attorney General if the person advises an employer or an employee, officer or agent of an employer to misrepresent the classification of an employee of the employer. Section 3 also subjects the person to liability for an amount that is equal to three times the total amount of any reasonable expenses incurred by this State in enforcing the provisions of that section against the person.**

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

**Section 1.** Chapter 613 of NRS is hereby amended by adding thereto a new section to read as follows:

**1. *In addition to any other remedy or penalty, the Labor Commissioner may impose an administrative penalty against an employer who ~~¶, regardless of the intent of the employer,~~ misclassifies an employee of the employer as an independent contractor ~~¶, or otherwise fails to properly~~***

classify a person as an employee of the employer. If imposed, the administrative penalty must be collected in the following amounts as determined by the Labor Commissioner:

(a) For a first offense ~~f, at~~ :

(1) At least \$250 but less than \$1,000 for each employee or person who is misclassified unintentionally or is otherwise not properly classified unintentionally.

(2) At least \$5,000 but less than \$15,000 for each employee or person who is misclassified ~~f~~ willfully or is otherwise not properly classified willfully.

(b) For a second offense, at least \$15,000 but less than \$25,000 for each employee or person misclassified ~~f~~ or otherwise not properly classified.

(c) For a third or subsequent offense, at least \$25,000 for each employee or person misclassified ~~f~~ or otherwise not properly classified.

2. In addition to imposing an administrative penalty against an employer pursuant to paragraph (c) of subsection 1, the Labor Commissioner may submit a notice to the Secretary of State requiring the revocation or suspension of the state business license, if any, issued to the employer pursuant to chapter 76 of NRS. The Labor Commissioner shall provide a copy of the notice to the employer. If a state business license is issued to the employer, the Secretary of State shall, as soon as practicable after receiving the notice, revoke or suspend the state business license for not more than 3 years as specified in the notice.

3. Before the Labor Commissioner may enforce an administrative penalty against an employer pursuant to this section, the Labor Commissioner must provide the employer with notice and an opportunity for a hearing as set forth in NRS 607.207. The Labor Commissioner may impose the administrative penalty against the employer if the employer, during any such hearing, fails to prove to the satisfaction of the Labor Commissioner that ~~the~~ :

(a) The employee is not misclassified as an independent contractor ~~f~~ ;  
or

(b) The employer did not otherwise fail to properly classify the person as an employee of the employer.

↳ as applicable.

4. As used in this section:

(a) "Employee" has the meaning ascribed to it in NRS 608.010.

(b) "Employer" has the meaning ascribed to it in NRS 608.011.

(c) ~~A person is an "independent"~~ "Independent contractor" ~~if~~

~~(1) The person performs services for wages on behalf of an employer;~~

~~(2) The person has been and will continue to be free from control or direction by the employer over the performance of the services, both under a contract of service and in fact;~~



~~(3) The service is either outside the usual course of the employer's business or the service is performed outside of all the places of business of the employer for whom the service is performed; and~~

~~(4) The service is performed in the course of an independently established trade, occupation, profession or business in which the person is customarily engaged and which is of the same nature as that involved in the contract of service.] **has the meaning ascribed to it in NRS 616A.255.**~~

**Sec. 2. NRS 616A.490 is hereby amended to read as follows:**

616A.490 **1.** Every employer shall post a notice upon his or her premises in a conspicuous place identifying the employer's industrial insurer. The notice must include the insurer's name, business address and telephone number and the name, business address and telephone number of its nearest adjuster in this State. The employer shall at all times maintain the notice provided for the information of his or her employees.

**2. In addition to the provisions of subsection 1, each notice posted pursuant to that subsection must prominently set forth the definition of "employee," as defined in NRS 616A.105, and the definition of "independent contractor," as defined in NRS 616A.255.**

**Sec. 3. Chapter 616D of NRS is hereby amended by adding thereto a new section to read as follows:**

**1. A person who, for money or other valuable consideration, knowingly advises an employer or any employee, officer or agent of an employer to misrepresent the classification or duties of an employee of the employer, including, without limitation, misrepresenting that the employee is an independent contractor, is liable in a civil action commenced by the Attorney General for:**

**(a) Not more than \$5,000 for the first occurrence;**

**(b) Not more than \$15,000 for the second occurrence; and**

**(c) Not more than \$25,000 for the third or any subsequent occurrence.**

**2. In addition to any amount imposed pursuant to subsection 1, in any civil action against a person specified in that subsection, the person is liable for an amount that is equal to three times the total amount of any reasonable expenses incurred by this State in enforcing the provisions of this section against the person.**

**3. Any money collected pursuant to this section must be used to pay the salaries and other expenses of the Fraud Control Unit for Industrial Insurance established pursuant to NRS 228.420. Any money remaining at the end of any fiscal year does not revert to the State General Fund.**

Senator Horsford moved the adoption of the amendment.

Remarks by Senator Horsford.

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

Senate Bill No. 207, as amended, revises Chapter 613 of *Nevada Revised Statutes* and gives the Labor Commissioner the authority to impose an administrative penalty against an employer who misclassifies an employee as an independent contractor or misclassifies a person as an

employee of the employer. This bill requires the Secretary of State to suspend or revoke the business license of the employer on the third or subsequent infraction of this law.

This bill also requires the employer to post a notice upon his or her premises to include the definitions of the terms "employee" and "independent contractor." Finally, the bill subjects a person to liability in a civil action brought by the Attorney General if the person advises an employer or an employee, officer or agent of an employer to misrepresent the classification of an employee of the employer. This bill becomes effective on October 1, 2011.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senator Horsford moved that the Senate recess until 6 p.m.

Motion carried.

Senate in recess at 4:17 p.m.

#### SENATE IN SESSION

At 7:43 p.m.

President Krolicki presiding.

Quorum present.

#### REPORTS OF COMMITTEES

*Mr. President:*

Your Committee on Government Affairs, to which were referred Assembly Bills Nos. 376, 413, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

JOHN J. LEE, *Chair*

*Mr. President:*

Your Committee on Judiciary, to which was referred Assembly Bill No. 273, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

VALERIE WIENER, *Chair*

#### MOTIONS, RESOLUTIONS AND NOTICES

Senator Wiener moved that all necessary rules be suspended, and that Assembly Bill No. 273 just reported out of committee be placed on Second Reading for this legislative day.

Motion carried unanimously.

Senator Lee moved that all necessary rules be suspended, and that Assembly Bill No. 376 just reported out of committee be placed on Second Reading for this legislative day.

Motion carried unanimously.

Senator Lee moved that all necessary rules be suspended, and that Assembly Bill No. 413 just reported out of committee be placed on Second Reading for this legislative day.

Motion carried unanimously.

#### SECOND READING AND AMENDMENT

Assembly Bill No. 273.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:  
Amendment No. 679.

"SUMMARY—Revises provisions governing deficiencies existing after foreclosure sales and sales in lieu of foreclosure sales. (BDR 3-561)"

"AN ACT relating to real property; revising provisions governing the amount which a person holding a junior lien on real property may recover in a civil action under certain circumstances; prohibiting certain persons holding a junior lien on certain residential property from bringing a civil action under certain circumstances; revising provisions governing the amount of a deficiency judgment after the foreclosure of a mortgage or a deed of trust; limiting the amount of certain judgments against guarantors, sureties or other obligors of obligations secured by real property under certain circumstances; and providing other matters properly relating thereto."

**Legislative Counsel's Digest:**

Under existing law, a judgment creditor or a beneficiary of a deed of trust may obtain, after a hearing, a deficiency judgment after a foreclosure sale or trustee's sale if it appears from the sheriff's return or the recital of consideration in the trustee's deed that there is a deficiency of the proceeds of the sale and a balance remaining due the judgment creditor or beneficiary of the deed of trust. Existing law requires a judgment creditor or beneficiary of a deed of trust to bring an action for such a deficiency judgment within 6 months after the foreclosure sale or trustee's sale. For an obligation secured by a mortgage or deed of trust on or after October 1, 2009, a court may not award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust if: (1) the creditor or beneficiary is a financial institution; (2) the real property is a single-family dwelling and the debtor or grantor was the owner of the property; (3) the debtor or grantor used the loan to purchase the property; (4) the debtor or grantor occupied the property continuously after obtaining the loan; and (5) the debtor or grantor did not refinance the loan. (NRS 40.455)

**Sections 3, 3.3 and 5.7** of this bill enact similar provisions to govern deficiency judgments sought by junior lienholders after a foreclosure sale, a trustee's sale or any sale or deed in lieu of a foreclosure sale or trustee's sale. **Section 3** provides that, if the circumstances prohibiting a deficiency judgment after a foreclosure sale or trustee's sale under current law exist with respect to a junior lienholder, the creditor may not bring a civil action to recover the debt owed to it after a foreclosure sale, a trustee's sale or a sale or deed in lieu of a foreclosure sale or trustee's sale.

Existing law authorizes a creditor under an obligation secured by a junior mortgage or deed of trust to bring an action to obtain a personal judgment against the debtor only if the action is commenced within 6 years after the date of the debtor's default. (NRS 11.190) Under **sections 3.3 and 5.7** of this bill, if the real property securing such an obligation is the subject of a foreclosure sale, a trustee's sale or a sale or deed in lieu of such a sale, the creditor may bring an action to obtain a personal judgment against the debtor

only if the action is brought within 6 months after the foreclosure sale, the trustee's sale or the sale in lieu of a foreclosure sale or trustee's sale.

Under existing law, the amount of a deficiency judgment after a foreclosure sale or a trustee's sale may not exceed the lesser of: (1) the amount of the indebtedness minus the fair market value of the foreclosed property at the time of the sale; or (2) the amount of the indebtedness minus the amount for which the foreclosed property actually sold. (NRS 40.459) **Section 5** of this bill provides that, for a deficiency judgment sought by a secured creditor after a foreclosure sale, trustee's sale or sale in lieu of a foreclosure sale or trustee's sale, the amount of the deficiency judgment must be reduced by the amount of any insurance proceeds received by, or payable to, the creditor. **Section 2** of this bill enacts a corresponding provision for money judgments sought against a debtor by a junior lienholder after a foreclosure sale, a trustee's sale or a sale or deed in lieu of a foreclosure sale or trustee's sale.

**Sections 2 and 5** also limit the recovery of a creditor who acquired the right to obtain payment for an obligation secured by the real property from another person who owned that obligation. If the creditor is seeking a deficiency judgment after a foreclosure sale, a trustee's sale or a sale in lieu of a foreclosure sale or trustee's sale, **section 5** provides that the creditor may not receive an amount which exceeds the lesser of: (1) the consideration paid for the obligation minus the fair market value of the property at the time of the foreclosure sale, with interest from the date of sale and reasonable costs; or (2) the consideration paid for the obligation minus the amount for which the property actually sold, with interest from the date of sale and reasonable costs. If the creditor is a junior lienholder who filed a civil action to obtain a money judgment against the debtor, **section 2** provides that the creditor may not receive an amount greater than the consideration paid for the obligation, with interest from the date on which the person acquired the right to obtain payment and reasonable costs.

**Section 5.5** of this bill limits the amount of a judgment against a guarantor, surety or other obligor, other than a mortgagor or grantor of a deed of trust, in an action commenced before a foreclosure sale or trustee's sale to enforce the obligation to pay, satisfy or purchase all or part of an obligation secured by a mortgage or other lien on real property. Under **section 5.5**, the amount of the judgment may not exceed the lesser of: (1) the amount of the indebtedness minus the fair market value of the real property at the time of the commencement of the action; or (2) if a foreclosure sale or a trustee's sale is completed before the date on which judgment is entered, the amount of the indebtedness minus the amount for which the foreclosed property actually sold.

**Section 6** of this bill provides that the amendatory provisions of ~~this bill~~ : **(1) sections 1-3** apply only prospectively to obligations secured by a mortgage, deed of trust or other encumbrance upon real property on or after the effective date of this bill ~~1~~ ; **(2) sections 3.3 and 5.7 apply only to an**

**action commenced after a foreclosure sale or sale in lieu of a foreclosure sale that occurs on or after July 1, 2011; and (3) section 5.5 apply only to an action against a guarantor, surety or other obligor commenced on or after the effective date of this bill. Under section 7 of this bill, the amendatory provisions of section 5 become effective upon passage and approval and thus apply to a deficiency judgment awarded on or after that effective date.**

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

**Section 1.** Chapter 40 of NRS is hereby amended by adding thereto the provisions set forth as sections 1.2 to 3.3, inclusive, of this act.

**Sec. 1.2.** *As used in sections 1.2 to 3.3, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 1.4, 1.6 and 1.8 of this act have the meanings ascribed to them in those sections.*

**Sec. 1.4.** *"Foreclosure sale" has the meaning ascribed to it in NRS 40.462.*

**Sec. 1.6.** *"Mortgage or other lien" has the meaning ascribed to it in NRS 40.433.*

**Sec. 1.8.** *"Sale in lieu of a foreclosure sale" means a sale of real property pursuant to an agreement between a person to whom an obligation secured by a mortgage or other lien on real property is owed and the debtor of that obligation in which the sales price of the real property is insufficient to pay the full outstanding balance of the obligation and the costs of the sale. The term includes, without limitation, a deed in lieu of a foreclosure sale.*

**Sec. 2. 1.** *If a person to whom an obligation secured by a junior mortgage or lien on real property is owed:*

*(a) Files a civil action to obtain a money judgment against the debtor under that obligation after a foreclosure sale or a sale in lieu of a foreclosure sale; and*

*(b) Such action is not barred by NRS 40.430,  
↪ in determining the amount owed by the debtor, the court shall not include the amount of any proceeds received by, or payable to, the person pursuant to an insurance policy to compensate the person for losses incurred with respect to the property or the default on the obligation.*

**2. If:**

*(a) A person acquired the right to enforce an obligation secured by a junior mortgage or lien on real property from a person who previously held that right;*

*(b) The person files a civil action to obtain a money judgment against the debtor after a foreclosure sale or a sale in lieu of a foreclosure sale; and*

*(c) Such action is not barred by NRS 40.430,*

↳ *the court shall not render judgment for more than the amount of the consideration paid for that right, plus interest from the date on which the person acquired the right and reasonable costs.*

3. *As used in this section, "obligation secured by a junior mortgage or lien on real property" includes, without limitation, an obligation which is not currently secured by a mortgage or lien on real property if the obligation:*

(a) *Is incurred by the debtor under an obligation which was secured by a mortgage or lien on real property; and*

(b) *Has the effect of reaffirming the obligation which was secured by a mortgage or lien on real property.*

Sec. 3. 1. *A person to whom an obligation secured by a junior mortgage or lien on real property is owed may not bring any action to enforce that obligation after a foreclosure sale of the real property which secured that obligation or a sale in lieu of a foreclosure sale if:*

(a) *The person is a financial institution;*

(b) *The real property which secured the obligation is a single-family dwelling and the debtor or grantor was the owner of the real property at the time of the foreclosure sale or sale in lieu of a foreclosure sale;*

(c) *The debtor or grantor used the amount of the obligation to purchase the real property;*

(d) *The debtor or grantor continuously occupied the real property as the debtor's or grantor's principal residence after securing the obligation; and*

(e) *The debtor or grantor did not refinance the obligation after securing it.*

2. *As used in this section, "financial institution" has the meaning ascribed to it in NRS 363A.050.*

Sec. 3.3. *A civil action not barred by NRS 40.430 or section 3 of this act by a person to whom an obligation secured by a junior mortgage or lien on real property is owed to obtain a money judgment against the debtor after a foreclosure sale of the real property or a sale in lieu of a foreclosure sale may only be commenced within 6 months after the date of the foreclosure sale or sale in lieu of a foreclosure.*

Sec. 4. (Deleted by amendment.)

Sec. 5. NRS 40.459 is hereby amended to read as follows:

40.459 1. After the hearing, the court shall award a money judgment against the debtor, guarantor or surety who is personally liable for the debt. The court shall not render judgment for more than:

~~1+~~ (a) *The amount by which the amount of the indebtedness which was secured exceeds the fair market value of the property sold at the time of the sale, with interest from the date of the sale; ~~for~~*

~~2+~~ (b) *The amount which is the difference between the amount for which the property was actually sold and the amount of the indebtedness which was secured, with interest from the date of sale ~~1+~~; or*

*(c) If the person seeking the judgment acquired the right to obtain the judgment from a person who previously held that right, the amount by which the amount of the consideration paid for that right exceeds the fair market value of the property sold at the time of sale or the amount for which the property was actually sold, whichever is greater, with interest from the date of sale and reasonable costs,*

↳ whichever is the lesser amount.

**2. For the purposes of this section, the "amount of the indebtedness" does not include any amount received by, or payable to, the judgment creditor or beneficiary of the deed of trust pursuant to an insurance policy to compensate the judgment creditor or beneficiary for any losses incurred with respect to the property or the default on the debt.**

**Sec. 5.5.** NRS 40.495 is hereby amended to read as follows:

40.495 1. The provisions of NRS 40.475 and 40.485 may be waived by the guarantor, surety or other obligor only after default.

2. Except as otherwise provided in subsection ~~4.4~~ 5, a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, may waive the provisions of NRS 40.430. If a guarantor, surety or other obligor waives the provisions of NRS 40.430, an action for the enforcement of that person's obligation to pay, satisfy or purchase all or part of an indebtedness or obligation secured by a mortgage or lien upon real property may be maintained separately and independently from:

(a) An action on the debt;

(b) The exercise of any power of sale;

(c) Any action to foreclose or otherwise enforce a mortgage or lien and the indebtedness or obligations secured thereby; and

(d) Any other proceeding against a mortgagor or grantor of a deed of trust.

3. If the obligee maintains an action to foreclose or otherwise enforce a mortgage or lien and the indebtedness or obligations secured thereby, the guarantor, surety or other obligor may assert any legal or equitable defenses provided pursuant to the provisions of NRS 40.451 to 40.463, inclusive.

**4. *If, before a foreclosure sale of real property, the obligee commences an action against a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, to enforce an obligation to pay, satisfy or purchase all or part of an indebtedness or obligation secured by a mortgage or lien upon the real property*** ~~the court~~

~~(a) **Must** :~~

**(a) The court must hold a hearing and take evidence presented by either party concerning the fair market value of the property as of the date of the commencement of the action. Notice of such hearing must be served upon all defendants who have appeared in the action and against whom a judgment is sought, or upon their attorneys of record, at least 15 days before the date set for the hearing.**

*(b) After the hearing, if the court ~~[shall award]~~ awards a money judgment against the debtor, guarantor or surety who is personally liable for the debt ~~thereof~~, the court must not render judgment for more than:*

*(1) The amount by which the amount of the indebtedness exceeds the fair market value of the property as of the date of the commencement of the action; or*

*(2) If a foreclosure sale is concluded before a judgment is entered, the amount that is the difference between the amount for which the property was actually sold and the amount of the indebtedness which was secured, ~~whichever is the lesser amount.~~*

5. The provisions of NRS 40.430 may not be waived by a guarantor, surety or other obligor if the mortgage or lien:

(a) Secures an indebtedness for which the principal balance of the obligation was never greater than \$500,000;

(b) Secures an indebtedness to a seller of real property for which the obligation was originally extended to the seller for any portion of the purchase price;

(c) Is secured by real property which is used primarily for the production of farm products as of the date the mortgage or lien upon the real property is created; or

(d) Is secured by real property upon which:

(1) The owner maintains the owner's principal residence;

(2) There is not more than one residential structure; and

(3) Not more than four families reside.

6. As used in this section, "foreclosure sale" has the meaning *ascribed to it in NRS 40.462.*

**Sec. 5.7.** NRS 11.190 is hereby amended to read as follows:

11.190 Except as otherwise provided in NRS 125B.050 and 217.007, **and section 3.3 of this act**, actions other than those for the recovery of real property, unless further limited by specific statute, may only be commenced as follows:

1. Within 6 years:

(a) An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or the renewal thereof.

(b) An action upon a contract, obligation or liability founded upon an instrument in writing, except those mentioned in the preceding sections of this chapter.

2. Within 4 years:

(a) An action on an open account for goods, wares and merchandise sold and delivered.

(b) An action for any article charged on an account in a store.

(c) An action upon a contract, obligation or liability not founded upon an instrument in writing.

(d) An action against a person alleged to have committed a deceptive trade practice in violation of NRS 598.0903 to 598.0999, inclusive, but the cause



of action shall be deemed to accrue when the aggrieved party discovers, or by the exercise of due diligence should have discovered, the facts constituting the deceptive trade practice.

3. Within 3 years:

(a) An action upon a liability created by statute, other than a penalty or forfeiture.

(b) An action for waste or trespass of real property, but when the waste or trespass is committed by means of underground works upon any mining claim, the cause of action shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting the waste or trespass.

(c) An action for taking, detaining or injuring personal property, including actions for specific recovery thereof, but in all cases where the subject of the action is a domestic animal usually included in the term "livestock," which has a recorded mark or brand upon it at the time of its loss, and which strays or is stolen from the true owner without the owner's fault, the statute does not begin to run against an action for the recovery of the animal until the owner has actual knowledge of such facts as would put a reasonable person upon inquiry as to the possession thereof by the defendant.

(d) Except as otherwise provided in NRS 112.230 and 166.170, an action for relief on the ground of fraud or mistake, but the cause of action in such a case shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting the fraud or mistake.

(e) An action pursuant to NRS 40.750 for damages sustained by a financial institution or other lender because of its reliance on certain fraudulent conduct of a borrower, but the cause of action in such a case shall be deemed to accrue upon the discovery by the financial institution or other lender of the facts constituting the concealment or false statement.

4. Within 2 years:

(a) An action against a sheriff, coroner or constable upon liability incurred by acting in his or her official capacity and in virtue of his or her office, or by the omission of an official duty, including the nonpayment of money collected upon an execution.

(b) An action upon a statute for a penalty or forfeiture, where the action is given to a person or the State, or both, except when the statute imposing it prescribes a different limitation.

(c) An action for libel, slander, assault, battery, false imprisonment or seduction.

(d) An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.

(e) Except as otherwise provided in NRS 11.215, an action to recover damages for injuries to a person or for the death of a person caused by the wrongful act or neglect of another. The provisions of this paragraph relating to an action to recover damages for injuries to a person apply only to causes of action which accrue after March 20, 1951.

(f) An action to recover damages under NRS 41.740.

5. Within 1 year:

(a) An action against an officer, or officer de facto to recover goods, wares, merchandise or other property seized by the officer in his or her official capacity, as tax collector, or to recover the price or value of goods, wares, merchandise or other personal property so seized, or for damages for the seizure, detention or sale of, or injury to, goods, wares, merchandise or other personal property seized, or for damages done to any person or property in making the seizure.

(b) An action against an officer, or officer de facto for money paid to the officer under protest, or seized by the officer in his or her official capacity, as a collector of taxes, and which, it is claimed, ought to be refunded.

**Sec. 6.** The amendatory provisions of :

**1. Sections 1 to 3, inclusive, of** this act apply only to an obligation secured by a mortgage, deed of trust or other encumbrance upon real property on or after the effective date of this act.

**2. Sections 3.3 and 5.7 of this act apply only to an action commenced after a foreclosure sale or sale in lieu of a foreclosure sale that occurs on or after July 1, 2011.**

**3. Section 5.5 of this act apply only to an action against a guarantor, surety or other obligor commenced on or after the effective date of this act.**

**Sec. 7. 1.** This **section and sections 1 to 3, inclusive, 5, 5.5 and 6 of this act** ~~becomes~~ **become** effective upon passage and approval.

**2. Sections 3.3 and 5.7 of this act become effective on July 1, 2011.**

Senator Wiener moved the adoption of the amendment.

Remarks by Senators Wiener and Kieckhefer.

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

SENATOR WIENER:

This amendment changes certain effective dates dealing with foreclosure sales and sales in lieu of foreclosure. It changes the effective date to upon passage and approval throughout sections of the bill.

SENATOR KIECKHEFER:

In Section 6, it made all of the provisions of the bill prospective and changes it so that some of the provisions in the bill are retrospective.

SENATOR WIENER:

In the hearing, some of the concerns were about retroactive applications of the bill. The clarity was provided through this amendment that all of the activities would be prospective because there were concerns about contracts.

Amendment adopted.

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

Assembly Bill No. 376.

Bill read second time.

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

Amendment No. 632.

"SUMMARY—Makes various changes regarding the financing of certain local improvements with revenue pledged from sales and use taxes. (BDR 21-148)"

"AN ACT relating to tourism improvement districts; making various changes regarding the financing of certain local improvements with revenue pledged from sales and use taxes; providing a procedure for the selection of subcontractors on certain contracts; and providing other matters properly relating thereto."

**Legislative Counsel's Digest:**

Existing law authorizes the governing body of any city or county to create a tourism improvement district (TID) and to pledge revenue from several sales and use taxes imposed in that district to finance certain projects within the district. The projects may be owned by the municipality, another governmental entity or any person and may be financed through the issuance of bonds or the entry into agreements for the reimbursement of the costs of the projects. (Chapter 271A of NRS) **Section 2** of this bill requires the independent auditing of claims made under agreements to provide such financing. **Section 2** also prohibits the use of such financing, with respect to a TID created on or after July 1, 2011, to pay various fees and costs and for the relocation within the TID of a retailer from another location within 3 miles outside of the boundary of the TID, and excludes the use for such financing of the tax revenue from such a retailer. **Section 6 of this bill prohibits the provision of such financing to certain governmental entities if a nongovernmental entity obtained any of the original financing in the TID, and prohibits such financing, without the consent of the entities which obtained the original financing in the TID, to an entity that did not obtain any of the original financing in the TID.** **Section 3** of this bill specifies the procedure required for the selection of subcontractors by contractors and developers who enter into certain construction contracts on financed projects or on property within a TID which benefits from financed infrastructure improvements. **Section 4** of this bill requires a municipality that creates a TID to prepare and submit to the Legislature annual reports regarding the TID, and requires the Department of Taxation to prepare and submit to the Legislature and the municipality semiannual reports regarding businesses within a TID. **Section ~~6~~ 7** of this bill applies the prevailing wage provisions applicable to public works to construction contracts for financed projects within a TID to the same extent as if the contracts were awarded by the municipality and the projects constituted public works.

Existing law does not allow the creation of a TID unless the pertinent governing body makes a written finding at a public hearing, based upon reports from independent consultants, as to whether the proposed project and financing will have a positive fiscal effect on the provision of local

governmental services. (NRS 271A.080) **Section 5** of this bill requires the selection of those independent consultants from a list provided by the Commission on Tourism.

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

**Section 1.** Chapter 271A of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

**Sec. 2. *The governing body of a municipality:***

**1. *Shall require the review of each claim submitted pursuant to any contract or other agreement made with the governing body to provide any financing or reimbursement pursuant to NRS 271A.120, by an independent auditor.***

**2. *Shall not, with respect to any district created on or after July 1, 2011, provide any financing or reimbursement pursuant to NRS 271A.120 for:***

**(a) *Any legal fees, accounting fees, costs of insurance, fees for legal notices or costs to amend any ordinances.***

**(b) *Any project that includes the relocation on or after July 1, 2011, to the district of any retail facilities of a retailer from another location outside of and within 3 miles of the boundary of the district. Each pledge of money pursuant to NRS 271A.070 shall be deemed to exclude any amounts attributable to any tangible personal property sold at retail, or stored, used or otherwise consumed, in the district during a fiscal year by a retailer who, on or after July 1, 2011, relocates any of its retail facilities to the district from another location outside of and within 3 miles of the boundary of the district.***

**Sec. 3. 1. *Except as otherwise provided in subsection 2, a contractor or developer who enters into a contract for original construction or a contract for benefited construction shall:***

**(a) *Advertise for at least 7 calendar days for bids on each subcontract for the performance of any portion of the contract;***

**(b) *At least 2 business days before the first day of that advertisement, provide notice of that advertisement to the governing body of the municipality;***

**(c) *Make available to all prospective bidders on the subcontract a written set of plans and specifications for the pertinent work;***

**(d) *Provide public notice of the name and address of each person who submits a bid on the subcontract; and***

**(e) *After closing the period for the solicitation of bids and receiving at least three timely and responsive bids, select any subcontractor from those timely and responsive bids that the contractor or developer, in his or her sole discretion, determines to be appropriate, except that the contractor or developer shall ensure that each subcontractor who will perform any portion of the contract is appropriately licensed pursuant to chapter 624 of NRS.***

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

(a) *Any contract which is awarded by a municipality; or*

(b) *Any project which is constructed or maintained by a governmental entity on any property while the governmental entity owns that property.*

3. *A governing body of a municipality that receives a notice of an advertisement for bids pursuant to paragraph (b) of subsection 1:*

(a) *Shall, upon such receipt, post notice of the advertisement on an Internet website maintained by the municipality; and*

(b) *May otherwise provide notice of the advertisement to local trade organizations and the general public.*

4. *As used in this section:*

(a) *"Contract for benefited construction":*

(1) *Except as otherwise provided in subparagraphs (2) and (3), means any contract or other agreement for the construction, improvement, repair, demolition or reconstruction of any property which is located within a district and which benefits from any infrastructure improvements paid for in whole or in part:*

(I) *From the proceeds of bonds or notes issued pursuant to paragraph (a) of subsection 1 of NRS 271A.120; or*

(II) *Pursuant to an agreement for reimbursement entered into pursuant to paragraph (b) of subsection 1 of NRS 271A.120.*

(2) *Except as otherwise provided in subparagraph (3) and unless the work is paid for in whole or in part with any public funding, does not include any:*

(I) *Contract or other agreement for the improvement, repair, demolition or reconstruction of any project;*

(II) *Contract or other agreement with the original tenant of any leased property for any improvement of the property which is to be undertaken more than 60 months after the property is first made available for lease; or*

(III) *Contract or other agreement for the improvement of any leased property made with any tenant of the property other than the original tenant.*

(3) *Does not include any contract for original construction.*

(b) *"Contract for original construction" means any contract or other agreement for the construction, improvement, repair, demolition or reconstruction of any project that is paid for in whole or in part:*

(1) *From the proceeds of bonds or notes issued pursuant to paragraph (a) of subsection 1 of NRS 271A.120; or*

(2) *Pursuant to an agreement for reimbursement entered into pursuant to paragraph (b) of subsection 1 of NRS 271A.120.*

(c) *"Original tenant" means the first tenant of any leased property after the property is first made available for lease.*

Sec. 4. 1. *On or before September 1 of each year, the governing body of a municipality that creates a district before, on or after July 1, 2011,*

*shall prepare and submit to the Director of the Legislative Counsel Bureau for submission to the Legislature, or to the Legislative Commission when the Legislature is not in regular session, an annual report containing:*

*(a) A statement of the status of each project located or expected to be located in the district, and of any changes in that status since the last annual report.*

*(b) An assessment of the financial impact of the district on the provision of local governmental services, including, without limitation, services for police protection and fire protection.*

*2. If the governing body of a municipality creates a district before, on or after July 1, 2011, the Department of Taxation shall:*

*(a) On or before April 1 and October 1 of each year, prepare and submit to the Director of the Legislative Counsel Bureau for submission to the Legislature, or to the Legislative Commission when the Legislature is not in regular session, and to the governing body of the municipality a semiannual report which states:*

*(1) The amount of revenue from the taxable sales made each month by each business within the district;*

*(2) To the extent that the pertinent information is available, the portion of that revenue which is attributable to persons who are not residents of this State;*

*(3) The amount of the wages paid each month by each business within the district; and*

*(4) The number of full-time and part-time employees employed each month by each business within the district.*

*(b) Require each business within the district to report to the Department of Taxation, at such times as the Department may specify on a form provided by the Department, such information as the Department determines to be necessary to carry out the provisions of paragraph (a).*

*3. Except as otherwise provided in subsection 2 or another specific statute, the Department of Taxation shall not disclose any information reported to the Department pursuant to subsection 2.*

*4. As used in this section, "taxable sales" means any sales that are taxable pursuant to chapter 372 of NRS.*

**Sec. 5.** NRS 271A.080 is hereby amended to read as follows:

271A.080 The governing body of a municipality shall not adopt an ordinance pursuant to NRS 271A.070 unless:

1. If the ordinance:

(a) Creates a district, the governing body has determined that no retailers will have maintained or will be maintaining a fixed place of business within the district on or within the 120 days immediately preceding the date of the adoption of the ordinance; or

(b) Amends the boundaries of the district to add any additional area, the governing body has determined that no retailers will have maintained or will

be maintaining a fixed place of business within that area on or within 120 days immediately preceding the date of the adoption of the ordinance.

2. The governing body has made a written finding at a public hearing that the project will benefit the district.

3. The governing body has made a written finding at a public hearing, based upon reports from independent consultants which were addressed to the governing body, to the board of county commissioners, if the governing body is not the board of county commissioners for the county in which the tourism *improvement* district is or will be located, and to the board of trustees of the school district in which the tourism improvement district is or will be located, as to whether the project and the financing thereof pursuant to this chapter will have a positive fiscal effect on the provision of local governmental services, after considering:

(a) The amount of the proceeds of all taxes and other governmental revenue projected to be received as a result of the properties and businesses expected to be located in the district;

(b) The use of any money proposed to be pledged pursuant to NRS 271A.070;

(c) Any increase in costs for the provision of local governmental services, including, without limitation, services for education, including operational and capital costs, and services for police protection and fire protection, as a result of the project and the development of land within the district; and

(d) Estimates of any increases in the proceeds from sales and use taxes collected by retailers located outside of the district and of any displacement of the proceeds from sales and use taxes collected by those retailers, as a result of the properties and businesses expected to be located in the district.

↪ ***The reports required from independent consultants pursuant to this subsection must be obtained from independent consultants selected by the governing body from a list of independent consultants provided by the Commission on Tourism. For the purposes of this subsection, the Commission shall, upon the request of a governing body, provide the governing body with a list of at least three qualified independent consultants, each of whom must be located outside of this State.***

4. The governing body has, at least 45 days before making the written finding required by subsection 3, provided to the board of trustees of the school district in which the tourism improvement district is or will be located:

(a) Written notice of the time and place of the meeting at which the governing body will consider making that written finding; and

(b) Each analysis prepared by or for or presented to the governing body regarding the fiscal effect of the project and the use of any money proposed to be pledged pursuant to NRS 271A.070 on the provision of local governmental services, including education.

↪ After the receipt of the notice required by this subsection and before the date of the meeting at which the governing body will consider making the

written finding required by subsection 3, the board of trustees shall conduct a hearing regarding the fiscal effect on the school district, if any, of the project and the use of any money proposed to be pledged pursuant to NRS 271A.070, and may submit to the governing body of the municipality any comments regarding that fiscal effect. The governing body shall consider those comments when making any written finding pursuant to subsection 3 and shall consider those comments when considering the terms of any agreement pursuant to NRS 271A.110.

5. If the governing body is not the board of county commissioners for the county in which the tourism *improvement* district is or will be located, the governing body has, at least 45 days before making the written finding required by subsection 3, provided to the board of county commissioners in the county in which the tourism improvement district is or will be located:

(a) Written notice of the time and place of the meeting at which the governing body will consider making that written finding; and

(b) Each analysis prepared by or for or presented to the governing body regarding the fiscal effect of the project and the use of any money proposed to be pledged pursuant to NRS 271A.070 on the provision of local governmental services.

➔ After the receipt of the notice required by this subsection and before the date of the meeting at which the governing body will consider making the written finding required by subsection 3, the board of county commissioners may conduct a hearing regarding the fiscal effect on local governmental services, if any, of the project and the use of any money proposed to be pledged pursuant to NRS 271A.070, and may submit to the governing body of the municipality any comments regarding that fiscal effect. The governing body may consider those comments when making any written finding pursuant to subsection 3 and shall consider those comments when considering the terms of any agreement pursuant to NRS 271A.110.

6. The governing body has determined, at a public hearing conducted at least 15 days after providing notice of the hearing by publication, that:

(a) As a result of the project:

(1) Retailers will locate their businesses as such in the district; and

(2) There will be a substantial increase in the proceeds from sales and use taxes remitted by retailers with regard to tangible personal property sold at retail, or stored, used or otherwise consumed, in the district; and

(b) A preponderance of that increase in the proceeds from sales and use taxes will be attributable to transactions with tourists who are not residents of this State.

7. The Commission on Tourism has determined, at a public hearing conducted at least 15 days after providing notice of the hearing by publication, that a preponderance of the increase in the proceeds from sales and use taxes identified pursuant to subsection 6 will be attributable to transactions with tourists who are not residents of this State.



8. The Governor has determined that the project and the use of any money proposed to be pledged pursuant to NRS 271A.070 will contribute significantly to economic development and tourism in this State. Before making that determination, the Governor:

(a) Must consider the fiscal effects of the pledge of money on educational funding, including any fiscal effects described in comments provided pursuant to subsection 4 by the school district in which the tourism improvement district is or will be located, and for that purpose may require the Department of Education or the Department of Taxation, or both, to provide an appropriate fiscal report; and

(b) If the Governor determines that the pledge of money will have a substantial adverse fiscal effect on educational funding, may require a commitment from the municipality for the provision of specified payments to the school district in which the tourism improvement district is or will be located during the term of the use of any money pledged pursuant to NRS 271A.070. The payments may be provided pursuant to agreements with owners of property within the district authorized by NRS 271A.110 or from sources other than the owners of property within the district. Such a commitment by a municipality is not subject to the limitations of subsection 1 of NRS 354.626 and, notwithstanding any other law to the contrary, is binding on the municipality for the term of the use of any money pledged pursuant to NRS 271A.070.

9. If any property within the boundaries of the district is also included within the boundaries of any other tourism improvement district or any improvement district for which any money has been pledged pursuant to NRS 271.650, all of the governing bodies which created those districts have entered into an interlocal agreement providing for:

(a) The apportionment of any money pledged pursuant to NRS 271.650 and 271A.070 with respect to such property; and

(b) The priority of the application of that money between:

(1) Bonds issued pursuant to chapter 271 of NRS; and

(2) Bonds and notes issued, and agreements entered into, pursuant to NRS 271A.120.

↪ Any such agreement for the priority of the application of that money may be made irrevocable during the term of any bonds issued pursuant to chapter 271 of NRS to which all or any portion of that money is pledged, or during the term of any bonds or notes issued or any agreements entered into pursuant to NRS 271A.120 to which all or any portion of that money is pledged.

**Sec. 6. NRS 271A.120 is hereby amended to read as follows:**

271A.120 1. Except as otherwise provided in this section, if the governing body of a municipality adopts an ordinance pursuant to NRS 271A.070, the municipality may:

(a) Issue, at one time or from time to time, bonds or notes as special obligations under the Local Government Securities Law to finance or

refinance projects for the benefit of the district. Any such bonds or notes may be secured by a pledge of, and be payable from, any money pledged pursuant to NRS 271A.070 and received by the municipality with respect to the district, any revenue received by the municipality from any revenue-producing projects in the district, or any combination thereof.

(b) Enter into an agreement with one or more governmental entities or other persons to reimburse that entity or person for the cost of acquiring, improving or equipping, or any combination thereof, any project, which may contain such terms as are determined to be desirable by the governing body of the municipality, including the payment of reasonable interest and other financing costs incurred by such entity or other person. Any such reimbursements may be secured by a pledge of, and be payable from, any money pledged pursuant to NRS 271A.070 and received by the municipality with respect to the district, any revenue received by the municipality from any revenue-producing projects in the district, or any combination thereof. Such an agreement is not subject to the limitations of subsection 1 of NRS 354.626 and may, at the option of the governing body, be binding on the municipality beyond the fiscal year in which it was made, only if the agreement pertains solely to one or more projects that are owned by the municipality or another governmental entity.

2. *The governing body of a municipality shall not, with respect to any district created before, on or after July 1, 2011, provide any financing or reimbursement pursuant to this section:*

*(a) Except as otherwise provided in this paragraph, to any governmental entity for any project within the district if any nongovernmental entity is or was entitled to receive any financing or reimbursement from the municipality pursuant to this section under the original financing agreements for the initial projects within the district. This paragraph does not prohibit the provision of such financing or reimbursement to:*

*(1) A school district; or*

*(2) A governmental entity that is or was entitled to receive such financing or reimbursement under the original financing agreements for the initial projects within the district.*

*(b) To any person or other entity for any project within the district, other than a person or other entity that is or was entitled to receive such financing or reimbursement from the municipality under the original financing agreements for the initial projects within the district, without the consent of all the persons and other entities that were entitled to receive such financing or reimbursement under the original financing agreements for the initial projects within the district.*

3. Before the issuance of any bonds or notes pursuant to this section, the municipality must obtain the results of a feasibility study, commissioned by the municipality, which shows that a sufficient amount will be generated from money pledged pursuant to NRS 271A.070 to make timely payment on the bonds or notes, taking into account the revenue from any other

revenue-producing projects also pledged for the payment of the bonds or notes, if any. A failure to make payments of any amounts due:

- (a) With respect to any bonds or notes issued pursuant to subsection 1; or
- (b) Under any agreements entered into pursuant to subsection 1,

↪ because of any insufficiency in the amount of money pledged pursuant to NRS 271A.070 to make those payments shall be deemed not to constitute a default on those bonds, notes or agreements.

~~4-4~~ 4. No bond, note or other agreement issued or entered into pursuant to this section may be secured by or payable from the general fund of the municipality, the power of the municipality to levy ad valorem property taxes, or any source other than any money pledged pursuant to NRS 271A.070 and received by the municipality with respect to the district, any revenue received by the municipality from any revenue-producing projects in the district, or any combination thereof. No bond, note or other agreement issued or entered into pursuant to this section may ever become a general obligation of the municipality or a charge against its general credit or taxing powers, nor may any such bond, note or other agreement become a debt of the municipality for purposes of any limitation on indebtedness.

~~4-4~~ 5. Any bond or note issued pursuant to this section, including any bond or note issued to refund any such bond or note, must mature on or before, and any agreement entered pursuant to this section must automatically terminate on or before, the end of the fiscal year in which the 20th anniversary of the adoption of the ordinance creating the district occurs.

~~Sec. 6-1~~ **Sec. 7.** NRS 271A.130 is hereby amended to read as follows:

271A.130 1. Except as otherwise provided in this section ~~4-1~~ **and section 3 of this act and** notwithstanding any other law to the contrary, any contract or other agreement relating to or providing for the construction, improvement, repair, demolition, reconstruction, other acquisition, equipment, operation or maintenance of any project financed in whole or in part pursuant to this chapter is exempt from any law requiring competitive bidding or otherwise specifying procedures for the award of contracts for construction or other contracts, or specifying procedures for the procurement of goods or services. The governing body of the municipality shall require a quarterly report on the demography of the workers employed by any contractor or subcontractor for each such project.

2. The provisions of subsection 1 do not apply to any project which is constructed or maintained by a governmental entity on any property while the governmental entity owns that property.

3. ~~The provisions of NRS 338.010 to 338.090, inclusive, apply to~~ **A person who enters into** any contract or other agreement for the construction, improvement, repair, demolition or reconstruction of any project that is paid for in whole or in part:

- (a) From the proceeds of bonds or notes issued pursuant to paragraph (a) of subsection 1 of NRS 271A.120; or

(b) Pursuant to an agreement for reimbursement entered into pursuant to paragraph (b) of subsection 1 of NRS 271A.120,

~~↳ [regardless of whether the project is publicly or privately owned.]~~ **shall include in the contract or other agreement the contractual provisions and stipulations that are required to be included in a contract for a public work pursuant to the provisions of NRS 338.013 to 338.090, inclusive. The governing body of the municipality, the contractor who is awarded the contract or enters into the agreement to perform the construction, improvement, repair, demolition or reconstruction, and any subcontractor who performs any portion of the contract or agreement shall comply with the provisions of NRS 338.013 to 338.090, inclusive, in the same manner as if the governing body of the municipality had undertaken the project or had awarded the contract.**

**4. The governing body of the municipality shall ensure that each contractor and developer to whom the provisions of section 3 of this act apply complies with those provisions.**

~~[Sec. 7.]~~ **Sec. 8.** NRS 372.750 is hereby amended to read as follows:

372.750 1. Except as otherwise provided in this section or NRS 360.247 ~~[.]~~ **or section 4 of this act**, it is a misdemeanor for any member of the Tax Commission or officer, agent or employee of the Department to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and equipment of any retailer or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular of them, set forth or disclosed in any return, or to permit any return or copy of a return, or any book containing any abstract or particulars of it to be seen or examined by any person not connected with the Department.

2. The Tax Commission may agree with any county fair and recreation board or the governing body of any county, city or town for the continuing exchange of information concerning taxpayers.

3. The Governor may, by general or special order, authorize the examination of the records maintained by the Department under this chapter by other state officers, by tax officers of another state, by the Federal Government, if a reciprocal arrangement exists, or by any other person. The information so obtained may not be made public except to the extent and in the manner that the order may authorize that it be made public.

4. Upon written request made by a public officer of a local government, the Executive Director shall furnish from the records of the Department, the name and address of the owner of any seller or retailer who must file a return with the Department. The request must set forth the social security number of the owner of the seller or retailer about which the request is made and contain a statement signed by the proper authority of the local government certifying that the request is made to allow the proper authority to enforce a law to recover a debt or obligation owed to the local government. Except as otherwise provided in NRS 239.0115, the information obtained by the local

government is confidential and may not be used or disclosed for any purpose other than the collection of a debt or obligation owed to that local government. The Executive Director may charge a reasonable fee for the cost of providing the requested information.

5. Successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest and penalties.

6. Relevant information that the Tax Commission has determined is not proprietary or confidential information in a hearing conducted pursuant to NRS 360.247 may be disclosed as evidence in an appeal by the taxpayer from a determination of tax due.

7. At any time after a determination, decision or order of the Executive Director or other officer of the Department imposing upon a person a penalty for fraud or intent to evade the tax imposed by this chapter on the sale, storage, use or other consumption of any vehicle, vessel or aircraft becomes final or is affirmed by the Commission, any member of the Commission or officer, agent or employee of the Department may publicly disclose the identity of that person and the amount of tax assessed and penalties imposed against that person.

~~Sec. 8.~~ **Sec. 9.** NRS 374.755 is hereby amended to read as follows:

374.755 1. Except as otherwise provided in this section or NRS 360.247 ~~+~~ **or section 4 of this act**, it is a misdemeanor for any member of the Nevada Tax Commission or officer, agent or employee of the Department to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and equipment of any retailer or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof, or any book containing any abstract or particulars thereof to be seen or examined by any person not connected with the Department.

2. The Nevada Tax Commission may agree with any county fair and recreation board or the governing body of any county, city or town for the continuing exchange of information concerning taxpayers.

3. The Governor may, however, by general or special order, authorize the examination of the records maintained by the Department under this chapter by other state officers, by tax officers of another state, by the Federal Government, if a reciprocal arrangement exists, or by any other person. The information so obtained pursuant to the order of the Governor may not be made public except to the extent and in the manner that the order may authorize that it be made public.

4. Upon written request made by a public officer of a local government, the Executive Director shall furnish from the records of the Department, the name and address of the owner of any seller or retailer who must file a return

with the Department. The request must set forth the social security number of the owner of the seller or retailer about which the request is made and contain a statement signed by the proper authority of the local government certifying that the request is made to allow the proper authority to enforce a law to recover a debt or obligation owed to the local government. Except as otherwise provided in NRS 239.0115, the information obtained by the local government is confidential and may not be used or disclosed for any purpose other than the collection of a debt or obligation owed to that local government. The Executive Director may charge a reasonable fee for the cost of providing the requested information.

5. Successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest and penalties.

6. Relevant information that the Nevada Tax Commission has determined is not proprietary or confidential information in a hearing conducted pursuant to NRS 360.247 may be disclosed as evidence in an appeal by the taxpayer from a determination of tax due.

7. At any time after a determination, decision or order of the Executive Director or other officer of the Department imposing upon a person a penalty for fraud or intent to evade the tax imposed by this chapter on the sale, storage, use or other consumption of any vehicle, vessel or aircraft becomes final or is affirmed by the Commission, any member of the Commission or officer, agent or employee of the Department may publicly disclose the identity of that person and the amount of tax assessed and penalties imposed against that person.

~~Sec. 9.~~ **Sec. 10.** The provisions of NRS 354.599 do not apply to any additional expenses of a local government that are related to the provisions of this act.

~~Sec. 10.~~ **Sec. 11.** 1. This section and sections 5 and ~~9~~ **10** of this act become effective upon passage and approval.

2. Sections 1 to 4, inclusive, **and 6, ~~7 and 8~~ to 9, inclusive,** of this act become 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. 632 to Assembly Bill No. 376 prohibits sales tax anticipated revenue financing, known as STAR bonds, to any governmental entity for any project within the Tourism Improvement District (TID) if any non-governmental entity is or was entitled to receive such financing under the original financing agreements for the initial projects in the TID. This proposed amendment would not prohibit such financing or reimbursement to a school district or to a governmental entity that is or was entitled to such financing under the original financing agreements.

It adds a stipulation that STAR bonds for any project not part of the original financing agreements must not be used without the consent of all the persons or entities that were entitled to receive such financing under the original agreements.

Amendment adopted.

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

Assembly Bill No. 413.

Bill read second time.

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

Amendment No. 631.

"SUMMARY—Revises provisions governing public works. (BDR 28-718)"

"AN ACT relating to public works; making various changes relating to the withholding of retainage on progress payments for public works contracts; and providing other matters properly relating thereto."

**Legislative Counsel's Digest:**

Existing law requires a public body to withhold as retainage at least 10 percent of the progress payments owed to a contractor on a public works project during the first half of the project. (NRS 338.515) Similarly, contractors and subcontractors may withhold as retainage not more than 10 percent of progress payments to their subcontractors and suppliers during the first half of the public works project. (NRS 338.555, 338.595) **Sections 1, 3 and 5** of this bill revise the maximum amount of retainage that may be withheld during the first half of the project to 5 percent of the progress payment. **Sections 1, 3 and 5** also provide that, except under limited circumstances, the amount of retainage may not exceed 2.5 percent of progress payments during the second half of a public works project. **Section 1 also allows a public body to pay some or all of the retainage withheld during the first half of the project if satisfactory progress is being made in the work or if a subcontractor has completed its portion of the work.**

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

**Section 1.** NRS 338.515 is hereby amended to read as follows:

338.515 1. Except as otherwise provided in NRS 338.525, a public body and its officers or agents awarding a contract for a public work shall pay or cause to be paid to a contractor the progress payments due under the contract within 30 days after the date the public body receives the progress bill or within a shorter period if the provisions of the contract so provide. Not more than ~~90~~ 95 percent of the amount of any progress payment may be paid until 50 percent of the work required by the contract has been performed. ~~{Thereafter,}~~

**2. After 50 percent of the work required by the contract has been performed, the public body may pay ~~any~~ to the contractor:**

**(a) Any** of the remaining progress payments without withholding additional retainage **; and**

(b) Any amount of any retainage that was withheld from progress payments pursuant to subsection 1,

→ if, in the opinion of the public body, satisfactory progress is being made in the work.

~~12.1~~ 3. After determining in accordance with subsection 2 whether satisfactory progress is being made in the work, the public body may pay to the contractor an amount of any retainage that was withheld from progress payments pursuant to subsection 1 if:

(a) A subcontractor has performed a portion of the work;

(b) The public body determines that the portion of the work has been completed in compliance with all applicable plans and specifications;

(c) The subcontractor submits to the contractor:

(1) A release of the subcontractor's claim for a mechanic's lien for the portion of the work; and

(2) From each of the subcontractor's subcontractors and suppliers who performed work or provided material for the portion of the work, a release of his or her claim for a mechanic's lien for the portion of the work; and

(d) The amount of the retainage which the public body pays is in proportion to the portion of the work which the subcontractor has performed.

4. If, pursuant to subsection 3, the public body pays to the contractor an amount of any retainage that was withheld from progress payments pursuant to subsection 1 for the portion of the work which has been performed by the subcontractor, the contractor must pay to the subcontractor the portion of any retainage withheld by the contractor pursuant to NRS 338.555 for the portion of the work. If, pursuant to this subsection, the contractor pays to the subcontractor the portion of any retainage withheld by the contractor pursuant to NRS 338.555 for the portion of the work which has been performed by the subcontractor, the subcontractor must pay to the subcontractor's subcontractors and suppliers the portion of any retainage withheld by the subcontractor pursuant to NRS 338.595 for the portion of the work.

5. If, after determining in accordance with subsection 2 whether satisfactory progress is being made in the work, the public body continues to withhold retainage from remaining progress payments:

(a) If the public body does not withhold any amount pursuant to NRS 338.525:

(1) The public body may not withhold more than 2.5 percent of the amount of any progress payment; and

(2) Before withholding any amount pursuant to subparagraph (1), the public body must pay to the contractor 50 percent of the amount of any retainage that was withheld from progress payments pursuant to subsection 1; or

(b) If the public body withholds any amount pursuant to NRS 338.525:



*(1) The public body may not withhold more than 5 percent of the amount of any progress payment; and*

*(2) The public body may continue to retain the amount of any retainage that was withheld from progress payments pursuant to subsection 1.*

~~§ 2.7~~ 6. Except as otherwise provided in NRS 338.525, a public body shall identify in the contract and pay or cause to be paid to a contractor the actual cost of the supplies, materials and equipment that:

- (a) Are identified in the contract;
- (b) Have been delivered and stored at a location, and in the time and manner, specified in a contract by the contractor or a subcontractor or supplier for use in a public work; and
- (c) Are in short supply or were specially made for the public work,  
 ↪ within 30 days after the public body receives a progress bill from the contractor for those supplies, materials or equipment.

~~§ 3.1~~ ~~§ 4.7~~ 7. A public body shall pay or cause to be paid to the contractor at the end of each quarter interest for the quarter on any amount withheld by the public body pursuant to NRS 338.400 to 338.645, inclusive, at a rate equal to the rate quoted by at least three insured banks, credit unions or savings and loan associations in this State as the highest rate paid on a certificate of deposit whose duration is approximately 90 days on the first day of the quarter. If the amount due to a contractor pursuant to this subsection for any quarter is less than \$500, the public body may hold the interest until:

- (a) The end of a subsequent quarter after which the amount of interest due is \$500 or more;
- (b) The end of the fourth consecutive quarter for which no interest has been paid to the contractor; or
- (c) The amount withheld under the contract is due pursuant to NRS 338.520,  
 ↪ whichever occurs first.

~~§ 4.1~~ ~~§ 5.7~~ 8. If the Labor Commissioner has reason to believe that a worker is owed wages by a contractor or subcontractor, the Labor Commissioner may require the public body to withhold from any payment due the contractor under this section and pay the Labor Commissioner instead, an amount equal to the amount the Labor Commissioner believes the contractor owes to the worker. This amount must be paid by the Labor Commissioner to the worker if the matter is resolved in the worker's favor, otherwise it must be returned to the public body for payment to the contractor.

**Sec. 2.** NRS 338.530 is hereby amended to read as follows:

338.530 1. If a public body receives:

- (a) A progress bill or retainage bill, fails to give a contractor a written notice of any withholding in the manner set forth in subsection 2 of

NRS 338.525, and does not pay the contractor within 30 days after receiving the progress bill or retainage bill; or

(b) A contractor's written notice of the correction of a condition set forth pursuant to subsection 2 of NRS 338.525 as the reason for the withholding, signed by an authorized agent of the contractor, and fails to:

(1) Pay the amount of the progress payment or retainage payment that was withheld from the contractor within 30 days after the public body receives the next progress bill or retainage bill; or

(2) Object to the scope and manner of the correction, within 30 days after the public body receives the notice of correction, in a written statement that sets forth the reason for the objection and is signed by an authorized agent of the public body,

↳ the public body shall pay to the contractor, in addition to the entire amount of the progress bill or retainage bill or any unpaid portion thereof, interest from the 30th day on the amount delayed, at a rate equal to the amount provided for in subsection ~~3~~ ~~4~~ 7 of NRS 338.515, until payment is made to the contractor.

2. If the public body objects pursuant to subparagraph (2) of paragraph (b) of subsection 1, it shall pay to the contractor an amount equal to the value of the corrections to which the public body does not object.

**Sec. 3.** NRS 338.555 is hereby amended to read as follows:

338.555 1. If a public body and a contractor enter into a contract for a public work, the contractor may withhold as retainage not more than ~~10~~ 5 percent from the amount of any progress payment due under a subcontract which is made before 50 percent of the work has been completed under the subcontract. ~~Thereafter~~

**2. After 50 percent of the work required by the contract has been performed,** the contractor shall pay any additional progress payments due under the subcontract without withholding any additional retainage if, in the opinion of the contractor, satisfactory progress is being made in the work under the subcontract, and the payment must be equal to that paid by the public body to the contractor for the work performed by the subcontractor.

~~2.~~ ***If the contractor continues to withhold retainage from remaining progress payments:***

***(a) If the contractor does not withhold any amount pursuant to NRS 338.560:***

***(1) The contractor may not withhold more than 2.5 percent of the amount of any progress payment; and***

***(2) Before withholding any amount pursuant to subparagraph (1), the contractor must pay to the subcontractor 50 percent of the amount of any retainage that was withheld from progress payments pursuant to subsection 1; or***

***(b) If the contractor withholds any amount pursuant to NRS 338.560:***

***(1) The contractor may not withhold more than 5 percent of the amount of any progress payment; and***

*(2) The contractor may continue to retain the amount of any retainage that was withheld from progress payments pursuant to subsection 1.*

3. If the contractor receives a payment of interest earned on the retainage or an amount withheld from a progress payment, the contractor shall, within 10 days after he or she receives the money, pay to each subcontractor or supplier that portion of the interest received from the public body which is attributable to the retainage or amount withheld from a progress payment by the contractor to the subcontractor or supplier.

**Sec. 4.** NRS 338.560 is hereby amended to read as follows:

338.560 1. A contractor may withhold from a progress payment or retainage payment an amount sufficient to pay:

(a) The expenses the contractor reasonably expects to incur as a result of the failure of his or her subcontractor or supplier to comply with the subcontract or applicable building code, law or regulation.

(b) An amount withheld from payment to the contractor by a public body pursuant to subsection ~~44~~ ~~57~~ 8 of NRS 338.515 for a claim for wages against the subcontractor.

2. A contractor shall, within 10 days after the contractor receives:

(a) A progress payment or retainage payment from the public body for an amount that is less than the amount set forth in the applicable progress bill or retainage bill; or

(b) A progress bill or retainage bill from his or her subcontractor or supplier,

↪ give a written notice to his or her subcontractor or supplier of any amount that will be withheld pursuant to this section.

3. The written notice must:

(a) Set forth:

(1) The amount of the progress payment or retainage payment that will be withheld from his or her subcontractor or supplier; and

(2) A detailed explanation of the reason the contractor will withhold that amount, including, without limitation, a specific reference to the provision or section of the subcontract, or documents related thereto, or applicable building code, law or regulation with which his or her subcontractor or supplier has failed to comply; and

(b) Be signed by an authorized agent of the contractor.

4. The contractor shall pay to his or her subcontractor or supplier the amount withheld by the public body or the contractor within 10 days after:

(a) The contractor receives a written notice of the correction of the condition that is the reason for the withholding, signed by an authorized agent of the subcontractor or supplier; or

(b) The public body pays to the contractor the amount withheld,

↪ whichever occurs later.

**Sec. 5.** NRS 338.595 is hereby amended to read as follows:

338.595 1. If a subcontractor and another subcontractor or supplier enter into a subcontract for a public work, the subcontractor may withhold as retainage not more than ~~10~~ 5 percent from the amount of any progress payment due under a subcontract which is made before 50 percent of the work has been completed under the subcontract. ~~The~~

2. *After 50 percent of the work required by the subcontractor or supplier has been performed, the subcontractor shall pay any additional progress payments due under the subcontract without withholding any additional retainage if, in the opinion of the subcontractor, satisfactory progress is being made in the work under the subcontract. The payment must be equal to that paid by the contractor to the subcontractor for the work performed or supplies provided by his or her subcontractor or supplier.*

~~2.~~ *If the subcontractor continues to withhold retainage from remaining progress payments:*

*(a) If the subcontractor does not withhold any amount pursuant to NRS 338.600:*

*(1) The subcontractor may not withhold more than 2.5 percent of the amount of any progress payment; and*

*(2) Before withholding any amount pursuant to subparagraph (1), the subcontractor must pay to the subcontractor or supplier 50 percent of the amount of any retainage that was withheld from progress payments pursuant to subsection 1; or*

*(b) If the subcontractor withholds any amount pursuant to NRS 338.600:*

*(1) The subcontractor may not withhold more than 5 percent of the amount of any progress payment; and*

*(2) The subcontractor may continue to retain the amount of any retainage that was withheld from progress payments pursuant to subsection 1.*

3. If the subcontractor receives a payment of interest earned on the retainage or an amount withheld from a progress payment, the subcontractor shall, within 10 days after receiving the money, pay to each of his or her subcontractors or suppliers that portion of the interest received from the contractor which is attributable to the retainage or amount withheld from a progress payment by the subcontractor to his or her subcontractor or supplier.

**Sec. 6.** This act becomes effective on October 1, 2011, and expires by limitation on July 1, 2015.

Senator Settelmeyer moved the adoption of the amendment.

Remarks by Senator Settelmeyer.

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

Amendment No. 631 to Assembly Bill No. 413 allows a public body to pay to a contractor some or all of the retainage withheld during the first half of the project if satisfactory progress is being made in the work, or if a subcontractor has completed its portion of the work.

It provides that if the public body pays this retainage to the contractor, the contractor must pay his retainage withheld as required in *Nevada Revised Statutes* (NRS) 338.555 to any

subcontractor. NRS 338.555 provides the contractor to pay either the whole 5 percent of the retainage or 2.5 percent, if the contractor continues to withhold the retainage.

Amendment adopted.

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

GENERAL FILE AND THIRD READING

Senate Joint Resolution No. 15.

Resolution read third time.

Remarks by Senators Leslie and Horsford.

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

SENATOR LESLIE:

Senate Joint Resolution No. 15 proposes to amend Article 10, Section 1 of the *Nevada Constitution* to repeal the provision establishing a separate tax rate and providing for assessing and disbursing the tax on the net proceeds of mines.

This amendment to the *Nevada Constitution* would allow the Legislature to determine both the taxation of the net proceeds of mines and the distribution of those taxes.

Pursuant to Article 16, Section 1 of the *Nevada Constitution* and Chapter 218D of NRS, the provisions contained within this joint resolution must be approved by the Legislature during the 2011 and 2013 Sessions, followed by voter approval at the 2014 General Election or a special election, in order to be ratified.

SENATOR HORSFORD:

I rise in support of this resolution. This legislation would give Nevadans a choice about how one of the largest industries in the State should pay its fair share in supporting education, public safety and other vital services.

By way of history, in 1987, the Legislature proposed a constitutional amendment to limit the tax on the net proceeds of mines to 5 percent. That measure was approved by the Legislature again in the 1989 65<sup>th</sup> Session and ratified that same year by Nevada voters.

Nevadans spoke at that special election and the 5 percent limit on taxation of net proceeds has been in effect ever since.

Senate Joint Resolution No. 15 would give Nevadans the same opportunity to speak more than 20 years later about whether they believe the current system for taxing the mining industry is fair and adequate, given the changed circumstances in the State.

We have talked about the need to fundamentally reform our revenue code and the taxation of the mining industry is an important part of that overall reform.

Senate Joint Resolution No. 15 would give Nevadans the opportunity to direct the Legislature on whether the current mining taxation system should be maintained or altered. It would ask Nevada voters whether they want us to have the latitude to determine a new rate more reflective of the needs of this State by lifting the constitutional ban on changing the rate.

This is not a mandate for changing the current system, but an opportunity for the people of Nevada to tell us whether they want that change.

Roll call on Senate Joint Resolution No. 15:

YEAS—13.

NAYS—Brower, Cegavske, Gustavson, Halseth, Hardy, McGinness, Rhoads, Settlemeyer—8.

Senate Joint Resolution No. 15 having received a constitutional majority, Mr. President declared it passed.

Resolution ordered transmitted to the Assembly.

UNFINISHED BUSINESS  
CONSIDERATION OF ASSEMBLY AMENDMENTS

Senate Bill No. 190.

The following Assembly amendment was read:

Amendment No. 721.

"SUMMARY—Provides for the licensure of music therapists. (BDR 54-377)"

"AN ACT relating to music therapy; providing for the licensure of music therapists by the State Board of Health; authorizing the Board to establish a voluntary Music Therapy Advisory Group; prohibiting a person from engaging in the practice of music therapy without a license; prescribing the requirements for the issuance and renewal of a license as a music therapist; establishing the grounds for disciplinary action against a music therapist; providing the disciplinary actions the Board may take against a music therapist; providing a penalty; and providing other matters properly relating thereto."

**Legislative Counsel's Digest:**

Existing law provides for the licensure and regulation of certain professions, occupations and businesses. (Title 54 of NRS) This bill provides for the licensure and regulation of music therapists. **Section 12** of this bill makes it unlawful to practice music therapy or hold oneself out as a music therapist without a license. **Section 17** of this bill sets forth the authorized music therapy services that may be provided by a music therapist. **Sections 13 and 14** of this bill make the State Board of Health the licensing entity for music therapists and establishes the requirements and fee for licensure to practice as a music therapist. **Sections 15 and 16** of this bill provide for the renewal of a license to practice music therapy every ~~4~~ **3** years as well as the requirements and fee for renewal. **Section 34** of this bill provides that the State Board of Health may not increase the fee for issuing or renewing a license sooner than January 1, 2014.

**Section 10** of this bill allows the State Board of Health to adopt any regulations it deems necessary to carry out the provisions of the bill. In addition, **section 10** requires the Board to enforce the provisions of the bill to the extent that money is available for that purpose. The Board is also required to maintain a list of applicants, licensees and persons whose licenses have been revoked or suspended and make those lists available upon request and payment of any fee. **Section 11** of this bill authorizes the State Board of Health to establish a Music Therapy Advisory Group that serves without compensation to assist the Board in carrying out its duties.

**Sections 18-23** of this bill establish the grounds for disciplinary action against a music therapist and the procedures for addressing complaints and taking such disciplinary action. **Section 24** of this bill prohibits a person from requiring a music therapist to delegate certain services to another person in certain circumstances.

**Section 25** of this bill adds music therapists to the definition of "provider of health care" as used in the chapter which addresses healing arts. That definition is also referred to and used in various sections of the NRS for various purposes. (See e.g. NRS 48.039, 162A.760, 391.208) **Section 26** of this bill adds music therapists to the list of persons required to report unprofessional conduct by a nurse or other person licensed or certified by the State Board of Nursing. **Sections 27-29** of this bill add music therapists to the list of persons required to report any known or suspected abuse, neglect, exploitation or isolation of an older or vulnerable person. **Section 30** of this bill adds music therapists to the list of persons required to report any known or suspected abuse or neglect of a child. **Section 31** of this bill makes the regulations of the State Board of Health relating to licensing music therapists subject to review of the Legislative Committee on Health Care. After any such review, the Committee would notify the Board of the advisability of adopting or revising the proposed regulation. (NRS 439B.225)

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

**Section 1.** Title 54 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 24, inclusive, of this act.

**Sec. 2.** *The practice of music therapy is hereby declared to be a learned allied health profession, affecting public health, safety and welfare and subject to regulation to protect the public from the practice of music therapy by unqualified and unlicensed persons and from unprofessional conduct by persons who are licensed to practice music therapy.*

**Sec. 3.** *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 4 to 8, inclusive, of this act have the meanings ascribed to them in those sections.*

**Sec. 4.** *"Board" means the State Board of Health.*

**Sec. 5.** *"Client" means a person who receives music therapy services.*

**Sec. 6.** *"Licensee" means a music therapist who is licensed to practice music therapy pursuant to this chapter.*

**Sec. 7.** *"Music therapy" means the clinical use of music interventions by a licensee to accomplish individualized goals within a therapeutic relationship by a credentialed professional who has completed a music therapy program approved by the Board. The term does not include:*

- 1. The practice of psychology or medicine;*
- 2. The psychological assessment or treatment of couples or families;*
- 3. The prescribing of drugs or electroconvulsive therapy;*
- 4. The medical treatment of physical disease, injury or deformity;*
- 5. The diagnosis or psychological treatment of a psychotic disorder;*
- 6. The use of projective techniques in the assessment of personality;*
- 7. The use of psychological, neuropsychological, psychometric assessment or clinical tests designed to identify or classify abnormal or*

*pathological human behavior or to determine intelligence, personality, aptitude, interests or addictions;*

*8. The use of individually administered intelligence tests, academic achievement tests or neuropsychological tests; ~~for~~*

*9. The use of psychotherapy to treat the concomitants of organic illness ~~it~~;*

*10. The diagnosis of any physical or mental disorder; or*

*11. The evaluation of the effects of medical and psychotropic drugs.*

*Sec. 8. "Music therapy services" means the services a licensee is authorized to provide pursuant to section 17 of this act in order to achieve the goals of music therapy.*

*Sec. 9. The provisions of this chapter do not apply to:*

*1. A person who is employed by this State or the Federal Government and who provides music therapy services within the scope of that employment.*

*2. A person performing services or participating in activities as part of a supervised course of study in an accredited or approved educational or internship program while pursuing study leading to a degree or certificate in music therapy, if the person is designated by a title which clearly indicates his or her status as a student or intern.*

*3. A person who holds a professional license in this State or an employee who is supervised by a person who holds a professional license in this State and whose provision of music therapy services is incidental to the practice of his or her profession if the person does not hold himself or herself out to the public as a music therapist.*

*Sec. 10. 1. The Board may adopt such regulations as it deems necessary to carry out the provisions of this chapter. The regulations may include, without limitation, additional:*

- (a) Standards of training for music therapists;*
- (b) Requirements for continuing education for music therapists; and*
- (c) Standards of practice for music therapists.*

*2. The Board shall:*

*(a) Enforce the provisions of this chapter and any regulations adopted pursuant thereto, to the extent that money is available for that purpose; and*

*(b) Maintain a list of:*

- (1) Applicants for a license;*
- (2) Licensees; and*
- (3) Persons whose licenses have been revoked or suspended by the Board.*

*3. The Board shall, upon request and payment of any fee, provide a copy of a list maintained pursuant to paragraph (b) of subsection 2. A fee charged for providing the copy must not exceed the actual cost incurred by the Board to make the copy.*



4. *The Board may accept gifts, grants, donations and contributions from any source to assist in carrying out the provisions of this chapter.*

Sec. 11. 1. *The Board may establish a Music Therapy Advisory Group consisting of persons familiar with the practice of music therapy to provide the Board with expertise and assistance in carrying out its duties pursuant to this chapter. If a Music Therapy Advisory Group is established, the Board must:*

- (a) *Determine the number of members;*
- (b) *Appoint the members;*
- (c) *Establish the terms of the members; and*
- (d) *Determine the duties of the Music Therapy Advisory Group.*

2. *Members of a Music Therapy Advisory Group established pursuant to subsection 1 serve without compensation.*

Sec. 12. 1. *A person who is not licensed to practice music therapy pursuant to this chapter, or a person whose license to practice music therapy has expired or has been suspended or revoked by the Board, shall not:*

- (a) *Provide music therapy services;*
- (b) *Use in connection with his or her name the words or letters "MT," "music therapist," "licensed, board-certified music therapist," "MT-BC," "Music Therapist - Board Certified," "MT - BC/L" or "Licensed Music Therapist - Board Certified" or any other letters, words or insignia indicating or implying that he or she is licensed to practice music therapy, or in any other way, orally, or in writing or print, or by sign, directly or by implication, use the words "music therapy" or represent himself or herself as licensed or qualified to engage in the practice of music therapy; or*
- (c) *List or cause to have listed in any directory, including, without limitation, a telephone directory, his or her name or the name of his or her company under the heading "Music Therapy" or "Music Therapist" or any other term that indicates or implies that he or she is licensed or qualified to practice music therapy.*

2. *A person who violates the provisions of this section is guilty of a misdemeanor.*

Sec. 13. 1. *The Board shall issue a license to practice music therapy to an applicant who:*

- (a) *Is at least 18 years of age;*
- (b) *Is of good moral character; and*
- (c) *Submits to the Board:*
  - (1) *A completed application on a form provided by the Board;*
  - (2) *Proof that the applicant has successfully completed an academic program approved by the American Music Therapy Association or its successor organization with a bachelor's degree or higher degree in music therapy;*
  - (3) *A fee in the amount of \$200 or such other amount as prescribed by regulation by the Board;*

(4) *A complete set of fingerprints and written permission authorizing the Board to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report; and*

(5) *Proof that the applicant has passed the examination for board certification offered by the Certification Board for Music Therapists or its successor organization or is certified as a music therapist by that Board or its successor organization.*

2. *Any increase in the fees imposed pursuant to this section must not exceed the amount necessary for the Board to carry out the provisions of this chapter.*

Sec. 14. 1. *In addition to any other requirements set forth in this chapter, an applicant for the issuance or renewal of a license as a music therapist shall:*

(a) *Include the social security number of the applicant in the application submitted to the Board.*

(b) *Submit to the Board the statement prescribed by the Division of Welfare and Supportive Services of the Department of Health and Human Services pursuant to NRS 425.520. The statement must be completed and signed by the applicant.*

2. *The Board shall include the statement required pursuant to subsection 1 in:*

(a) *The application or any other forms that must be submitted for the issuance or renewal of the license; or*

(b) *A separate form prescribed by the Board.*

3. *A license may not be issued or renewed by the Board if the applicant:*

(a) *Fails to submit the statement required pursuant to subsection 1; or*

(b) *Indicates on the statement submitted pursuant to subsection 1 that the applicant is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.*

4. *If an applicant indicates on the statement submitted pursuant to subsection 1 that the applicant is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order, the Board shall advise the applicant to contact the district attorney or other public agency enforcing the order to determine the actions that the applicant may take to satisfy the arrearage.*

Sec. 15. 1. *Each license to practice music therapy expires ~~15~~ 3 years after the date on which it is issued and may be renewed if, before the license expires, the licensee submits to the Board:*

(a) A completed application for renewal on a form prescribed by the Board;

(b) Proof that the applicant has continuously maintained for the previous ~~five~~ 3 years his or her certification with and is currently certified as a music therapist by the Certification Board for Music Therapists or its successor organization;

(c) Proof that the applicant has completed not less than 100 units of continuing education approved by the Certification Board for Music Therapists or its successor organization; and

(d) A fee in the amount of \$200 or such other amount as prescribed by regulation by the Board.

2. Any increase in the fees imposed pursuant to this section must not exceed the amount necessary for the Board to carry out the provisions of this chapter.

Sec. 16. 1. A license that is not renewed on or before the date on which it expires is delinquent. The Board shall, within 30 days after the license becomes delinquent, send a notice to the licensee by certified mail, return receipt requested, to the address of the licensee as indicated in the records of the Board.

2. A licensee may renew a delinquent license within 60 days after the license becomes delinquent by complying with the requirements of section 15 of this act.

3. A license expires 60 days after it becomes delinquent if it is not renewed within that period.

Sec. 17. 1. A licensee may:

~~1.~~ (a) Accept referrals for music therapy services from physicians, psychologists or other ~~health and~~ medical, developmental or mental health professionals, education professionals, family members, clients or caregivers. Before providing music therapy services to a client for a medical or mental health condition, the licensee shall collaborate with the client's physician, psychologist, ~~for other~~ primary care provider or mental health professional to review the client's diagnosis, ~~and~~ treatment needs  
~~2.~~ and treatment plan.

(b) Conduct a music therapy assessment of a client to collect systematic, comprehensive and accurate information necessary to determine the appropriate type of music therapy services to provide for the client, including, without limitation, information relating to a client's emotional and physical health, social functioning, communication abilities and cognitive skills based upon the client's history and through observation and interaction of the client in music and nonmusic settings.

~~3.~~ (c) Develop an individualized treatment plan for the client that identifies the goals, objectives and potential strategies of the music therapy services appropriate for the client using music interventions, which may include, without limitation, music improvisation, receptive music listening,

song writing, lyric discussion, music and imagery, music performance, learning through music and movement to music.

~~4.4~~ (d) If applicable, carry out an individualized treatment plan that is consistent with any other medical, developmental, mental health or education services being provided to the client.

~~5.5~~ (e) Evaluate and compare the client's response to music therapy and the individualized treatment plan and suggest modifications, as appropriate.

~~6.6~~ (f) Develop a plan for determining when the provision of music therapy services is no longer needed in collaboration with the client, any physician or other provider of health care or education of the client, any appropriate member of the family of the client and any other appropriate person upon whom the client relies for support.

~~7.7~~ (g) Minimize any barriers so that the client may receive music therapy services in the least restrictive environment.

~~8.8~~ (h) Collaborate with and educate the client and the family or caregiver of the client or any other appropriate person about the needs of the client that are being addressed in music therapy and the manner in which the music therapy addresses those needs.

~~9. Perform other services approved by the Board or~~

2. Except as otherwise provided by this chapter or a regulation adopted by the Board pursuant to this chapter, a licensee shall comply with the scope of practice of the Certification Board for Music Therapists or its successor organization.

Sec. 18. The Board may refuse to grant or may suspend or revoke a license to practice music therapy for any of the following reasons:

1. Submitting false, fraudulent or misleading information to the Board or any agency of this State, any other state, a territory or possession of the United States, the District of Columbia or the Federal Government.

2. Violating any provision of this chapter or any regulation adopted pursuant thereto.

3. Conviction of a felony relating to the practice of music therapy or of any offense involving moral turpitude, the record of conviction being conclusive evidence thereof.

4. Habitual drunkenness or addiction to the use of a controlled substance.

5. Impersonating a licensed music therapist or allowing another person to use his or her license.

6. Using fraud or deception in applying for a license to practice music therapy.

7. Failing to comply with the "Code of Professional Practice" of the Certification Board for Music Therapists or its successor organization or committing any other unethical practices contrary to the interest of the public as determined by the Board.

8. *Negligence, fraud or deception in connection with the music therapy services a licensee is authorized to provide pursuant to this chapter.*

Sec. 19. 1. *If any member of the Board or a Music Therapy Advisory Group becomes aware of any ground for initiating disciplinary action against a licensee, the member must file a written complaint with the Board.*

2. *As soon as practicable after receiving a complaint, the Board shall:*

(a) *Forward the complaint to the Certification Board for Music Therapists or its successor organization for investigation of the complaint and request a written report of the findings of such investigation; or*

(b) *To the extent money is available to do so, conduct an investigation of the complaint to determine whether the allegations in the complaint merit the initiation of disciplinary proceedings against the licensee.*

3. *The Board shall retain a copy of each complaint filed with the Board pursuant to this section for at least 10 years, including, without limitation, any complaint that is not acted upon.*

Sec. 20. 1. *If, after an investigation conducted by the Board or receiving the findings from an investigation of a complaint from the Certification Board for Music Therapists or its successor organization, and after notice and a hearing as required by law, the Board finds one or more grounds for taking disciplinary action, the Board may:*

(a) *Place the licensee on probation for a specified period or until further order of the Board;*

(b) *Administer to the applicant or licensee a public reprimand;*

(c) *Refuse to renew the license of the licensee;*

(d) *Suspend or revoke the license of the licensee;*

(e) *Impose an administrative fine of not more than \$500 for each violation; or*

(f) *Take any combination of actions set forth in paragraphs (a) to (e), inclusive.*

2. *The order of the Board may include such other terms, provisions or conditions as the Board deems appropriate.*

3. *The order of the Board and the findings of fact and conclusions of law supporting that order are public records.*

4. *The Board shall not issue a private reprimand.*

Sec. 21. 1. *Except as otherwise provided in this section and NRS 239.0115, a complaint filed with the Board, all documents and other information filed with the complaint and all documents and other information returned from the Certification Board for Music Therapists or its successor organization as a result of an investigation conducted to determine whether to initiate disciplinary action against a person are confidential, unless the person submits a written statement to the Board requesting that such documents and information be made public records.*

2. *The charging documents filed with the Board to initiate disciplinary action pursuant to chapter 622A of NRS and all documents and*

*information considered by the Board when determining whether to impose discipline are public records.*

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

*4. The provisions of this section do not prohibit the Board from communicating or cooperating with or providing any documents or other information to any other licensing board or any other agency that is investigating a person, including, without limitation, a law enforcement agency.*

*Sec. 22. 1. If the Board receives a copy of a court order issued pursuant to NRS 425.540 that provides for the suspension of all professional, occupational and recreational licenses, certificates and permits issued to a person who is the holder of a license as a music therapist, the Board shall deem the license issued to that person to be suspended at the end of the 30th day after the date on which the court order was issued unless the Board receives a letter issued to the holder of the license by the district attorney or other public agency pursuant to NRS 425.550 stating that the holder of the license has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.*

*2. The Board shall reinstate a license as a music therapist that has been suspended by a district court pursuant to NRS 425.540 if the Board receives a letter issued by the district attorney or other public agency pursuant to NRS 425.550 to the person whose license was suspended stating that the person whose license was suspended has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.*

*Sec. 23. 1. If the Board determines that a person has violated or is about to violate any provision of this chapter or a regulation adopted pursuant thereto, the Board may bring an action in a court of competent jurisdiction to enjoin the person from engaging in or continuing the violation.*

*2. An injunction:*

*(a) May be issued without proof of actual damage sustained by any person.*

*(b) Does not prohibit the criminal prosecution and punishment of the person who commits the violation.*

*Sec. 24. 1. A person shall not require a licensee to delegate the provision of music therapy services to another person if, in the opinion of the licensee, such delegation would be inappropriate or create a risk of harm to the client.*

*2. A person who violates the provisions of this section is guilty of a misdemeanor.*

*Sec. 25. NRS 629.031 is hereby amended to read as follows:*

*629.031 Except as otherwise provided by a specific statute:*

1. "Provider of health care" means a physician licensed pursuant to chapter 630, 630A or 633 of NRS, physician assistant, dentist, licensed nurse, dispensing optician, optometrist, practitioner of respiratory care, registered physical therapist, podiatric physician, licensed psychologist, licensed marriage and family therapist, licensed clinical professional counselor, **music therapist**, chiropractor, athletic trainer, perfusionist, doctor of Oriental medicine in any form, medical laboratory director or technician, pharmacist or a licensed hospital as the employer of any such person.

2. For the purposes of NRS 629.051, 629.061 and 629.065, the term includes a facility that maintains the health care records of patients.

**Sec. 26.** NRS 632.472 is hereby amended to read as follows:

632.472 1. The following persons shall report in writing to the Executive Director of the Board any conduct of a licensee or holder of a certificate which constitutes a violation of the provisions of this chapter:

(a) Any physician, dentist, dental hygienist, chiropractor, optometrist, podiatric physician, medical examiner, resident, intern, professional or practical nurse, nursing assistant, perfusionist, physician assistant licensed pursuant to chapter 630 or 633 of NRS, psychiatrist, psychologist, marriage and family therapist, clinical professional counselor, alcohol or drug abuse counselor, **music therapist**, driver of an ambulance, advanced emergency medical technician or other person providing medical services licensed or certified to practice in this State.

(b) Any personnel of a medical facility or facility for the dependent engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of a medical facility or facility for the dependent upon notification by a member of the staff of the facility.

(c) A coroner.

(d) Any person who maintains or is employed by an agency to provide personal care services in the home.

(e) Any person who operates, who is employed by or who contracts to provide services for an intermediary service organization as defined in NRS 427A.0291.

(f) Any person who maintains or is employed by an agency to provide nursing in the home.

(g) Any employee of the Department of Health and Human Services.

(h) Any employee of a law enforcement agency or a county's office for protective services or an adult or juvenile probation officer.

(i) Any person who maintains or is employed by a facility or establishment that provides care for older persons.

(j) Any person who maintains, is employed by or serves as a volunteer for an agency or service which advises persons regarding the abuse, neglect or exploitation of an older person and refers them to persons and agencies where their requests and needs can be met.

(k) Any social worker.

2. Every physician who, as a member of the staff of a medical facility or facility for the dependent, has reason to believe that a nursing assistant has engaged in conduct which constitutes grounds for the denial, suspension or revocation of a certificate shall notify the superintendent, manager or other person in charge of the facility. The superintendent, manager or other person in charge shall make a report as required in subsection 1.

3. A report may be filed by any other person.

4. Any person who in good faith reports any violation of the provisions of this chapter to the Executive Director of the Board pursuant to this section is immune from civil liability for reporting the violation.

5. As used in this section, "agency to provide personal care services in the home" has the meaning ascribed to it in NRS 449.0021.

**Sec. 27.** NRS 200.5093 is hereby amended to read as follows:

200.5093 1. Any person who is described in subsection 4 and who, in a professional or occupational capacity, knows or has reasonable cause to believe that an older person has been abused, neglected, exploited or isolated shall:

(a) Except as otherwise provided in subsection 2, report the abuse, neglect, exploitation or isolation of the older person to:

(1) The local office of the Aging and Disability Services Division of the Department of Health and Human Services;

(2) A police department or sheriff's office;

(3) The county's office for protective services, if one exists in the county where the suspected action occurred; or

(4) A toll-free telephone service designated by the Aging and Disability Services Division of the Department of Health and Human Services; and

(b) Make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the older person has been abused, neglected, exploited or isolated.

2. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that the abuse, neglect, exploitation or isolation of the older person involves an act or omission of the Aging and Disability Services Division, another division of the Department of Health and Human Services or a law enforcement agency, the person shall make the report to an agency other than the one alleged to have committed the act or omission.

3. Each agency, after reducing a report to writing, shall forward a copy of the report to the Aging and Disability Services Division of the Department of Health and Human Services and the Unit for the Investigation and Prosecution of Crimes.

4. A report must be made pursuant to subsection 1 by the following persons:

(a) Every physician, dentist, dental hygienist, chiropractor, optometrist, podiatric physician, medical examiner, resident, intern, professional or practical nurse, physician assistant licensed pursuant to chapter 630 or 633 of



NRS, perfusionist, psychiatrist, psychologist, marriage and family therapist, clinical professional counselor, clinical alcohol and drug abuse counselor, alcohol and drug abuse counselor, *music therapist*, athletic trainer, driver of an ambulance, advanced emergency medical technician or other person providing medical services licensed or certified to practice in this State, who examines, attends or treats an older person who appears to have been abused, neglected, exploited or isolated.

(b) Any personnel of a hospital or similar institution engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of a hospital or similar institution upon notification of the suspected abuse, neglect, exploitation or isolation of an older person by a member of the staff of the hospital.

(c) A coroner.

(d) Every person who maintains or is employed by an agency to provide personal care services in the home.

(e) Every person who maintains or is employed by an agency to provide nursing in the home.

(f) Every person who operates, who is employed by or who contracts to provide services for an intermediary service organization as defined in NRS 427A.0291.

(g) Any employee of the Department of Health and Human Services.

(h) Any employee of a law enforcement agency or a county's office for protective services or an adult or juvenile probation officer.

(i) Any person who maintains or is employed by a facility or establishment that provides care for older persons.

(j) Any person who maintains, is employed by or serves as a volunteer for an agency or service which advises persons regarding the abuse, neglect, exploitation or isolation of an older person and refers them to persons and agencies where their requests and needs can be met.

(k) Every social worker.

(l) Any person who owns or is employed by a funeral home or mortuary.

5. A report may be made by any other person.

6. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that an older person has died as a result of abuse, neglect or isolation, the person shall, as soon as reasonably practicable, report this belief to the appropriate medical examiner or coroner, who shall investigate the cause of death of the older person and submit to the appropriate local law enforcement agencies, the appropriate prosecuting attorney, the Aging and Disability Services Division of the Department of Health and Human Services and the Unit for the Investigation and Prosecution of Crimes his or her written findings. The written findings must include the information required pursuant to the provisions of NRS 200.5094, when possible.

7. A division, office or department which receives a report pursuant to this section shall cause the investigation of the report to commence within

3 working days. A copy of the final report of the investigation conducted by a division, office or department, other than the Aging and Disability Services Division of the Department of Health and Human Services, must be forwarded within 30 days after the completion of the report to the:

- (a) Aging and Disability Services Division;
- (b) Repository for Information Concerning Crimes Against Older Persons created by NRS 179A.450; and
- (c) Unit for the Investigation and Prosecution of Crimes.

8. If the investigation of a report results in the belief that an older person is abused, neglected, exploited or isolated, the Aging and Disability Services Division of the Department of Health and Human Services or the county's office for protective services may provide protective services to the older person if the older person is able and willing to accept them.

9. A person who knowingly and willfully violates any of the provisions of this section is guilty of a misdemeanor.

10. As used in this section, "Unit for the Investigation and Prosecution of Crimes" means the Unit for the Investigation and Prosecution of Crimes Against Older Persons in the Office of the Attorney General created pursuant to NRS 228.265.

**Sec. 28.** NRS 200.50935 is hereby amended to read as follows:

200.50935 1. Any person who is described in subsection 3 and who, in a professional or occupational capacity, knows or has reasonable cause to believe that a vulnerable person has been abused, neglected, exploited or isolated shall:

- (a) Report the abuse, neglect, exploitation or isolation of the vulnerable person to a law enforcement agency; and

- (b) Make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the vulnerable person has been abused, neglected, exploited or isolated.

2. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that the abuse, neglect, exploitation or isolation of the vulnerable person involves an act or omission of a law enforcement agency, the person shall make the report to a law enforcement agency other than the one alleged to have committed the act or omission.

3. A report must be made pursuant to subsection 1 by the following persons:

- (a) Every physician, dentist, dental hygienist, chiropractor, optometrist, podiatric physician, medical examiner, resident, intern, professional or practical nurse, perfusionist, physician assistant licensed pursuant to chapter 630 or 633 of NRS, psychiatrist, psychologist, marriage and family therapist, clinical professional counselor, clinical alcohol and drug abuse counselor, alcohol and drug abuse counselor, *music therapist*, athletic trainer, driver of an ambulance, advanced emergency medical technician or other person providing medical services licensed or certified to practice in this State, who

examines, attends or treats a vulnerable person who appears to have been abused, neglected, exploited or isolated.

(b) Any personnel of a hospital or similar institution engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of a hospital or similar institution upon notification of the suspected abuse, neglect, exploitation or isolation of a vulnerable person by a member of the staff of the hospital.

(c) A coroner.

(d) Every person who maintains or is employed by an agency to provide nursing in the home.

(e) Any employee of the Department of Health and Human Services.

(f) Any employee of a law enforcement agency or an adult or juvenile probation officer.

(g) Any person who maintains or is employed by a facility or establishment that provides care for vulnerable persons.

(h) Any person who maintains, is employed by or serves as a volunteer for an agency or service which advises persons regarding the abuse, neglect, exploitation or isolation of a vulnerable person and refers them to persons and agencies where their requests and needs can be met.

(i) Every social worker.

(j) Any person who owns or is employed by a funeral home or mortuary.

4. A report may be made by any other person.

5. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that a vulnerable person has died as a result of abuse, neglect or isolation, the person shall, as soon as reasonably practicable, report this belief to the appropriate medical examiner or coroner, who shall investigate the cause of death of the vulnerable person and submit to the appropriate local law enforcement agencies and the appropriate prosecuting attorney his or her written findings. The written findings must include the information required pursuant to the provisions of NRS 200.5094, when possible.

6. A law enforcement agency which receives a report pursuant to this section shall immediately initiate an investigation of the report.

7. A person who knowingly and willfully violates any of the provisions of this section is guilty of a misdemeanor.

**Sec. 29.** NRS 200.5095 is hereby amended to read as follows:

200.5095 1. Reports made pursuant to NRS 200.5093, 200.50935 and 200.5094, and records and investigations relating to those reports, are confidential.

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

(a) Pursuant to a criminal prosecution;

(b) Pursuant to NRS 200.50982; or

(c) To persons or agencies enumerated in subsection 3,  
↳ is guilty of a misdemeanor.

3. Except as otherwise provided in subsection 2 and NRS 200.50982, data or information concerning the reports and investigations of the abuse, neglect, exploitation or isolation of an older person or a vulnerable person is available only to:

(a) A physician who is providing care to an older person or a vulnerable person who may have been abused, neglected, exploited or isolated;

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

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

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

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

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

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

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

(i) If the older person or vulnerable person is deceased, the executor or administrator of his or her estate, if the identity of the person who was responsible for reporting the alleged abuse, neglect, exploitation or isolation of the older person or vulnerable person to the public agency is protected, and the executor or administrator is not the person suspected of such abuse, neglect, exploitation or isolation; or

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

4. If the person who is reported to have abused, neglected, exploited or isolated an older person or a vulnerable person is the holder of a license or certificate issued pursuant to chapters 449, 630 to 641B, inclusive, or 654 of NRS, **or sections 2 to 24, inclusive, of this act, the** information contained in the report must be submitted to the board that issued the license.

**Sec. 30.** NRS 432B.220 is hereby amended to read as follows:

432B.220 1. Any person who is described in subsection 4 and who, in his or her professional or occupational capacity, knows or has reasonable cause to believe that a child has been abused or neglected shall:

(a) Except as otherwise provided in subsection 2, report the abuse or neglect of the child to an agency which provides child welfare services or to a law enforcement agency; and

(b) Make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the child has been abused or neglected.

2. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that the abuse or neglect of the child involves an act or omission of:

(a) A person directly responsible or serving as a volunteer for or an employee of a public or private home, institution or facility where the child is receiving child care outside of the home for a portion of the day, the person shall make the report to a law enforcement agency.

(b) An agency which provides child welfare services or a law enforcement agency, the person shall make the report to an agency other than the one alleged to have committed the act or omission, and the investigation of the abuse or neglect of the child must be made by an agency other than the one alleged to have committed the act or omission.

3. Any person who is described in paragraph (a) of subsection 4 who delivers or provides medical services to a newborn infant and who, in his or her professional or occupational capacity, knows or has reasonable cause to believe that the newborn infant has been affected by prenatal illegal substance abuse or has withdrawal symptoms resulting from prenatal drug exposure shall, as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the newborn infant is so affected or has such symptoms, notify an agency which provides child welfare services of the condition of the infant and refer each person who is responsible for the welfare of the infant to an agency which provides child welfare services for appropriate counseling, training or other services. A notification and referral to an agency which provides child welfare services pursuant to this subsection shall not be construed to require prosecution for any illegal action.

4. A report must be made pursuant to subsection 1 by the following persons:

(a) A physician, dentist, dental hygienist, chiropractor, optometrist, podiatric physician, medical examiner, resident, intern, professional or practical nurse, physician assistant licensed pursuant to chapter 630 or 633 of NRS, perfusionist, psychiatrist, psychologist, marriage and family therapist, clinical professional counselor, clinical alcohol and drug abuse counselor, alcohol and drug abuse counselor, clinical social worker, *music therapist*, athletic trainer, advanced emergency medical technician or other person providing medical services licensed or certified in this State.

(b) Any personnel of a hospital or similar institution engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of a hospital or similar institution upon

notification of suspected abuse or neglect of a child by a member of the staff of the hospital.

(c) A coroner.

(d) A member of the clergy, practitioner of Christian Science or religious healer, unless the person has acquired the knowledge of the abuse or neglect from the offender during a confession.

(e) A social worker and an administrator, teacher, librarian or counselor of a school.

(f) Any person who maintains or is employed by a facility or establishment that provides care for children, children's camp or other public or private facility, institution or agency furnishing care to a child.

(g) Any person licensed to conduct a foster home.

(h) Any officer or employee of a law enforcement agency or an adult or juvenile probation officer.

(i) An attorney, unless the attorney has acquired the knowledge of the abuse or neglect from a client who is or may be accused of the abuse or neglect.

(j) Any person who maintains, is employed by or serves as a volunteer for an agency or service which advises persons regarding abuse or neglect of a child and refers them to persons and agencies where their requests and needs can be met.

(k) Any person who is employed by or serves as a volunteer for an approved youth shelter. As used in this paragraph, "approved youth shelter" has the meaning ascribed to it in NRS 244.422.

(l) Any adult person who is employed by an entity that provides organized activities for children.

5. A report may be made by any other person.

6. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that a child has died as a result of abuse or neglect, the person shall, as soon as reasonably practicable, report this belief to an agency which provides child welfare services or a law enforcement agency. If such a report is made to a law enforcement agency, the law enforcement agency shall notify an agency which provides child welfare services and the appropriate medical examiner or coroner of the report. If such a report is made to an agency which provides child welfare services, the agency which provides child welfare services shall notify the appropriate medical examiner or coroner of the report. The medical examiner or coroner who is notified of a report pursuant to this subsection shall investigate the report and submit his or her written findings to the appropriate agency which provides child welfare services, the appropriate district attorney and a law enforcement agency. The written findings must include, if obtainable, the information required pursuant to the provisions of subsection 2 of NRS 432B.230.

**Sec. 31.** NRS 439B.225 is hereby amended to read as follows:

439B.225 1. As used in this section, "licensing board" means any division or board empowered to adopt standards for the issuance or renewal of licenses, permits or certificates of registration pursuant to NRS 435.3305 to 435.339, inclusive, chapter 449, 625A, 630, 630A, 631, 632, 633, 634, 634A, 635, 636, 637, 637A, 637B, 639, 640, 640A, 641, 641A, 641B, 641C, 652 or 654 of NRS ~~+~~ **or sections 2 to 24, inclusive, of this act.**

2. The Committee shall review each regulation that a licensing board proposes or adopts that relates to standards for the issuance or renewal of licenses, permits or certificates of registration issued to a person or facility regulated by the board, giving consideration to:

- (a) Any oral or written comment made or submitted to it by members of the public or by persons or facilities affected by the regulation;
- (b) The effect of the regulation on the cost of health care in this State;
- (c) The effect of the regulation on the number of licensed, permitted or registered persons and facilities available to provide services in this State; and
- (d) Any other related factor the Committee deems appropriate.

3. After reviewing a proposed regulation, the Committee shall notify the agency of the opinion of the Committee regarding the advisability of adopting or revising the proposed regulation.

4. The Committee shall recommend to the Legislature as a result of its review of regulations pursuant to this section any appropriate legislation.

**Sec. 32.** NRS 608.0116 is hereby amended to read as follows:

608.0116 "Professional" means pertaining to an employee who is licensed or certified by the State of Nevada for and engaged in the practice of law or any of the professions regulated by chapters 623 to 645, inclusive, 645G and 656A of NRS ~~+~~ **and sections 2 to 24, inclusive, of this act.**

**Sec. 33.** Section 14 of this act is hereby amended to read as follows:

Sec. 14. 1. In addition to any other requirements set forth in this chapter, an applicant for the issuance or renewal of a license as a music therapist shall ~~+~~

~~— (a) Include the social security number of the applicant in the application submitted to the Board.~~

~~— (b) Submit~~ **submit** to the Board the statement prescribed by the Division of Welfare and Supportive Services of the Department of Health and Human Services pursuant to NRS 425.520. The statement must be completed and signed by the applicant.

2. The Board shall include the statement required pursuant to subsection 1 in:

- (a) The application or any other forms that must be submitted for the issuance or renewal of the license; or
- (b) A separate form prescribed by the Board.

3. A license may not be issued or renewed by the Board if the applicant:

(a) Fails to submit the statement required pursuant to subsection 1; or

(b) Indicates on the statement submitted pursuant to subsection 1 that the applicant is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.

4. If an applicant indicates on the statement submitted pursuant to subsection 1 that the applicant is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order, the Board shall advise the applicant to contact the district attorney or other public agency enforcing the order to determine the actions that the applicant may take to satisfy the arrearage.

**Sec. 34.** The State Board of Health shall not adopt any regulation to increase the fee for the issuance of a license to practice music therapy pursuant to section 13 of this act or the fee for the renewal of such a license pursuant to section 15 of this act before January 1, 2014.

**Sec. 35.** 1. This section, sections 1 to 32, inclusive, and section 34 of this act become effective:

(a) Upon passage and approval for the purpose of issuing licenses to qualified applicants; and

(b) On January 1, 2012, for all other purposes.

2. Section 33 of this act becomes effective on the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:

(a) Have failed to comply with a subpoena or warrant relating to a proceeding to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

(b) Are in arrears in the payment for the support of one or more children, ↪ are repealed by the Congress of the United States.

3. Sections 22 and 33 of this act expire by limitation 2 years after the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:

(a) Have failed to comply with a subpoena or warrant relating to a proceeding to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

(b) Are in arrears in the payment for the support of one or more children, ↪ are repealed by the Congress of the United States.



Senator Schneider moved that the Senate concur in the Assembly amendment to Senate Bill No. 190.

Motion carried by a two-thirds majority.

Bill ordered enrolled.

Senate Bill No. 234.

The following Assembly amendment was read:

Amendment No. 669.

"SUMMARY—Revises provisions relating to motor vehicle dealers. (BDR 43-386)"

"AN ACT relating to vehicles; prohibiting a manufacturer from requiring a dealer to alter substantially an existing facility of the dealer or construct a new facility; prohibiting a manufacturer from taking adverse action against a dealer relating to the exportation of a vehicle outside the United States except under certain circumstances; revising provisions governing the modification or replacement of a franchise; revising provisions relating to unfair practices; and providing other matters properly relating thereto."

**Legislative Counsel's Digest:**

**Section 2** of this bill prohibits a manufacturer from requiring a dealer to alter substantially an existing facility or to construct a new facility for any new vehicles that are handled by the dealer in certain circumstances and provides that any such requirement constitutes a modification of the franchise of the dealer.

**Section 3** of this bill prohibits a manufacturer from taking adverse action against a dealer who sells a vehicle which is later exported outside the United States, unless the dealer had actual knowledge of or reasonably should have known of the exportation of the vehicle.

**Section 9** of this bill provides that if a manufacturer is purchased by another manufacturer or entity, a dealer must be offered a franchise agreement that is substantially similar to the franchise agreement offered to other dealers of the same line and make of vehicles.

**Section 16** of this bill provides that the forms for the application for credit and contracts to be used in the sale of vehicles prescribed by the Commissioner of Financial Institutions must contain a provision which provides that if the seller elects to rescind the contract, the seller must provide notice to the buyer not less than 20 days after the date of the contract.

**Section 10** of this bill provides that a refusal to accept an amended claim for parts and labor or a claim that was not filed before the manufacturer's deadline that is submitted within 60 days after the claim was first filed or was due is an unfair practice. **Section 10** also makes an audit confirming a warranty repair, sales incentive or rebate performed more than 9 months after a claim was made an unfair practice. **Section 11** of this bill prohibits a manufacturer from preventing a dealer from disclosing a service, repair guidance or recall notice or providing certain information relating to warranty coverage.

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

**Section 1.** Chapter 482 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

**Sec. 2. 1. A manufacturer shall not require a dealer:**

*(a) To alter substantially an existing facility of the dealer; or*

*(b) To construct a new facility,*

*↪ for any new vehicles that are handled by the dealer unless the alteration or new construction constitutes a reasonable facility requirement in accordance with the franchise agreement.*

*2. If a manufacturer requires a substantial alteration of an existing facility of the dealer or requires the dealer to construct a new facility, that requirement constitutes a modification of the franchise of the dealer for the purposes of this section and NRS 482.36311 to 482.36425, inclusive, and section 3 of this act.*

**Sec. 3. A manufacturer shall not modify the franchise of a dealer or take any adverse action against a dealer that sells a vehicle which is later exported outside the United States, unless the dealer had actual knowledge of or reasonably should have known of the exportation of the vehicle.**

**Sec. 4.** (Deleted by amendment.)

**Sec. 5.** (Deleted by amendment.)

**Sec. 6.** (Deleted by amendment.)

**Sec. 7.** (Deleted by amendment.)

**Sec. 8.** (Deleted by amendment.)

**Sec. 9.** NRS 482.36354 is hereby amended to read as follows:

482.36354 1. A manufacturer or distributor shall not modify the franchise of a dealer or replace the franchise with another franchise if the modification or replacement would have a substantially adverse effect upon the dealer's investment or obligations to provide sales and service, unless:

(a) The manufacturer or distributor has given written notice of its intention to the Director and the dealer affected by the intended modification or replacement; and

(b) Either of the following conditions occurs:

(1) The dealer does not file a protest with the Director within 30 days after receiving the notice; or

(2) After a protest has been filed with the Director and the Director has conducted a hearing, the Director issues an order authorizing the manufacturer or distributor to modify or replace the franchise.

2. The notice required by subsection 1 must be given to the dealer and to the Director at least 60 days before the date on which the intended action is to take place.

3. If a manufacturer or distributor changes the area of primary responsibility of a dealer, the change constitutes a modification of the franchise of the dealer for the purposes of NRS 482.36311 to 482.36425, inclusive. As used in this subsection, "area of primary responsibility" means

the geographic area in which a dealer, pursuant to a franchise agreement, is responsible for selling, servicing and otherwise representing the products of a manufacturer or distributor.

**4. *Notwithstanding the provisions of this section, if a manufacturer is purchased by another manufacturer or entity, a dealer must be offered a franchise agreement that is substantially similar to the franchise agreement offered to other dealers of the same line and make of vehicles.***

**Sec. 10.** NRS 482.36385 is hereby amended to read as follows:

482.36385 It is an unfair act or practice for any manufacturer, distributor or factory branch, directly or through any representative, to:

1. Compete with a dealer. A manufacturer or distributor shall not be deemed to be competing when operating a previously existing dealership temporarily for a reasonable period, or in a bona fide retail operation which is for sale to any qualified person at a fair and reasonable price, or in a bona fide relationship in which a person has made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of the dealership on reasonable terms and conditions.

2. Discriminate unfairly among its dealers, or fail without good cause to comply with franchise agreements, with respect to warranty reimbursement or authority granted to its dealers to make warranty adjustments with retail customers.

3. Fail to compensate a dealer fairly for the work and services which the dealer is required to perform in connection with the delivery and preparation obligations under any franchise, or fail to compensate a dealer fairly for labor, parts and other expenses incurred by the dealer under the manufacturer's warranty agreements. The manufacturer shall set forth in writing the respective obligations of a dealer and the manufacturer in the preparation of a vehicle for delivery, and as between them a dealer's liability for a defective product is limited to the obligation so set forth. Fair compensation includes diagnosis and reasonable administrative and clerical costs. The dealer's compensation for parts and labor to satisfy a warranty must not be less than the amount of money charged to its various retail customers for parts and labor that are not covered by a warranty. If parts are supplied by the manufacturer, including exchanged parts and assembled components, the dealer is entitled with respect to each part to an amount not less than the dealer's normal retail markup for the part. This subsection does not apply to compensation for any part, system, fixture, appliance, furnishing, accessory or feature of a motor home or recreational vehicle that is designed, used and maintained primarily for nonvehicular, residential purposes.

4. Fail to ~~pay~~ :

(a) **Pay** all claims made by dealers for compensation for delivery and preparation work, transportation claims, special campaigns and work to satisfy warranties within 30 days after approval, or fail to approve or disapprove such claims within 30 days after receipt ~~or disapprove~~ ;

(b) *Disapprove* any claim without notice to the dealer in writing of the grounds for disapproval ~~†~~;

(c) *Accept an amended claim for labor and parts if the amended claim is submitted not later than 60 days after the date on which the manufacturer or distributor notifies the dealer that the claim has been disapproved and the disapproval was based on the dealer's failure to comply with a specific requirement for processing the claim, including, without limitation, a clerical error or other administrative technicality that does not relate to the legitimacy of the claim.*

↪ Failure to approve or disapprove or to pay within the specified time limits in an individual case does not constitute a violation of this section if the failure is because of reasons beyond the control of the manufacturer, distributor or factory branch.

5. Sell a new vehicle to a person who is not licensed as a new vehicle dealer under the provisions of this chapter.

6. Use false, deceptive or misleading advertising or engage in deceptive acts in connection with the manufacturer's or distributor's business.

7. Perform an audit to confirm a warranty repair, sales incentive or rebate more than ~~†~~ 9 months after the date ~~†of the transaction.†~~ *on which the claim was made. An audit of a dealer's records pursuant to this subsection may be conducted by the manufacturer or distributor on a reasonable basis, and a dealer's claim for warranty or sales incentive compensation must not be denied except for good cause, including, without limitation, performance of nonwarranty repairs, lack of material documentation, fraud or misrepresentation. A dealer's failure to comply with the specific requirements of the manufacturer or distributor for processing the claim does not constitute grounds for the denial of the claim or the reduction of the amount of compensation to the dealer if reasonable documentation or other evidence has been presented to substantiate the claim. The manufacturer or distributor shall not deny a claim or reduce the amount of compensation to the dealer for warranty repairs to resolve a condition discovered by the dealer during the course of a separate repair.*

8. Prohibit or prevent a dealer from appealing the results of an audit to confirm a warranty repair, sales incentive or rebate, or to require that such an appeal be conducted at a location other than the dealer's place of business.

**Sec. 11.** NRS 482.36389 is hereby amended to read as follows:

482.36389 A manufacturer shall not ~~†require†~~:

1. *Require* a dealer to disclose information concerning a customer to the manufacturer or a third party if the customer objects or the disclosure is otherwise unlawful ~~†~~; *or*

2. *Prohibit or prevent a dealer from disclosing a service, repair guidance or recall notice that is documented by the manufacturer or notifying customers of available warranty coverage and expiration dates of existing warranty coverage.*

**Sec. 12.** (Deleted by amendment.)

Sec. 13. (Deleted by amendment.)

Sec. 14. (Deleted by amendment.)

Sec. 15. (Deleted by amendment.)

**Sec. 15.5. Chapter 97 of NRS is hereby amended by adding thereto a new section to read as follows:**

**Notwithstanding the provisions of any contract to the contrary, default on the part of the buyer is only enforceable to the extent that:**

**1. The buyer fails to make a payment as required by the agreement; or**  
**2. The prospect of payment, performance or realization of collateral is significantly impaired. The burden of establishing the prospect of significant impairment is on the seller.**

Sec. 16. NRS 97.299 is hereby amended to read as follows:

97.299 1. The Commissioner of Financial Institutions shall prescribe, by regulation, forms for the application for credit and contracts to be used in the sale of vehicles if:

(a) The sale involves the taking of a security interest to secure all or a part of the purchase price of the vehicle;

(b) The application for credit is made to or through the seller of the vehicle;

(c) The seller is a dealer; and

(d) The sale is not a commercial transaction.

2. The forms prescribed pursuant to subsection 1 must meet the requirements of NRS 97.165, must be accepted and acted upon by any lender to whom the application for credit is made and, in addition to the information required in NRS 97.185 and required to be disclosed in such a transaction by federal law, must:

(a) Identify and itemize the items embodied in the cash sale price, including the amount charged for a contract to service the vehicle after it is purchased.

(b) In specifying the amount of the buyer's down payment, identify the amounts paid in money and allowed for property given in trade and the amount of any manufacturer's rebate applied to the down payment.

(c) Contain a description of any property given in trade as part of the down payment.

(d) Contain a description of the method for calculating the unearned portion of the finance charge upon prepayment in full of the unpaid total of payments as prescribed in NRS 97.225.

(e) Contain a provision that default on the part of the buyer is only enforceable to the extent that:

(1) The buyer fails to make a payment as required by the agreement; or

(2) The prospect of payment, performance or realization of collateral is significantly impaired. The burden of establishing the prospect of significant impairment is on the seller.

**(f) Contain a provision which provides that if the seller ~~elects to rescind the contract~~ exercises a valid option to cancel the vehicle sale as a result of**

*being unable to assign the contract to a financial institution with whom the seller regularly does business, the seller must ~~provide~~ hand-deliver or send prepaid by United States mail written notice to the buyer not less than 20 days after the date of the contract.*

(g) Include the following notice in at least 10-point bold type:

**NOTICE TO BUYER**

Do not sign this agreement before you read it or if it contains any blank spaces. You are entitled to a completed copy of this agreement. If you pay the amount due before the scheduled date of maturity of the indebtedness and you are not in default in the terms of the contract for more than 2 months, you are entitled to a refund of the unearned portion of the finance charge. If you fail to perform your obligations under this agreement, the vehicle may be repossessed and you may be liable for the unpaid indebtedness evidenced by this agreement.

3. The Commissioner shall arrange for or otherwise cause the translation into Spanish of the forms prescribed pursuant to subsection 1.

4. If a change in state or federal law requires the Commissioner to amend the forms prescribed pursuant to subsection 1, the Commissioner need not comply with the provisions of chapter 233B of NRS when making those amendments.

5. As used in this section:

(a) "Commercial transaction" means any sale of a vehicle to a buyer who purchases the vehicle solely or primarily for commercial use or resale.

(b) "Dealer" has the meaning ascribed to it in NRS 482.020.

**Sec. 17.** (Deleted by amendment.)

**Sec. 17.5.** The Commissioner of Financial Institutions shall adopt the regulations required by section 16 of this act on or before October 1, 2011.

**Sec. 18.** 1. This section and sections 16 and 17.5 of this act become effective upon passage and approval for the purpose of adopting regulations and on October 1, 2011, for all other purposes.

2. Sections 1 to ~~15,~~ 15.5, inclusive, and 17 of this act become effective on October 1, 2011.

**3. The amendatory provisions of section 16 of this act expire by limitation on September 30, 2012.**

Senator Schneider moved that the Senate concur in the Assembly amendment to Senate Bill No. 234.

Motion carried by a constitutional majority.

Bill ordered enrolled.

Senate Bill No. 237.

The following Assembly amendment was read:

Amendment No. 638.

"SUMMARY—Revises provisions governing the Nevada Youth Legislature. (BDR 34-9)"

"AN ACT relating to education; revising certain provisions governing the Nevada Youth Legislature; and providing other matters properly relating thereto."

**Legislative Counsel's Digest:**

Existing law provides for the creation, membership, powers and duties of the Nevada Youth Legislature. (NRS 385.505-385.575) **Sections 6 and 16** of this bill provide for the creation of a nonprofit corporation, with a Board of Directors appointed by the Legislative Commission, to provide educational programs and opportunities and administer and oversee the activities of the Youth Legislature. Pursuant to **sections 6, 9-12 and 16** of this bill, the Board, working cooperatively with the Legislative Counsel Bureau, assumes most of the duties currently performed by the Bureau and the Director of the Bureau. **Sections 5 and 14** of this bill provide for the creation of the Nevada Youth Legislature Account in the Legislative Fund, into which gifts, grants, donations and legislative appropriations ~~must~~ **may** be deposited and from which the expenses and operations of the Youth Legislature are paid. **Section 8** of this bill increases the term of a member of the Youth Legislature from 1 year to 2 years, with the possibility of a single, successive 2-year reappointment if the member continues to meet the qualifications for initial appointment. **Section 9** of this bill provides that if a member of the Youth Legislature changes his or her residency or school of enrollment in such a manner as to render the member ineligible for his or her original appointment, the member must so inform the Board, in writing, of that fact. **Section 9** also expands the eligibility requirements to allow pupils in grade 9 to apply for appointment to the Youth Legislature. **Section 10** of this bill sets forth that: (1) the position of a member of the Youth Legislature becomes vacant upon the unexcused absence of the member from any two official, scheduled meetings, courses, events, seminars or activities of the Youth Legislature; and (2) insofar as is practicable, a vacancy on the Youth Legislature must be filled within 30 days after the date on which the vacancy occurs. **Section 12** of this bill provides that, in addition to conducting at least one meeting, each member of the Youth Legislature must perform such other activities relating to the Youth Legislature as may be assigned by the Board. **Section 15** of this bill extends the date of reversion for the initial appropriation made to the Youth Legislature in 2007 from 2011 to 2013.

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

**Section 1.** Chapter 385 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

**Sec. 2.** *As used in NRS 385.505 to 385.575, inclusive, and sections 2 to 6, inclusive, of this act, unless the context otherwise requires, the words and terms defined in NRS 385.505 and sections ~~2.5 and 3~~ ~~and 4~~ of this act have the meanings ascribed to them in those sections.*

**Sec. 2.5.** "Account" means the Nevada Youth Legislature Account created by section 5 of this act.

Sec. 3. "Board" means the Board of Directors described in subsection 2 of section 6 of this act.

Sec. 4. ~~"Fund" means the Nevada Youth Legislature Fund created by section 5 of this act.~~ (Deleted by amendment.)

Sec. 5. 1. There is hereby created ~~as a special revenue fund in the State Treasury~~ the Nevada Youth Legislature Account in the Legislative Fund.

2. Money for the ~~Fund must~~ Account may be provided:

(a) By ~~direct legislative~~ appropriation; ~~and~~ or  
 (b) Through the acceptance of gifts, grants and donations as authorized pursuant to ~~paragraph (c) of subsection 2 of~~ NRS 385.545 ~~and~~ section 6 of this act.

3. ~~The Fund must be administered by the Board.~~

~~4.~~ The money in the ~~Fund~~ Account must be held in trust for the Youth Legislature and may be used only:

(a) For the educational programs and operations of the Youth Legislature;  
 (b) To provide administrative support for the Youth Legislature;  
 (c) To pay for expenses directly related to the Youth Legislature; and  
 (d) For such other purposes directly related to the Youth Legislature as the Board may approve.

~~5.~~ 4. The interest and income earned on the money in the ~~Fund~~ Account, after deducting any applicable charges, must be credited to the ~~Fund~~ Account. All claims against the ~~Fund~~ Account must be paid as other claims against the State are paid.

~~6.~~ 5. Any money remaining in the ~~Nevada Youth Legislature Fund~~ Account at the end of a fiscal year does not revert to the State General Fund, and the balance in the ~~Nevada Youth Legislature Fund~~ Account must be carried forward to the next fiscal year.

~~7.~~ 6. Each year, the Board shall submit an itemized statement of the income and expenditures for the ~~Fund~~ Account to the Legislative Commission.

Sec. 6. 1. The Youth Legislature must be administered by a corporation for public benefit, as that term is defined in NRS 82.021, which must include providing educational programs and opportunities as its primary organizational goal.

2. The corporation for public benefit must be governed by a Board of Directors consisting of seven members appointed by the Legislative Commission.

3. A member of the Board serves a term of 2 years and until his or her successor is appointed. A member of the Board may be reappointed.

4. The members of the Board shall elect a Chair and a Vice Chair from among their number. The term of office of the Chair and the Vice Chair is 1 year.

5. The Board:



*(a) Shall administer the provisions of NRS 385.505 to 385.575, inclusive, and sections 2 to 6, inclusive, of this act.*

~~*(b) Shall administer the Fund.*~~

~~*(c)*~~ *May provide to the Youth Legislature such administrative, financial and other support and guidance as the Board may determine to be necessary or appropriate.*

~~*(d)*~~ *(c) May employ one or more persons to provide administrative support for the Youth Legislature or pay the costs incurred by one or more volunteers to provide any required administrative support.*

~~*(e)*~~ *(d) Shall oversee the activities of the Youth Legislature.*

~~*(f)*~~ *(e) May solicit and accept gifts, grants and donations from any source to provide educational programs and opportunities and for the support of the Youth Legislature in carrying out the provisions of NRS 385.505 to 385.575, inclusive, and sections 2 to 6, inclusive, of this act. Any such gifts, grants and donations must be deposited in the ~~Fund~~ Account.*

~~*(g)*~~ *(f) May perform such other functions in whatever manner the Board determines will best serve the interests of this State and the Youth Legislature.*

Sec. 7. NRS 385.505 is hereby amended to read as follows:

385.505 ~~{As used in NRS 385.505 to 385.575, inclusive,}~~ "Youth Legislature" means the Nevada Youth Legislature created by NRS 385.515.

Sec. 8. NRS 385.515 is hereby amended to read as follows:

385.515 1. The Nevada Youth Legislature is hereby created, consisting of 21 members.

2. Each member of the Senate shall, taking into consideration any recommendations made by a member of the Assembly, appoint a person who submits an application and meets the qualifications for appointment set forth in NRS 385.525. A member of the Assembly may submit recommendations to a member of the Senate concerning the appointment.

3. After the initial terms:

(a) Except as otherwise provided in subsection 4, appointments to the Youth Legislature must be made by each member of the Senate before March 30 of each year.

(b) The term of each member of the Youth Legislature begins June 1 of the year of appointment.

4. If a member of the Senate does not make an appointment to the Youth Legislature by March 30 of a year, the members of the Assembly whose assembly districts are at least partially located within the senatorial district of that member of the Senate must collaborate to appoint a person who submits an application and meets the qualifications for appointment set forth in NRS 385.525.

5. Each member of the Youth Legislature serves a term of ~~1 year~~ **2 years** and may be reappointed *to one successive 2-year term* if the member

continues to meet the qualifications for appointment set forth in NRS 385.525.

**Sec. 9.** NRS 385.525 is hereby amended to read as follows:

385.525 1. To be eligible for appointment to the Youth Legislature, a person:

(a) Must be:

(1) A resident of the senatorial district of the Senator who appoints him or her;

(2) Enrolled in a public school or private school located in the senatorial district of the Senator who appoints him or her; or

(3) A homeschooled child who is otherwise eligible to be enrolled in a public school in the senatorial district of the Senator who appoints him or her;

(b) Must be enrolled in a public school or private school in this State in grade 9, 10, 11 or 12 for the school year in which he or she serves or be a homeschooled child who is otherwise eligible to enroll in a public school in this State in grade 9, 10, 11 or 12 for the school year in which he or she serves; and

(c) Must not be related by blood, adoption or marriage within the third degree of consanguinity or affinity to the Senator who appoints him or her or to any member of the Assembly who collaborated to appoint him or her.

2. *If, at any time, a person appointed to the Youth Legislature changes his or her residency or changes his or her school of enrollment in such a manner as to render the person ineligible under his or her original appointment, the person shall inform the Board, in writing, within 30 days after becoming aware of such changed facts.*

3. A person who wishes to be appointed or reappointed to the Youth Legislature must submit an application on the form prescribed pursuant to subsection ~~3~~ 4 to the Senator of the senatorial district in which the person resides, is enrolled in a public school or private school or, if the person is a homeschooled child, the senatorial district in which he or she is otherwise eligible to be enrolled in a public school. A person may not submit an application to more than one Senator in a calendar year.

~~3~~ 4. The ~~Director of the Legislative Counsel Bureau~~ **Board** shall prescribe a form for applications submitted pursuant to this section, which must require the signature of the principal of the school in which the applicant is enrolled or, if the applicant is a homeschooled child, the signature of a member of the community in which the applicant resides other than a relative of the applicant.

**Sec. 10.** NRS 385.535 is hereby amended to read as follows:

385.535 1. A position on the Youth Legislature becomes vacant upon:

(a) The death or resignation of a member.

(b) The absence of a member for any reason from ~~two~~ :

(1) *Two* meetings of the Youth Legislature, *including, without limitation, meetings conducted in person, meetings conducted by*

*teleconference, meetings conducted by videoconference and meetings conducted by other electronic means;*

*(2) Two activities of the Youth Legislature;*

*(3) Two event days of the Youth Legislature; or*

*(4) Any combination of absences from meetings, activities or event days of the Youth Legislature, if the combination of absences therefrom equals two or more,*

*↪ unless the absences are, as applicable, excused by the Chair ~~of the Youth Legislature.~~ or Vice Chair of the Board.*

(c) A change of residency or a change of the school of enrollment of a member which renders that member ineligible under his or her original appointment.

2. A vacancy on the Youth Legislature must be filled ~~for~~ :

*(a) For* the remainder of the unexpired term in the same manner as the original appointment.

*(b) Insofar as is practicable, within 30 days after the date on which the vacancy occurs.*

*3. As used in this section, "event day" means any single calendar day on which an official, scheduled event of the Youth Legislature is held, including, without limitation, a course of instruction, a course of orientation, a meeting, a seminar or any other official, scheduled activity.*

**Sec. 11.** NRS 385.545 is hereby amended to read as follows:

385.545 1. The Youth Legislature shall elect from among its members, to serve a term of 1 year beginning on June 1 of each year:

(a) A Chair, who shall conduct the meetings and *, in cooperation with the Board,* oversee the formation of committees as necessary to accomplish the business of the Youth Legislature; and

(b) A Vice Chair, who shall assist the Chair and conduct the meetings of the Youth Legislature if the Chair is absent or otherwise unable to perform his or her duties.

2. The Director of the Legislative Counsel Bureau ~~is~~ *upon request of the Board:*

(a) Shall provide meeting rooms and teleconference and videoconference facilities for the Youth Legislature.

(b) Shall, in the event of a vacancy on the Youth Legislature, notify the appropriate appointing authority of such vacancy.

(c) May accept gifts, grants and donations from any source for the support of the Youth Legislature in carrying out the provisions of NRS 385.505 to 385.575, inclusive ~~and~~ *, and sections 2 to 6, inclusive, of this act. Any such gifts, grants and donations must be deposited in the ~~Fund~~ Account.*

**Sec. 12.** NRS 385.555 is hereby amended to read as follows:

385.555 1. The Youth Legislature shall:

(a) Hold at least two public hearings in this State each school year. The Youth Legislature may simultaneously teleconference or videoconference each public hearing to two or more prominent locations throughout this State.

(b) Evaluate, review and comment upon issues of importance to the youth in this State, including, without limitation:

- (1) Education;
- (2) Employment opportunities;
- (3) Participation of youth in state and local government;
- (4) A safe learning environment;
- (5) The prevention of substance abuse;
- (6) Emotional and physical well-being;
- (7) Foster care; and
- (8) Access to state and local services.

(c) Conduct a public awareness campaign to raise awareness about the Youth Legislature and to enhance outreach to the youth in this State.

2. During his or her term, each member of the Youth Legislature shall ~~conduct~~:

(a) **Conduct** at least one meeting to afford the youth of this State an opportunity to discuss issues of importance to the youth in this State.

(b) **Complete such other activities as may be assigned to him or her by the Board as a member of the Youth Legislature.**

3. The Youth Legislature may, within the limits of available money ~~†~~ **and if approved by the Board:**

(a) During the period in which the Legislature is in a regular session, meet as often as necessary to conduct the business of the Youth Legislature and to advise the Legislature on proposed legislation relating to the youth in this State.

(b) Form committees, which may meet as often as necessary to assist with the business of the Youth Legislature.

(c) Conduct periodic seminars for its members regarding leadership, government and the legislative process.

~~†(d) Employ a person to provide administrative support for the Youth Legislature or pay the costs incurred by one or more volunteers to provide any required administrative support.†~~

4. Except as otherwise provided in this subsection, the Youth Legislature and its committees shall comply with the provisions of chapter 241 of NRS. Any activities of the Youth Legislature which are conducted solely for purposes of training, including, without limitation, any orientation programs conducted for the Youth Legislature, are not subject to the provisions of chapter 241 of NRS.

5. On or before May 30 of each year, the Youth Legislature shall submit a written report to the ~~†Director of the Legislative Counsel Bureau†~~ **Board** and to the Governor describing the activities of the Youth Legislature during the immediately preceding school year and any recommendations for legislation. The ~~†Director†~~ **Board** shall transmit the written report to the Legislative Committee on Education and to the next regular session of the Legislature.

**Sec. 13.** NRS 385.565 is hereby amended to read as follows:

385.565 The Youth Legislature may:

1. Request the drafting of not more than one legislative measure which relates to matters within the scope of the Youth Legislature. A request must be submitted to the Legislative Counsel on or before December 1 preceding the commencement of a regular session of the Legislature unless the Legislative Commission authorizes submitting a request after that date.

2. Adopt procedures to conduct meetings of the Youth Legislature and any committees thereof. Those procedures may be changed upon approval of a majority vote of all members of the Youth Legislature who are present and voting.

3. Advise the ~~{Director of the Legislative Counsel Bureau}~~ **Board** regarding the administration of any appropriations, gifts, grants or donations received for the support of the Youth Legislature.

**Sec. 14.** NRS 385.575 is hereby amended to read as follows:

385.575 The members of the Youth Legislature serve without compensation. To the extent that money is available ~~{, including, without limitation, money from gifts, grants and donations,}~~ **in the ~~{Fund,}~~ Account,** the members of the Youth Legislature may receive the per diem allowance and travel expenses provided for state officers and employees generally for attending a meeting of the Youth Legislature or a seminar conducted by the Youth Legislature.

**Sec. 15.** Section 8 of chapter 345, Statutes of Nevada 2007, as amended by chapter 74, Statutes of Nevada 2009, at page 256, is hereby amended to read as follows:

Sec. 8. 1. There is hereby appropriated from the State General Fund to the disbursement account created by section 1 of this act the sum of \$35,000 to fund the Nevada Youth Legislative Issues Forum created by Senate Bill 247 of the 2007 Legislative Session.

2. Any remaining balance of the appropriation made by subsection 1 must not be committed for expenditure after June 30, ~~{2011,}~~ **2013**, by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September ~~{6, 2011,}~~ **20, 2013**, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September ~~{6, 2011,}~~ **20, 2013**.

**Sec. 16.** As soon as practicable after the effective date of this act, the Legislative Commission shall:

1. Create or cause to be created the corporation for public benefit described in section 6 of this act. The corporation must be created in accordance with the requirements set forth in chapter 82 of NRS.

2. Appoint a Board of Directors for the corporation for public benefit described in section 6 of this act.

3. Perform such other activities as are necessary to provide initial support to the corporation for public benefit described in section 6 of this act.

**Sec. 17.** All money previously appropriated, donated, granted or otherwise supplied to the Nevada Youth Legislature, or its successor in interest, remaining unexpended and unencumbered on the effective date of this act must be transferred to the Nevada Youth Legislature ~~Fund~~ **Account** created by section 5 of this act on or before July 1, 2011.

**Sec. 18.** This act becomes effective upon passage and approval.

Senator Denis moved that the Senate concur in the Assembly amendment to Senate Bill No. 237.

Motion carried by a constitutional majority.

Bill ordered enrolled.

Senate Bill No. 273.

The following Assembly amendment was read:

Amendment No. 718.

"SUMMARY—Revises various provisions governing the practice of osteopathic medicine. (BDR 54-959)"

"AN ACT relating to osteopathic medicine; authorizing an osteopathic physician to engage in telemedicine under certain circumstances; authorizing the State Board of Osteopathic Medicine to place any condition, limitation or restriction on a license under certain circumstances;" ~~requiring an osteopathic physician who performs an autopsy to submit a written report of the findings of the autopsy to the Board under certain circumstances;~~ requiring the Board to submit to the Governor and to the Director of the Legislative Counsel Bureau certain reports compiling disciplinary action taken by the Board against physician assistants; revising provisions governing applications for licensure by the Board; revising provisions governing the requirements for licensure by the Board; revising certain provisions relating to the renewal of a license by the Board; revising provisions relating to certain continuing education requirements for licensees; authorizing the Board to prorate the initial license fee for certain licenses; expanding the authority of the Board to discipline a physician assistant for certain conduct; revising provisions requiring certain persons to report information relating to certain malpractice claims to the Board; expanding the authority of the Board to investigate a physician assistant for certain conduct; revising provisions governing certain complaints filed with the Board; authorizing the Board summarily to suspend the license of a physician assistant under certain circumstances; authorizing the Board to seek injunctive relief against an osteopathic physician or physician assistant for engaging in certain conduct; providing a penalty; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law authorizes the State Board of Osteopathic Medicine to issue, renew and suspend a license to practice osteopathic medicine and to issue

and renew a license to practice as a physician assistant in this State. (NRS 633.305-633.501)

**Section 2** of this bill authorizes an osteopathic physician to engage in telemedicine if the osteopathic physician is properly licensed and meets certain other criteria. **Section 34** of this bill authorizes the Board to seek injunctive relief against an osteopathic physician for engaging in telemedicine without a required license. **Section 3** of this bill authorizes the Board to place any condition, limitation or restriction on a license issued by the Board under certain circumstances. ~~Section 4 of this bill requires an osteopathic physician who performs an autopsy and who determines that the death of the decedent is the result of an overdose of a controlled substance or dangerous drug to submit a written report of such findings to the Board.~~

**Section 6** of this bill expands the scope of unprofessional conduct, which is subject to regulation by the Board, to include certain actions of a physician assistant. **Section 9** of this bill authorizes the Board to reject an application for licensure as an osteopathic physician or physician assistant if the Board has cause to believe that information submitted with the application by the applicant is false, misleading, deceptive or fraudulent. **Section 9.5** of this bill revises provisions governing the requirements for licensure by the Board. **Section 11** of this bill authorizes an osteopathic physician to apply for another temporary license after the expiration of one such license. **Section 14** of this bill authorizes the Board to prorate the initial license fee for a new license to practice as an osteopathic physician and physician assistant. **Sections 11.7 and 13** of this bill require a physician assistant to meet certain continuing education requirements before renewing his or her license to practice as a physician assistant in this State. **Section 12** of this bill shortens certain procedural deadlines with respect to the renewal of a license to practice osteopathic medicine or a license to practice as a physician assistant. **Sections 15 and 29** of this bill expand the scope of the authority of the Board to discipline a physician assistant.

**Sections 16, 17 and 21** of this bill require the reporting of information relating to certain malpractice claims to the Board, and **sections 20 and 21** of this bill expand the scope of certain reporting requirements to include the conduct or investigation of physician assistants. **Sections 17 and 29** also expand the applicability of certain administrative fines imposed by the Board.

**Sections 19, 22 and 23** of this bill authorize the Board to order a physician assistant to undergo a competency examination under certain circumstances. **Section 24** of this bill authorizes the immediate suspension of the license of a physician assistant under certain circumstances. **Sections 26 and 34** of this bill authorize the Board to seek injunctive relief against a physician assistant for certain conduct. **Section 36** of this bill provides that a person who practices as a physician assistant without a valid license or uses the identity of another person to do so is guilty of a category D felony.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN

SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Chapter 633 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

**Sec. 2. 1.** *An osteopathic physician may engage in telemedicine in this State if he or she possesses an unrestricted license to practice osteopathic medicine in this State pursuant to this chapter. If an osteopathic physician engages in telemedicine with a patient who is physically located in another state or territory of the United States, the osteopathic physician shall, before engaging in telemedicine with the patient, take any steps necessary to be authorized or licensed to practice osteopathic medicine in the other state or territory of the United States in which the patient is physically located.*

**2.** *Except as otherwise provided in subsections 3 and 4, before an osteopathic physician may engage in telemedicine pursuant to this section:*

*(a) A bona fide relationship between the osteopathic physician and the patient must exist which must include, without limitation, a history and physical examination or consultation which occurred in person and which was sufficient to establish a diagnosis and identify any underlying medical conditions of the patient.*

*(b) The osteopathic physician must obtain informed, written consent from the patient or the legal representative of the patient to engage in telemedicine with the patient. The osteopathic physician shall maintain the consent form as part of the permanent medical record of the patient.*

*(c) The osteopathic physician must inform the patient, both orally and in writing:*

*(1) That the patient or the legal representative of the patient may withdraw the consent provided pursuant to paragraph (b) at any time;*

*(2) Of the potential risks, consequences and benefits of telemedicine;*

*(3) Whether the osteopathic physician has a financial interest in the Internet website used to engage in telemedicine or in the products or services provided to the patient via telemedicine;*

*(4) That the transmission of any confidential medical information while engaged in telemedicine is subject to all applicable federal and state laws with respect to the protection of and access to confidential medical information; and*

*(5) That the osteopathic physician will not release any confidential medical information without the express, written consent of the patient or the legal representative of the patient.*

**3.** *An osteopathic physician is not required to comply with the provisions of paragraph (a) of subsection 2 if the osteopathic physician engages in telemedicine for the purposes of making a diagnostic interpretation of a medical examination, study or test of the patient.*

**4.** *An osteopathic physician is not required to comply with the provisions of paragraph (a) or (c) of subsection 2 in an emergency medical situation.*



5. *The provisions of this section must not be interpreted or construed to:*

(a) *Modify, expand or alter the scope of practice of an osteopathic physician pursuant to this chapter; or*

(b) *Authorize the practice of osteopathic medicine or delivery of care by an osteopathic physician in a setting that is not authorized by law or in a manner that violates the standard of care required of an osteopathic physician pursuant to this chapter.*

6. *As used in this section, "telemedicine" means the practice of osteopathic medicine through the synchronous or asynchronous transfer of medical data or information using interactive audio, video or data communication, other than through a standard telephone, facsimile transmission or electronic mail message.*

Sec. 3. 1. *The Board may place any condition, limitation or restriction on any license issued pursuant to this chapter if the Board determines that such action is necessary to protect the public health, safety or welfare.*

2. *The Board shall not report any condition, limitation or restriction placed on a license pursuant to this section to the National Practitioner Data Bank unless the licensee fails to comply with the condition, limitation or restriction placed on the license. The Board may, upon request, report any such information to an agency of another state which regulates the practice of osteopathic medicine in that State.*

3. *The Board may modify any condition, limitation or restriction placed on a license pursuant to this section if the Board determines that the modification is necessary to protect the public health, safety or welfare.*

4. *Any condition, limitation or restriction placed on a license pursuant to this section is not a disciplinary action pursuant to NRS 633.651.*

Sec. 4. ~~1. Any osteopathic physician who performs an autopsy in this State and who determines that the death of the decedent is the result of an overdose of a controlled substance or a dangerous drug shall, within 30 days after making the determination, submit to the Board a written report of the findings of the autopsy, and provide to the Board any other information requested by the Board.~~

~~2. Upon receipt of a report submitted pursuant to subsection 1, the Board shall investigate the death of the decedent to determine whether the conduct of any osteopathic physician contributed to the death of the decedent.~~

~~3. As used in this section, "dangerous drug" has the meaning ascribed to it in NRS 454.201.~~ **(Deleted by amendment.)**

Sec. 5. NRS 633.071 is hereby amended to read as follows:

633.071 "Malpractice" means failure on the part of an osteopathic physician *or physician assistant* to exercise the degree of care, diligence and skill ordinarily exercised by osteopathic physicians *or physician assistants* in good standing in the community in which he or she practices.

**Sec. 6.** NRS 633.131 is hereby amended to read as follows:

633.131 1. "Unprofessional conduct" includes:

(a) Willfully making a false or fraudulent statement or submitting a forged or false document in applying for a license to practice osteopathic medicine **or to practice as a physician assistant**, or in applying for **the** renewal of a license to practice osteopathic medicine ~~††~~ **or to practice as a physician assistant**.

(b) Failure of a ~~licensee of the~~ **person who is licensed to practice** ~~of~~ osteopathic medicine to ~~designate his or her school of practice in the professional use of his or her name by~~ **identify himself or herself professionally by using** the term D.O., osteopathic physician, doctor of osteopathy or a similar term.

(c) Directly or indirectly giving to or receiving from any person, corporation or other business organization any fee, commission, rebate or other form of compensation for sending, referring or otherwise inducing a person to communicate with an osteopathic physician in his or her professional capacity or for any professional services not actually and personally rendered, except as otherwise provided in subsection 2.

(d) Employing, directly or indirectly, any suspended or unlicensed person in the practice of osteopathic medicine ~~††~~ **or in practice as a physician assistant**, or the aiding or abetting of any unlicensed person to practice osteopathic medicine ~~††~~ **or to practice as a physician assistant**.

(e) Advertising the practice of osteopathic medicine in a manner which does not conform to the guidelines established by regulations of the Board.

(f) Engaging in any:

(1) Professional conduct which is intended to deceive or which the Board by regulation has determined is unethical; or

(2) Medical practice harmful to the public or any conduct detrimental to the public health, safety or morals which does not constitute gross or repeated malpractice or professional incompetence.

(g) Administering, dispensing or prescribing any controlled substance or any dangerous drug as defined in chapter 454 of NRS, otherwise than in the course of legitimate professional practice or as authorized by law.

(h) Habitual drunkenness or habitual addiction to the use of a controlled substance.

(i) Performing, assisting in or advising an unlawful abortion or the injection of any liquid silicone substance into the human body, other than the use of silicone oil to repair a retinal detachment.

(j) Willful disclosure of a communication privileged pursuant to a statute or court order.

(k) Willful disobedience of the regulations of the State Board of Health, the State Board of Pharmacy or the State Board of Osteopathic Medicine.

(l) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any prohibition made in this chapter.

(m) Failure of a licensee to maintain timely, legible, accurate and complete medical records relating to the diagnosis, treatment and care of a patient.

(n) Making alterations to the medical records of a patient that the licensee knows to be false.

(o) Making or filing a report which the licensee knows to be false.

(p) Failure of a licensee to file a record or report as required by law, or willfully obstructing or inducing any person to obstruct such filing.

(q) Failure of a licensee to make medical records of a patient available for inspection and copying as provided by NRS 629.061.

***(r) Providing false, misleading or deceptive information to the Board in connection with an investigation conducted by the Board.***

2. It is not unprofessional conduct:

(a) For persons holding valid licenses to practice osteopathic medicine issued pursuant to this chapter to practice osteopathic medicine in partnership under a partnership agreement or in a corporation or an association authorized by law, or to pool, share, divide or apportion the fees and money received by them or by the partnership, corporation or association in accordance with the partnership agreement or the policies of the board of directors of the corporation or association;

(b) For two or more persons holding valid licenses to practice osteopathic medicine issued pursuant to this chapter to receive adequate compensation for concurrently rendering professional care to a patient and dividing a fee if the patient has full knowledge of this division and if the division is made in proportion to the services performed and the responsibility assumed by each ~~person~~ ***person***; or

(c) For a person licensed to practice osteopathic medicine pursuant to the provisions of this chapter to form an association or other business relationship with an optometrist pursuant to the provisions of NRS 636.373.

**Sec. 7.** NRS 633.221 is hereby amended to read as follows:

633.221 ~~It is~~ The Board shall elect from its members a President, a Vice President and a Secretary-Treasurer, who shall hold their respective offices at ~~its~~ ***the*** pleasure ~~of~~

~~2. The Board may fix and pay a salary to the Secretary-Treasurer.~~ ***of the Board.***

**Sec. 8.** NRS 633.286 is hereby amended to read as follows:

633.286 1. On or before February 15 of each odd-numbered year, the Board shall submit to the Governor and to the Director of the Legislative Counsel Bureau for transmittal to the next regular session of the Legislature a written report compiling:

(a) Disciplinary action taken by the Board during the previous biennium against osteopathic physicians ***and physician assistants*** for malpractice or negligence;

(b) Information reported to the Board during the previous biennium pursuant to NRS 633.526, 633.527, subsections 3 and 4 of NRS 633.533 and NRS 690B.250 and 690B.260; and

(c) Information reported to the Board during the previous biennium pursuant to NRS 633.524, including, without limitation, the number and types of surgeries performed by each holder of a license to practice osteopathic medicine and the occurrence of sentinel events arising from such surgeries, if any.

2. The report must include only aggregate information for statistical purposes and exclude any identifying information related to a particular person.

**Sec. 9.** NRS 633.305 is hereby amended to read as follows:

633.305 1. Every applicant for a license shall:

(a) File an application with the Board in the manner prescribed by regulations of the Board;

(b) Submit verified proof satisfactory to the Board that the applicant meets any age, citizenship and educational requirements prescribed by this chapter; and

(c) Pay in advance to the Board the application and initial license fee specified in ~~this chapter~~ **NRS 633.501**.

2. An application filed with the Board pursuant to subsection 1 must include all information required to complete the application.

3. The Board may hold hearings and conduct investigations into any matter related to the application and, in addition to the proofs required by subsection 1, may take such further evidence and require such other documents or proof of qualifications as it deems proper.

4. The Board may reject an application if ~~it appears~~ **the Board has cause to believe** that any credential **or information** submitted **by the applicant** is false ~~+~~, **misleading, deceptive or fraudulent**.

**Sec. 9.5.** NRS 633.311 is hereby amended to read as follows:

633.311 Except as otherwise provided in NRS 633.315, an applicant for a license to practice osteopathic medicine may be issued a license by the Board if:

1. The applicant is 21 years of age or older;

2. The applicant is a citizen of the United States or is lawfully entitled to remain and work in the United States;

3. The applicant is a graduate of a school of osteopathic medicine;

4. The applicant:

(a) Has graduated from a school of osteopathic medicine before 1995 and has completed:

(1) A hospital internship; or

(2) One year of postgraduate training that complies with the standards of intern training established by the American Osteopathic Association;

(b) Has completed 3 years, **or such other length of time as required by a specific program**, of postgraduate medical education as a resident in the

United States or Canada in a program approved by the Board, the Bureau of Professional Education of the American Osteopathic Association or the Accreditation Council for Graduate Medical Education; or

(c) Is a resident who is enrolled in a postgraduate training program in this State, has completed 24 months of the program and has committed, in writing, that he or she will complete the program;

5. The applicant applies for the license as provided by law;

6. The applicant passes:

(a) All parts of the licensing examination of the National Board of Osteopathic Medical Examiners;

(b) All parts of the licensing examination of the Federation of State Medical Boards of the United States, Inc.;

(c) All parts of the licensing examination of the Board, a state, territory or possession of the United States, or the District of Columbia, and is certified by a specialty board of the American Osteopathic Association or by the American Board of Medical Specialties; or

(d) A combination of the parts of the licensing examinations specified in paragraphs (a), (b) and (c) that is approved by the Board;

7. The applicant pays the fees provided for in this chapter; and

8. The applicant submits all information required to complete an application for a license.

**Sec. 10.** NRS 633.351 is hereby amended to read as follows:

633.351 ~~Any~~ **An** unsuccessful applicant may appeal to the district court to review the action of the Board, if the applicant files the appeal within ~~6 months from~~ **30 days after** the date ~~of the rejection of~~ **on which the order rejecting** the application **is issued** by the Board. Upon appeal, the applicant has the burden of showing that the action of the Board is erroneous or unlawful.

**Sec. 11.** NRS 633.391 is hereby amended to read as follows:

633.391 1. The Board may issue **to a qualified person** a temporary license to practice osteopathic medicine in ~~order to authorize a~~ **this State which authorizes the** person ~~who is qualified to practice osteopathic medicine in this State~~ to serve as a substitute for ~~;~~

~~(a) A~~ **a** physician licensed pursuant to chapter 630 of NRS ~~;~~ or

~~(b) An~~ **an** osteopathic physician licensed pursuant to this chapter ~~;~~

~~;~~ who is absent from his or her practice.

2. Each applicant for ~~such~~ a **temporary** license ~~shall~~ **issued pursuant to this section must** pay the temporary license fee specified in this chapter.

3. A temporary license to practice osteopathic medicine is valid for not more than 6 months after issuance and is not renewable. **Upon the expiration of a temporary license, an osteopathic physician may apply for a new temporary license in accordance with the provisions of this section.**

**Sec. 11.3.** NRS 633.400 is hereby amended to read as follows:

633.400 1. Except as otherwise provided in NRS 633.315, the Board shall, except for good cause, issue a license by endorsement to a person who

has been issued a license to practice osteopathic medicine by the District of Columbia or any state or territory of the United States if:

(a) At the time the person files an application with the Board, the license is in effect and unrestricted; and

(b) The applicant:

(1) Is currently certified by either a specialty board of the American Board of Medical Specialties or a specialty board of the American Osteopathic Association, ~~and~~ *or* was certified or recertified within the past 10 years;

(2) Has had no adverse actions reported to the National Practitioner Data Bank within the past 5 years;

(3) Has been continuously and actively engaged in the practice of osteopathic medicine within his or her specialty for the past 5 years;

(4) Is not involved in and does not have pending any disciplinary action concerning a license to practice osteopathic medicine in the District of Columbia or any state or territory of the United States;

(5) Provides information on all the medical malpractice claims brought against him or her, without regard to when the claims were filed or how the claims were resolved; and

(6) Meets all statutory requirements to obtain a license to practice osteopathic medicine in this State except that the applicant is not required to meet the requirements set forth in NRS 633.311.

2. Any person applying for a license pursuant to this section shall pay in advance to the Board the application and initial license fee specified in this chapter.

3. A license by endorsement may be issued at a meeting of the Board or between its meetings by its President and Executive Director. Such action shall be deemed to be an action of the Board.

**Sec. 11.5.** NRS 633.434 is hereby amended to read as follows:

633.434 The Board shall adopt regulations regarding the licensure of a physician assistant, including, without limitation:

1. The educational and other qualifications of applicants.
2. The required academic program for applicants.
3. The procedures for applications for and the issuance of licenses.
4. The tests or examinations of applicants by the Board.

5. The medical services which a physician assistant may perform, except that a physician assistant may not perform osteopathic manipulative therapy or those specific functions and duties delegated or restricted by law to persons licensed as dentists, chiropractors, doctors of Oriental medicine, podiatric physicians, optometrists and hearing aid specialists under chapters 631, 634, 634A, 635, 636 and 637A, respectively, of NRS.

~~6. The duration, renewal and termination of licenses.~~

~~7.~~ The grounds and procedures respecting disciplinary actions against physician assistants.

~~18.1~~ 7. The supervision of medical services of a physician assistant by a supervising osteopathic physician.

**Sec. 11.7.** NRS 633.471 is hereby amended to read as follows:

633.471 1. Except as otherwise provided in subsection 4 and NRS 633.491, every holder of a license ~~to practice osteopathic medicine~~ issued under this chapter, except a temporary or a special license, may renew the license on or before January 1 of each calendar year after its issuance by:

- (a) Applying for renewal on forms provided by the Board;
- (b) Paying the annual license renewal fee specified in this chapter;
- (c) Submitting a list of all actions filed or claims submitted to arbitration or mediation for malpractice or negligence against the holder during the previous year;
- (d) Submitting an affidavit to the Board that in the year preceding the application for renewal the holder has attended courses or programs of continuing education approved by the Board totaling a number of hours established by the Board which must not be less than 35 hours nor more than that set in the requirements for continuing medical education of the American Osteopathic Association; and

(e) Submitting all information required to complete the renewal.

2. The Secretary of the Board shall notify each licensee ~~of the practice of osteopathic medicine~~ of the requirements for renewal not less than 30 days before the date of renewal.

3. The Board shall request submission of verified evidence of completion of the required number of hours of continuing medical education annually from no fewer than one-third of the applicants for renewal of a license to practice osteopathic medicine ~~or~~ **or a license to practice as a physician assistant**. Upon a request from the Board, an applicant for renewal of a license to practice osteopathic medicine **or a license to practice as a physician assistant** shall submit verified evidence satisfactory to the Board that in the year preceding the application for renewal the applicant attended courses or programs of continuing medical education approved by the Board totaling the number of hours established by the Board.

4. Members of the Armed Forces of the United States and the United States Public Health Service are exempt from payment of the annual license renewal fee during their active duty status.

**Sec. 12.** NRS 633.481 is hereby amended to read as follows:

633.481 1. Except as otherwise provided in subsection 2, if a licensee ~~of the practice of osteopathic medicine~~ fails to comply with the requirements of NRS 633.471 within ~~30~~ **10** days after the renewal date, the Board shall give ~~30~~ **15** days' notice of ~~the~~ failure to renew ~~the license~~ and of ~~the revocation~~ **expiration** of the license by certified mail to the licensee at the licensee's last **known** address **that is** registered with the Board. If the license is not renewed ~~before the expiration of the 30 days~~ **within 15 days after receiving** notice, the license ~~is~~ **expires** automatically ~~revoked~~ without any further notice or a hearing and the Board shall file a copy of the

notice with the Drug Enforcement Administration of the United States Department of Justice or its successor agency.

2. A licensee ~~{of the practice of osteopathic medicine}~~ who fails to meet the continuing education requirements for license renewal may apply to the Board for a waiver of the requirements. The Board may grant a waiver for that year only if ~~{it}~~ **the Board** finds that the failure is due to ~~{the licensee's}~~ **a** disability, military service, ~~{or}~~ absence from the United States, or ~~{to}~~ circumstances beyond the control of the licensee which are deemed by the Board to excuse the failure.

3. A person whose license ~~{is revoked}~~ **has expired** under this section may apply to the Board for restoration of the license upon:

(a) Payment of all past due renewal fees and the late payment fee specified in ~~{this chapter;}~~ **NRS 633.501;**

(b) Producing verified evidence satisfactory to the Board of completion of the total number of hours of continuing education required for the year preceding the renewal date and for each year succeeding the date of ~~{revocation;}~~ **expiration;**

(c) Stating under oath in writing that he or she has not withheld information from the Board which if disclosed would ~~{furnish}~~ **constitute** grounds for disciplinary action under this chapter; and

(d) Submitting ~~{all}~~ **any other** information **that is required by the Board to** ~~{complete the restoration of}~~ **restore** the license.

**Sec. 13.** NRS 633.491 is hereby amended to read as follows:

633.491 1. A licensee ~~{of the practice of osteopathic medicine}~~ who retires from ~~{such}~~ practice ~~{need not}~~ **is not required** annually to renew his or her license after filing with the Board an affidavit stating the date on which he or she retired from practice and ~~{such}~~ **any other** ~~{facts}~~ **evidence that the Board may require** to verify the retirement. ~~{as the Board deems necessary.}~~

2. ~~{A retired licensee of the}~~ **An osteopathic physician or physician assistant who retires from** practice ~~{of osteopathic medicine}~~ **and** who desires to return to practice may apply to renew his or her license by paying all back annual license renewal fees from the date of retirement and submitting verified evidence satisfactory to the Board that the licensee has attended continuing education courses or programs approved by the Board which total:

(a) Twenty-five hours if the licensee has been retired 1 year or less.

(b) Fifty hours within 12 months of the date of the application if the licensee has been retired for more than 1 year.

3. A licensee ~~{of the practice of osteopathic medicine}~~ who wishes to have a license placed on inactive status must provide the Board with an affidavit stating the date on which the licensee will cease the practice of osteopathic medicine **or cease to practice as a physician assistant** in Nevada and any other ~~{facts}~~ **evidence** that the Board may require. The Board shall place the license of the licensee on inactive status upon receipt of:



- (a) The affidavit required pursuant to this subsection; and
- (b) Payment of the inactive license fee prescribed by NRS 633.501.

4. ~~A licensee of the practice of~~ **An osteopathic ~~medicine~~ physician or physician assistant** whose license has been placed on inactive status:

- (a) ~~Need~~ **Is not required to** annually renew the license.
- (b) Shall annually pay the inactive license fee prescribed by NRS 633.501.
- (c) Shall not ~~engage in the~~ practice ~~of~~ osteopathic medicine **or practice as a physician assistant** in this State.

5. ~~A licensee of the practice of~~ **An osteopathic ~~medicine~~ physician or physician assistant** whose license is on inactive status and who wishes to renew ~~the~~ **his or her** license to practice osteopathic medicine **or license to practice as a physician assistant** must:

(a) Provide to the Board verified evidence satisfactory to the Board of completion of the total number of hours of continuing medical education required for:

(1) The year preceding the date of the application for renewal of the license ; ~~to practice osteopathic medicine;~~ and

(2) Each year ~~succeeding~~ **after** the date the license was placed on inactive status.

(b) Provide to the Board an affidavit stating that the applicant has not withheld from the Board any information which would ~~provide~~ **constitute** grounds for disciplinary action pursuant to this chapter.

(c) Comply with all other requirements for renewal.

**Sec. 14.** NRS 633.501 is hereby amended to read as follows:  
633.501 ~~The~~

**1. Except as otherwise provided in subsection 2, the** Board shall charge and collect fees not to exceed the following amounts:

~~11~~ **(a)** Application and initial license fee for an osteopathic physician  
\$800

~~12~~ **(b)** Annual license renewal fee for an osteopathic physician.....500

~~13~~ **(c)** Temporary license fee .....500

~~14~~ **(d)** Special or authorized facility license fee .....200

~~15~~ **(e)** Special event license fee.....200

~~16~~ **(f)** Special or authorized facility license renewal fee .....200

~~17~~ **(g)** Reexamination fee.....200

~~18~~ **(h)** Late payment fee .....300

~~19~~ **(i)** Application and initial license fee for a physician assistant .....400

~~110~~ **(j)** Annual license renewal fee for a physician assistant.....400

~~111~~ **(k)** Inactive license fee .....200

**2. The Board may prorate the initial license fee for a new license issued pursuant to paragraph (a) or (i) of subsection 1 which expires less than 6 months after the date of issuance.**

**3. The cost of any special meeting called at the request of a licensee, an institution, an organization, a state agency or an applicant for licensure must be paid by the person or entity requesting the special meeting. Such a special meeting must not be called until the person or entity requesting the meeting has paid a cash deposit with the Board sufficient to defray all expenses of the meeting.**

**Sec. 15.** NRS 633.511 is hereby amended to read as follows:

633.511 The grounds for initiating disciplinary action pursuant to this chapter are:

1. Unprofessional conduct.
2. Conviction of:
  - (a) A violation of any federal or state law regulating the possession, distribution or use of any controlled substance or any dangerous drug as defined in chapter 454 of NRS;
  - (b) A felony relating to the practice of osteopathic medicine ~~or~~ **or practice as a physician assistant;**
  - (c) A violation of any of the provisions of NRS 616D.200, 616D.220, 616D.240 or 616D.300 to 616D.440, inclusive;
  - (d) Murder, voluntary manslaughter or mayhem;
  - (e) Any felony involving the use of a firearm or other deadly weapon;
  - (f) Assault with intent to kill or to commit sexual assault or mayhem;
  - (g) Sexual assault, statutory sexual seduction, incest, lewdness, indecent exposure or any other sexually related crime;
  - (h) Abuse or neglect of a child or contributory delinquency; or
  - (i) Any offense involving moral turpitude.
3. The suspension of ~~the~~ **a** license to practice osteopathic medicine **or to practice as a physician assistant** by any other jurisdiction.
4. Malpractice or gross malpractice, which may be evidenced by a claim of malpractice settled against a ~~practitioner~~ **licensee.**
5. Professional incompetence.
6. Failure to comply with the requirements of NRS 633.527.
7. Failure to comply with the requirements of subsection 3 of NRS 633.471.
8. Failure to comply with the provisions of NRS 633.694.
9. Operation of a medical facility, as defined in NRS 449.0151, at any time during which:
  - (a) The license of the facility is suspended or revoked; or
  - (b) An act or omission occurs which results in the suspension or revocation of the license pursuant to NRS 449.160.

↪ This subsection applies to an owner or other principal responsible for the operation of the facility.
10. Failure to comply with the provisions of subsection 2 of NRS 633.322.
11. Signing a blank prescription form.

12. Attempting, directly or indirectly, by intimidation, coercion or deception, to obtain or retain a patient or to discourage the use of a second opinion.

13. Terminating the medical care of a patient without adequate notice or without making other arrangements for the continued care of the patient.

14. In addition to the provisions of subsection 3 of NRS 633.524, making or filing a report which the licensee knows to be false, failing to file a record or report that is required by law or willfully obstructing or inducing another to obstruct the making or filing of such a record or report.

15. Failure to report any person the licensee knows, or has reason to know, is in violation of the provisions of this chapter or the regulations of the Board within 30 days after the date the licensee knows or has reason to know of the violation.

16. Failure by a licensee or applicant to report in writing, within 30 days, any criminal action taken or conviction obtained against the licensee or applicant, other than a minor traffic violation, in this State or any other state or by the Federal Government, a branch of the Armed Forces of the United States or any local or federal jurisdiction of a foreign country.

17. Engaging in any act that is unsafe in accordance with regulations adopted by the Board.

**18. Failure to comply with the provisions of section 2 of this act.**

**Sec. 16.** NRS 633.526 is hereby amended to read as follows:

633.526 1. The insurer of an osteopathic physician *or physician assistant* licensed under this chapter shall report to the Board:

(a) Any action for malpractice against the osteopathic physician *or physician assistant* not later than 45 days after the osteopathic physician *or physician assistant* receives service of a summons and complaint for the action;

(b) Any claim for malpractice against the osteopathic physician *or physician assistant* that is submitted to arbitration or mediation not later than 45 days after the claim is submitted to arbitration or mediation; and

(c) Any settlement, award, judgment or other disposition of any action or claim described in paragraph (a) or (b) not later than 45 days after the settlement, award, judgment or other disposition.

2. The Board shall report any failure to comply with subsection 1 by an insurer licensed in this State to the Division of Insurance of the Department of Business and Industry. If, after a hearing, the Division of Insurance determines that any such insurer failed to comply with the requirements of subsection 1, the Division may impose an administrative fine of not more than \$10,000 against the insurer for each such failure to report. If the administrative fine is not paid when due, the fine must be recovered in a civil action brought by the Attorney General on behalf of the Division.

**Sec. 17.** NRS 633.527 is hereby amended to read as follows:

633.527 1. An osteopathic physician *or physician assistant* shall report to the Board:

(a) Any action for malpractice against the osteopathic physician *or physician assistant* not later than 45 days after the osteopathic physician *or physician assistant* receives service of a summons and complaint for the action;

(b) Any claim for malpractice against the osteopathic physician *or physician assistant* that is submitted to arbitration or mediation not later than 45 days after the claim is submitted to arbitration or mediation;

(c) Any settlement, award, judgment or other disposition of any action or claim described in paragraph (a) or (b) not later than 45 days after the settlement, award, judgment or other disposition; and

(d) Any sanctions imposed against the osteopathic physician *or physician assistant* that are reportable to the National Practitioner Data Bank not later than 45 days after the sanctions are imposed.

2. If the Board finds that an osteopathic physician *or physician assistant* has violated any provision of this section, the Board may impose a fine of not more than \$5,000 against the osteopathic physician *or physician assistant* for each violation, in addition to any other fines or penalties permitted by law.

3. All reports made by an osteopathic physician *or physician assistant* pursuant to this section are public records.

**Sec. 18.** NRS 633.528 is hereby amended to read as follows:

633.528 If the Board receives a report pursuant to the provisions of NRS 633.526, 633.527, 690B.250 or 690B.260 indicating that a judgment has been rendered or an award has been made against an osteopathic physician *or physician assistant* regarding an action or claim for malpractice or that such an action or claim against the osteopathic physician *or physician assistant* has been resolved by settlement, the Board shall conduct an investigation to determine whether to ~~impose disciplinary action against~~ *discipline* the osteopathic physician *or physician assistant* regarding the action or claim, unless the Board has already commenced or completed such an investigation regarding the action or claim before it receives the report.

**Sec. 19.** NRS 633.529 is hereby amended to read as follows:

633.529 1. Notwithstanding the provisions of chapter 622A of NRS, if the Board receives a report pursuant to the provisions of NRS 633.526, 633.527, 690B.250 or 690B.260 indicating that a judgment has been rendered or an award has been made against an osteopathic physician *or physician assistant* regarding an action or claim for malpractice, or that such an action or claim against the osteopathic physician *or physician assistant* has been resolved by settlement, the Board may order ~~that~~ the osteopathic physician *or physician assistant* to undergo a mental or physical examination or ~~an~~ *any other* examination ~~testing~~ *designated by the Board to test* his or her competence to practice *osteopathic* medicine *or to practice as a physician assistant, as applicable. An examination conducted pursuant to this subsection must be conducted* by osteopathic physicians ~~for other examinations~~ *designated by the Board .* ~~to assist the Board or any~~

~~investigative committee of the Board in determining the fitness of the osteopathic physician to practice medicine.]~~

2. For the purposes of this section:

(a) ~~Every~~ **An** osteopathic physician **or physician assistant** who applies for a license or who holds a license under this chapter ~~shall be~~ **is** deemed to have given consent to submit to a mental or physical examination or an examination testing his or her competence to practice **osteopathic** medicine ~~when ordered to do so in writing~~ **or to practice as a physician assistant, as applicable, pursuant to a written order** by the Board.

(b) The testimony or reports of the examining osteopathic physician are not privileged communications.

**Sec. 20.** NRS 633.531 is hereby amended to read as follows:

633.531 1. The Board or any of its members, ~~any~~ **or a** medical review panel of a hospital or medical society, which becomes aware ~~that any one or combination of the~~ **of any conduct by an osteopathic physician or physician assistant that may constitute** grounds for initiating disciplinary action ~~may exist as to a person practicing osteopathic medicine in this State~~ shall, and any other person who is so aware may, file a written complaint specifying the relevant facts with the Board.

2. The Board shall retain all complaints filed with the Board pursuant to this section for at least 10 years, including, without limitation, any complaints not acted upon.

**Sec. 21.** NRS 633.533 is hereby amended to read as follows:

633.533 1. Except as otherwise provided in subsection 2, any person may file with the Board a complaint against an osteopathic physician **or physician assistant** on a form provided by the Board. The form may be submitted in writing or electronically. If a complaint is submitted anonymously, the Board may accept the complaint but may refuse to consider the complaint if the lack of the identity of the complainant makes processing the complaint impossible or unfair to the person who is the subject of the complaint.

2. Any licensee, medical school or medical facility that becomes aware that a person practicing osteopathic medicine **or practicing as a physician assistant** in this State has, is or is about to become engaged in conduct which constitutes grounds for initiating disciplinary action shall file a written complaint with the Board within 30 days after becoming aware of the conduct.

3. Any hospital, clinic or other medical facility licensed in this State, or medical society, shall **file a written** report ~~to~~ **with** the Board **of** any change in ~~an osteopathic physician's~~ **the** privileges **of an osteopathic physician** to practice osteopathic medicine **or a physician assistant to practice as a physician assistant** while the osteopathic physician **or physician assistant** is under investigation, and the outcome of any disciplinary action taken by ~~the~~ **the** facility or society against the osteopathic physician **or physician assistant** concerning the care of a patient or the competency of the

osteopathic physician *or physician assistant*, within 30 days after the change in privileges is made or disciplinary action is taken. The Board shall report any failure to comply with this subsection by a hospital, clinic or other medical facility licensed in this State to the Health Division of the Department of Health and Human Services. If, after a hearing, the Health Division determines that any such facility or society failed to comply with the requirements of this subsection, the *Health* Division may impose an administrative fine of not more than \$10,000 against the facility or society for each such failure to report. If the administrative fine is not paid when due, the fine must be recovered in a civil action brought by the Attorney General on behalf of the *Health* Division.

4. The clerk of every court shall report to the Board any finding, judgment or other determination of the court that an osteopathic physician or physician assistant:

- (a) Is ~~is a person with mental illness;~~ **mentally ill;**
  - (b) Is ~~is a person with mental incompetence;~~ **mentally incompetent;**
  - (c) Has been convicted of a felony or any law governing controlled substances or dangerous drugs;
  - (d) Is guilty of abuse or fraud under any state or federal program providing medical assistance; or
  - (e) Is liable for damages for malpractice or negligence,
- ↪ within 45 days after ~~such a~~ **the** finding, judgment or determination . ~~is made.~~

5. On or before January 15 of each year, the clerk of every court shall submit to the Office of Court Administrator created pursuant to NRS 1.320 a written report compiling the information that the clerk reported during the previous year to the Board regarding osteopathic physicians *and physician assistants* pursuant to paragraph (e) of subsection 4.

**Sec. 22.** NRS 633.561 is hereby amended to read as follows:

633.561 1. Notwithstanding the provisions of chapter 622A of NRS, if the Board or a member of the Board designated to review a complaint pursuant to NRS 633.541 has reason to believe that the conduct of an osteopathic physician *or physician assistant* has raised a reasonable question as to his or her competence to practice osteopathic medicine *or to practice as a physician assistant, as applicable*, with reasonable skill and safety to patients, the Board or the member designated by the Board may require the osteopathic physician *or physician assistant* to submit to a mental or physical examination *conducted* by physicians designated by the Board. If the osteopathic physician *or physician assistant* participates in a diversion program, the diversion program may exchange with any authorized member of the staff of the Board any information concerning the recovery and participation of the osteopathic physician *or physician assistant* in the diversion program. As used in this subsection, "diversion program" means a program approved by the Board to correct an osteopathic physician's *or physician assistant's* alcohol or drug dependence or any other impairment.

2. For the purposes of this section:

(a) ~~Every~~ **An osteopathic physician or physician assistant** who is licensed under this chapter **and** who accepts the privilege of practicing osteopathic medicine **or practicing as a physician assistant** in this State ~~shall be~~ **is** deemed to have given consent to submit to a mental or physical examination ~~if directed to do so in writing~~ **pursuant to a written order** by the Board.

(b) The testimony or examination reports of the examining physicians are not privileged communications.

3. Except in extraordinary circumstances, as determined by the Board, the failure of ~~an~~ **an osteopathic physician or physician assistant** who is licensed under this chapter to submit to an examination ~~if directed as provided in~~ **pursuant to** this section constitutes an admission of the charges against the **osteopathic physician or physician assistant**.

**Sec. 23.** NRS 633.571 is hereby amended to read as follows:

633.571 Notwithstanding the provisions of chapter 622A of NRS, if the Board has reason to believe that the conduct of any osteopathic physician **or physician assistant** has raised a reasonable question as to his or her competence to practice osteopathic medicine **or to practice as a physician assistant, as applicable**, with reasonable skill and safety to patients, the Board may ~~cause a medical competency examination of~~ **require** the **osteopathic physician or physician assistant to submit to an examination** for **the** purposes of determining his or her ~~fitness~~ **competence** to practice osteopathic medicine **or to practice as a physician assistant, as applicable**, with reasonable skill and safety to patients.

**Sec. 24.** NRS 633.581 is hereby amended to read as follows:

633.581 1. If an investigation by the Board ~~regarding~~ **of** an osteopathic physician **or physician assistant** reasonably determines that the health, safety or welfare of the public or any patient served by the osteopathic physician **or physician assistant** is at risk of imminent or continued harm, the Board may summarily suspend the license of the osteopathic physician ~~or~~ **or physician assistant**. The order of summary suspension may be issued by the Board, an investigative committee of the Board or the Executive Director of the Board after consultation with the President, Vice President or Secretary-Treasurer of the Board.

2. If the Board issues an order summarily suspending the license of an osteopathic physician **or physician assistant** pursuant to subsection 1, the Board shall hold a hearing regarding the matter not later than 45 days after the date on which the Board issues the order summarily suspending the license unless the Board and the licensee mutually agree to a longer period.

3. Notwithstanding the provisions of chapter 622A of NRS, if the Board issues an order summarily suspending the license of an osteopathic physician **or physician assistant** pending ~~proceedings~~ **a proceeding** for disciplinary action and requires the **osteopathic physician or physician assistant** to submit to a mental or physical examination or a medical competency

examination, the examination ~~shall~~ **must** be conducted and the results **must be** obtained not later than 60 days after the Board issues ~~its~~ **the** order.

**Sec. 25.** NRS 633.591 is hereby amended to read as follows:

633.591 Notwithstanding the provisions of chapter 622A of NRS, if the Board issues an order summarily suspending the license of an osteopathic physician **or physician assistant** pending proceedings for disciplinary action, including, without limitation, a summary suspension pursuant to NRS 233B.127, the court shall not stay that order unless the Board fails to institute and determine such proceedings as promptly as the requirements for investigation of the case reasonably allow.

**Sec. 26.** NRS 633.601 is hereby amended to read as follows:

633.601 1. In addition to any other remedy provided by law, the Board, through ~~its President or Secretary~~ **an officer of the Board** or the Attorney General, may apply to any court of competent jurisdiction to enjoin any unprofessional conduct of an osteopathic physician **or physician assistant** which is harmful to the public or to limit the ~~physician's~~ **practice of the osteopathic physician or physician assistant** or suspend his or her license to practice **osteopathic medicine or to practice as a physician assistant, as applicable**, as provided in this section.

2. The court in a proper case may issue a temporary restraining order or a preliminary injunction for such purposes:

(a) Without proof of actual damage sustained by any person, this provision being a preventive as well as punitive measure; and

(b) Pending proceedings for disciplinary action by the Board. Notwithstanding the provisions of chapter 622A of NRS, such proceedings shall be instituted and determined as promptly as the requirements for investigation of the case reasonably allow.

**Sec. 27.** NRS 633.631 is hereby amended to read as follows:

633.631 Except as otherwise provided in chapter 622A of NRS:

1. Service of process made under this chapter ~~shall~~ **must** be either personal or by registered or certified mail with return receipt requested, addressed to the osteopathic physician **or physician assistant** at his or her last known address, as indicated ~~on~~ **in** the records of the Board. ~~If possible.~~ If personal service cannot be made and if mail notice is returned undelivered, the Secretary of the Board shall cause **a** notice of hearing to be published once a week for 4 consecutive weeks in a newspaper published in the county of the ~~physician's~~ **of the osteopathic physician or physician assistant** or, if no newspaper is published in that county, ~~then~~ in a newspaper widely distributed in that county.

2. Proof of service of process or publication of notice made under this chapter ~~shall~~ **must** be filed with the Secretary of the Board and ~~shall~~ **must** be recorded in the minutes of the Board.

**Sec. 28.** NRS 633.641 is hereby amended to read as follows:

633.641 Notwithstanding the provisions of chapter 622A of NRS, in any disciplinary proceeding before the Board, a hearing officer or a panel:



1. Proof of actual injury need not be established where the formal complaint charges deceptive or unethical professional conduct or medical practice harmful to the public.

2. A certified copy of the record of a court or a licensing agency showing a conviction or the suspension or revocation of a license to practice osteopathic medicine *or to practice as a physician assistant* is conclusive evidence of its occurrence.

**Sec. 29.** NRS 633.651 is hereby amended to read as follows:

633.651 1. If the Board finds a person guilty in a disciplinary proceeding, it shall by order take one or more of the following actions:

(a) Place the person on probation for a specified period or until further order of the Board.

(b) Administer to the person a public reprimand.

(c) Limit the practice of the person to, or by the exclusion of, one or more specified branches of osteopathic medicine.

(d) Suspend the license of the person to practice osteopathic medicine *or to practice as a physician assistant* for a specified period or until further order of the Board.

(e) Revoke the license of the person to practice osteopathic medicine ~~or~~ *or to practice as a physician assistant*.

(f) Impose a fine not to exceed \$5,000 for each violation.

(g) Require supervision of the practice of the person.

(h) Require the person to perform community service without compensation.

(i) Require the person to complete any training or educational requirements specified by the Board.

(j) Require the person to participate in a program to correct alcohol or drug dependence or any other impairment.

↪ The order of the Board may contain any other terms, provisions or conditions as the Board deems proper and which are not inconsistent with law.

2. The Board shall not administer a private reprimand.

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

**Sec. 30.** NRS 633.671 is hereby amended to read as follows:

633.671 1. Any person who has been placed on probation or whose license has been limited, suspended or revoked by the Board is entitled to judicial review of the Board's order as provided by law.

2. Every order of the Board which limits the practice of *osteopathic medicine or the practice of a physician assistant* or suspends or revokes a license is effective from the date ~~[the Secretary certifies]~~ *on which the order is issued by the Board* until the date the order is modified or reversed by a final judgment of the court.

3. The district court shall give a petition for judicial review of the Board's order priority over other civil matters which are not expressly given priority by law.

**Sec. 31.** NRS 633.681 is hereby amended to read as follows:

633.681 1. Any person:

(a) Whose practice of osteopathic medicine *or practice as a physician assistant* has been limited; or

(b) Whose license to practice osteopathic medicine *or to practice as a physician assistant* has been:

(1) Suspended until further order; or

(2) Revoked,

↪ may apply to the Board after a reasonable period for removal of the limitation or suspension or may apply to the Board pursuant to the provisions of chapter 622A of NRS for reinstatement of the revoked license.

2. In hearing the application, the Board:

(a) May require the person to submit to a mental or physical examination by physicians whom it designates and submit such other evidence of changed conditions and of fitness as it deems proper;

(b) Shall determine whether under all the circumstances the time of the application is reasonable; and

(c) May deny the application or modify or rescind its order as it deems the evidence and the public safety warrants.

**Sec. 32.** NRS 633.691 is hereby amended to read as follows:

633.691 1. In addition to any other immunity provided by the provisions of chapter 622A of NRS, the Board, a medical review panel of a hospital, a hearing officer, a panel of the Board, an employee or volunteer of a diversion program specified in NRS 633.561, or any person who or other organization which initiates or assists in any lawful investigation or proceeding concerning the discipline of an osteopathic physician *or physician assistant* for gross malpractice, malpractice, professional incompetence or unprofessional conduct is immune from any civil action for such initiation or assistance or any consequential damages, if the person or organization acted in good faith.

2. The Board shall not commence an investigation, impose any disciplinary action or take any other adverse action against an osteopathic physician *or physician assistant* for:

(a) Disclosing to a governmental entity a violation of a law, rule or regulation by an applicant for a license to practice osteopathic medicine *or to practice as a physician assistant, or* by an osteopathic physician ~~†~~ *or physician assistant*; or

(b) Cooperating with a governmental entity that is conducting an investigation, hearing or inquiry into such a violation, including, without limitation, providing testimony concerning the violation.

3. As used in this section, "governmental entity" includes, without limitation:

(a) A federal, state or local officer, employee, agency, department, division, bureau, board, commission, council, authority or other subdivision or entity of a public employer;

(b) A federal, state or local employee, committee, member or commission of the Legislative Branch of Government;

(c) A federal, state or local representative, member or employee of a legislative body or a county, town, village or any other political subdivision or civil division of the State;

(d) A federal, state or local law enforcement agency or prosecutorial office, or any member or employee thereof, or police or peace officer; and

(e) A federal, state or local judiciary, or any member or employee thereof, or grand or petit jury.

**Sec. 33.** NRS 633.701 is hereby amended to read as follows:

633.701 The filing and review of a complaint and any subsequent disposition by the Board, the member designated by the Board to review a complaint pursuant to NRS 633.541 or any reviewing court do not preclude:

1. Any measure by a hospital or other institution to limit or terminate the privileges of an osteopathic physician *or physician assistant* according to its rules or the custom of the profession. No civil liability attaches to any such action taken without malice even if the ultimate disposition of the complaint is in favor of the *osteopathic* physician ~~or~~ *physician assistant*.

2. Any appropriate criminal prosecution by the Attorney General or a district attorney based upon the same or other facts.

**Sec. 34.** NRS 633.711 is hereby amended to read as follows:

633.711 1. The Board, through ~~its President or Secretary~~ *an officer of the Board* or the Attorney General, may maintain in any court of competent jurisdiction a suit for an injunction against any person ~~practicing~~:

(a) *Practicing* osteopathic medicine *or practicing as a physician assistant* without a *valid* license to practice osteopathic medicine ~~valid under this chapter~~ *or to practice as a physician assistant; or*

(b) *Engaging in telemedicine without a valid license pursuant to section 2 of this act.*

2. ~~Such an~~ *An* injunction ~~is~~ *issued pursuant to subsection 1:*

(a) May be issued without proof of actual damage sustained by any person, this provision being a preventive as well as a punitive measure.

(b) ~~Shall~~ *Must* not relieve such person from criminal prosecution for practicing without such a license.

**Sec. 35.** NRS 633.721 is hereby amended to read as follows:

633.721 In a criminal complaint charging any person with practicing osteopathic medicine *or practicing as a physician assistant* without a *valid* license ~~to practice osteopathic medicine~~ *issued by the Board*, it is sufficient to charge that the person did, upon a certain day, and in a certain county of this State, engage in ~~the~~ *such* practice ~~of osteopathic medicine~~

without having a valid license to do so, without averring any further or more particular facts concerning the violation.

**Sec. 36.** NRS 633.741 is hereby amended to read as follows:

633.741 A person who:

1. Except as otherwise provided in NRS 629.091, practices ~~osteopathic~~:

(a) **Osteopathic** medicine ~~;~~

~~(a) Without~~ **without** a **valid** license to practice osteopathic medicine ~~valid~~ under this chapter; ~~or~~

(b) **As a physician assistant without a valid license under this chapter;**  
**or**

(c) Beyond the limitations ordered upon his or her practice by the Board or the court;

2. Presents as his or her own the diploma, license or credentials of another;

3. Gives either false or forged evidence of any kind to the Board or any of its members in connection with an application for a license;

4. Files for record the license issued to another, falsely claiming himself or herself to be the person named in the license, or falsely claiming himself or herself to be the person entitled to the license;

5. Practices osteopathic medicine **or practices as a physician assistant** under a false or assumed name or falsely personates another licensee of a like or different name;

6. Holds himself or herself out as a physician assistant or who uses any other term indicating or implying that he or she is a physician assistant, unless the person has been licensed by the Board as provided in this chapter;  
**or**

7. Supervises a person as a physician assistant before such person is licensed as provided in this chapter,

↪ is guilty of a category D felony and shall be punished as provided in NRS 193.130.

**Sec. 37.** Section 121 of chapter 413, Statutes of Nevada 2007, as amended by chapter 369, Statutes of Nevada 2009, at page 1856, and chapter 494, Statutes of Nevada 2009, at page 2999, is hereby amended to read as follows:

Sec. 121. 1. This section becomes effective upon passage and approval.

2. Sections 1 to 42.3, inclusive, and 43 to 120, inclusive, of this act become effective:

(a) Upon passage and approval for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On January 1, 2008, for all other purposes.

3. ~~Sections 11 and 25~~ **Section 11** ~~and 25~~ of this act ~~expire~~ **expires** by limitation on January 1, 2012.

4. Section 42.3 of this act expires by limitation on the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:

(a) Have failed to comply with a subpoena or warrant relating to a proceeding to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

(b) Are in arrears in the payment for the support of one or more children,

↪ are repealed by the Congress of the United States.

5. Section 42.7 of this act becomes effective on the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:

(a) Have failed to comply with a subpoena or warrant relating to a proceeding to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

(b) Are in arrears in the payment for the support of one or more children,

↪ are repealed by the Congress of the United States.

6. Sections 42.7 and 55.5 of this act expire by limitation on the date 2 years after the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:

(a) Have failed to comply with a subpoena or warrant relating to a proceeding to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

(b) Are in arrears in the payment for the support of one or more children,

↪ are repealed by the Congress of the United States.

Senator Schneider moved that the Senate concur in the Assembly amendment to Senate Bill No. 273.

Motion carried by a constitutional majority.

Bill ordered enrolled.

Senate Bill No. 358.

The following Assembly amendment was read:

Amendment No. 642.

"SUMMARY—Makes various changes concerning the operation of certain vending stands. (BDR 22-665)"

"AN ACT relating to regional transportation commissions; revising provisions pertaining to vending stands provided for by such a commission; and providing other matters properly relating thereto."

**Legislative Counsel's Digest:**

Existing law establishes a priority of right for persons who are blind or visually impaired to operate vending stands in or on any public buildings or properties. (NRS 426.640) Existing law also exempts from that priority of right vending stands in any building, terminal or parking facility owned, operated or leased by a regional transportation commission in a county whose population is 400,000 or more (currently Clark County). (NRS 277A.320) **Section 2** of this bill removes that exemption for both existing and future contracts. **Section 3** of this bill clarifies that the removal of the exemption applies with respect to any vending stand contract entered into by such a regional transportation commission on or after the effective date of this bill, and that any such existing vending stand contract must comply with the amendatory provisions of this bill on and after July 1, 2011.

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

**Section 1.** The Legislature hereby finds and declares that:

1. There is a great need, as described in NRS 426.640, to provide persons who are blind with remunerative employment, enlarge the economic opportunities of persons who are blind and stimulate persons who are blind to greater efforts to make themselves self-supporting with independent livelihoods; and

2. It is the policy of the Legislature and of this State to support the needs of persons who are blind by vigorously enforcing and promoting the provisions of NRS 426.630 to 426.720, inclusive.

**Sec. 2.** NRS 277A.320 is hereby amended to read as follows:

277A.320 1. In a county whose population is 400,000 or more, the commission may provide for the construction, installation and maintenance of vending stands for passengers of public mass transportation in any building, terminal or parking facility owned, operated or leased by the commission.

2. The provisions of NRS 426.630 to 426.720, inclusive, ~~do not~~ apply to a vending stand constructed, installed or maintained pursuant to this section.

**Sec. 3.** 1. The amendatory provisions of this act apply to any contract for the operation of a vending stand that is entered into on or after the effective date of this act.

2. In addition to the provisions of subsection 1, all contracts for the operation of a vending stand that are in existence on the date on which this act becomes effective and are affected by the amendatory provisions of this act must be in compliance with the amendatory provisions of this act on and after July 1, 2011.

3. As used in this section, "vending stand" has the meaning ascribed to it in NRS 426.630.

**Sec. 4.** This act becomes effective upon passage and approval.

Senator Lee moved that the Senate concur in the Assembly amendment to Senate Bill No. 358.

Motion carried by a constitutional majority.

Bill ordered enrolled.

SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the President and Secretary signed Assembly Bills Nos. 196, 459, 478.

Senator Horsford moved that the Senate adjourn until Sunday, May 29, 2011, at 1:30 p.m.

Motion carried.

Senate adjourned at 8:01 p.m.

Approved:

BRIAN K. KROLICKI  
*President of the Senate*

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