

Amendment No. 350

Senate Amendment to Senate Bill No. 94	(BDR 15-440)
<b>Proposed by:</b> Senate Committee on Judiciary	
<b>Amends:</b> Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.





SENATE BILL NO. 94—SENATOR SETTELMAYER

FEBRUARY 3, 2021

Referred to Committee on Judiciary

SUMMARY—~~[Revises provisions relating to public highways, roads and ways.]~~  
**Provides that an unlocked gate does not, in and of itself, constitute a public nuisance.** (BDR 15-440)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.  
Effect on the State: No.

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

AN ACT relating to ~~[property; making it]~~ **public nuisances; providing that an unlocked gate does not, in and of itself, constitute** a public nuisance ~~;~~ ~~[for a person to engage in certain activities relating to certain public ways; providing that the posting of certain signs on private property does not constitute a public nuisance under certain circumstances; authorizing an owner of private property upon which certain highways, roads or ways are located to commence certain civil actions; authorizing an owner of private property upon which certain public roads or ways are located to erect and maintain a fence or gate across such a road or way under certain circumstances; setting forth certain requirements relating to such fences and gates; providing a penalty;]~~ and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law ~~[makes it]~~ **states that: (1)** a public nuisance ~~[for a person, by force, threat,~~  
2 ~~intimidation or any other unlawful means, to prevent or obstruct the free passage or transit~~  
3 ~~over or through certain highways, roads, state lands or other public lands or lands dedicated to~~  
4 ~~public use or to knowingly misrepresent the status of or assert any right to the exclusive use~~  
5 ~~and occupancy of those highways, roads, state lands or other public lands or lands dedicated~~  
6 ~~to public use, if the person has no leasehold interest in or claim or color of title to the~~  
7 ~~highway, road, state land or other public land or land dedicated to public use.]~~ **is a crime**  
8 **against the order and economy of the State; and (2) a person commits a public nuisance**  
9 **if he or she engages in certain activities.** (NRS 202.450) **A person who commits or**  
10 **maintains a public nuisance for which no special punishment is prescribed is guilty of a**  
11  **misdemeanor and a court may order the person to abate the nuisance and pay a civil**  
12 **penalty of not less than \$500 but not more than \$5,000. (NRS 202.470, 202.480)** Section 1  
13 of this bill ~~[makes it]~~ **revises the provisions setting forth the activities that constitute**  
14 a public nuisance ~~[for a person to engage in such activities with respect to certain additional~~  
15 ~~public ways. Section 1 also specifies that knowingly misrepresenting the status of or asserting~~  
16 any right to the exclusive use and occupancy of such highways, roads, ways or lands may be

accomplished by any means, including posting a “no trespassing” sign or other sign indicating that such a highway, road, way or land is private property or communicating such an indication verbally. However, section 1 further provides that it is **to specify that an unlocked gate does not, in and of itself, constitute a public nuisance.** ~~[for an owner of private property upon which certain highways, roads or ways are located to post a sign on his or her property indicating that the property is private property if, next to such a sign, the owner also posts a sign indicating that members of public may access the highway, road or way located on the property.] Sections 3-5 of this bill make conforming changes to reflect the addition of the [provisions of] **provision made by section 1.**~~

~~[Section 2 of this bill authorizes an owner of private property upon which certain highways, roads or ways are located who suffers damage or injury as a result of another person’s use of such a highway, road or way to bring a civil action against the person for actual damages, and reasonable attorney’s fees.~~

~~— Section 6 of this bill authorizes an owner of private property upon which certain public roads, unpaved county roads or public ways are located to erect and maintain a fence or gate across such a road or way if he or she submits a request to and is approved by the governmental entity that has jurisdiction over the road or way. Section 6 authorizes a governmental entity to approve such a request if it determines that the proposed fence or gate will not greatly inconvenience the traveling public. Section 6 also: (1) sets forth certain requirements for fences and gates erected and maintained pursuant to section 6; and (2) requires that certain signage be posted and maintained advising members of the public of certain information relating to the public road or way. Sections 1, 6 and 7 of this bill provide that a fence or gate erected and maintained pursuant to section 6 does not: (1) constitute a public nuisance prohibited by existing law; or (2) violate certain provisions of existing law making it a public offense to obstruct a road, street or alley. (NRS 202.450, 405.230)]~~

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

**Section 1.** NRS 202.450 is hereby amended to read as follows:

202.450 1. A public nuisance is a crime against the order and economy of the State.

2. Every place:

(a) Wherein any gambling, bookmaking or pool selling is conducted without a license as provided by law, or wherein any swindling game or device, or bucket shop, or any agency therefor is conducted, or any article, apparatus or device useful therefor is kept;

(b) Wherein any fighting between animals or birds is conducted;

(c) Wherein any dog races are conducted as a gaming activity;

(d) Wherein any intoxicating liquors are kept for unlawful use, sale or distribution;

(e) Wherein a controlled substance, immediate precursor or controlled substance analog is unlawfully sold, served, stored, kept, manufactured, used or given away;

(f) That is regularly and continuously used by the members of a criminal gang to engage in, or facilitate the commission of, crimes by the criminal gang; or

(g) Where vagrants resort,

↳ is a public nuisance.

3. Every act unlawfully done and every omission to perform a duty, which act or omission:

(a) Annoys, injures or endangers the safety, health, comfort or repose of any considerable number of persons;

(b) Offends public decency;

1 (c) Unlawfully interferes with, befouls, obstructs or tends to obstruct, or  
 2 renders dangerous for passage, a lake, navigable river, bay, stream, canal, ditch,  
 3 millrace or basin, or a public park, square, street, alley, bridge, causeway or  
 4 highway; or

5 (d) In any way renders a considerable number of persons insecure in life or the  
 6 use of property,  
 7 ~~is~~ is a public nuisance.

8 4. A building or place which was used for the purpose of unlawfully  
 9 manufacturing a controlled substance, immediate precursor or controlled substance  
 10 analog is a public nuisance if the building or place has not been deemed safe for  
 11 habitation by the board of health and:

12 (a) The owner of the building or place allows the building or place to be used  
 13 for any purpose before all materials or substances involving the controlled  
 14 substance, immediate precursor or controlled substance analog have been removed  
 15 from or remediated on the building or place by an entity certified or licensed to do  
 16 so; or

17 (b) The owner of the building or place fails to have all materials or substances  
 18 involving the controlled substance, immediate precursor or controlled substance  
 19 analog removed from or remediated on the building or place by an entity certified  
 20 or licensed to do so within 180 days after the building or place is no longer used for  
 21 the purpose of unlawfully manufacturing a controlled substance, immediate  
 22 precursor or controlled substance analog.

23 5. ~~It~~ ~~is~~ ~~except as otherwise provided in subsection 6 and section 6 of this act,~~  
 24 ~~it~~ is a public nuisance for any person:

25 (a) By force, threat or intimidation, or by fencing or otherwise enclosing, or by  
 26 any other unlawful means, to prevent or obstruct the free passage or transit over or  
 27 through any:

28 (1) Highway designated as a United States highway;

29 (2) Highway designated as a state highway pursuant to NRS 408.285;

30 (3) Main, general or minor county road designated pursuant to NRS  
 31 403.170;

32 (4) Public road, as defined in subsection 2 of NRS 405.191;

33 (5) ~~Public ways~~

34 ~~(6)~~ State land or other public land; or

35 ~~(6)~~ ~~(7)~~ Land dedicated to public use; or

36 (b) To knowingly misrepresent the status of or assert any right to the exclusive  
 37 use and occupancy of such a highway, road, ~~way,~~ state land or other public land or  
 38 land dedicated to public use ~~by any means, including, without limitation, posting~~  
 39 ~~a "no trespassing" sign or other sign indicating that such a highway, road, way,~~  
 40 ~~state land or other public land or land dedicated to public use is private property~~  
 41 ~~or communicating such an indication verbally,~~

42 ~~is~~ if the person has no leasehold interest, claim or color of title, made or asserted in  
 43 good faith, in or to the highway, road, ~~way,~~ state land or other public land or land  
 44 dedicated to public use.

45 6. ~~It is~~ ~~An unlocked gate does not , in and of itself, constitute a public~~  
 46 ~~nuisance . [for an owner of private property upon which a highway, road or~~  
 47 ~~public way described in subparagraphs (1) to (5), inclusive, of paragraph (a) of~~  
 48 ~~subsection 5 is located to post on his or her property, in a manner that would~~  
 49 ~~otherwise constitute a public nuisance pursuant to subsection 5, a sign indicating~~  
 50 ~~that the property is private property if, next to such a sign, the owner also posts a~~  
 51 ~~sign indicating that members of the public may access the highway, road or way.]~~

52 7. Agricultural activity conducted on farmland consistent with good  
 53 agricultural practice and established before surrounding nonagricultural activities is

1 not a public nuisance unless it has a substantial adverse effect on the public health  
2 or safety. It is presumed that an agricultural activity which does not violate a  
3 federal, state or local law, ordinance or regulation constitutes good agricultural  
4 practice.

5 ~~[7.]~~ 8. A shooting range is not a public nuisance with respect to any noise  
6 attributable to the shooting range if the shooting range is in compliance with the  
7 provisions of all applicable statutes, ordinances and regulations concerning noise:

8 (a) As those provisions existed on October 1, 1997, for a shooting range that  
9 begins operation on or before October 1, 1997; or

10 (b) As those provisions exist on the date that the shooting range begins  
11 operation, for a shooting range in operation after October 1, 1997.

12 ➤ A shooting range is not subject to any state or local law related to the control of  
13 noise that is adopted or amended after the date set forth in paragraph (a) or (b), as  
14 applicable, and does not constitute a nuisance for failure to comply with any such  
15 law.

16 ~~[8.]~~ 9. A request for emergency assistance by a tenant as described in NRS  
17 118A.515 and 118B.152 is not a public nuisance.

18 ~~[9.]~~ 10. As used in this section:

19 (a) "Board of health" has the meaning ascribed to it in NRS 439.4797.

20 (b) "Controlled substance analog" has the meaning ascribed to it in NRS  
21 453.043.

22 (c) "Criminal gang" has the meaning ascribed to it in NRS 193.168.

23 (d) "Immediate precursor" has the meaning ascribed to it in NRS 453.086.

24 (e) ~~"Public way" means any way, including, without limitation, an easement  
25 for public access or a public right of way, which is shown upon any plat,  
26 subdivision, addition, parcel map or record of survey of any county, city, town or  
27 portion thereof duly recorded or filed in the office of the county recorder, and  
28 which is not specifically therein designated as a private road or a nonpublic road,  
29 and any way which is described in a duly recorded conveyance as a public road  
30 or is reserved thereby for public road purposes or which is described by words of  
31 similar import. The term does not include a utility easement or any highway or  
32 road specified in subparagraphs (1) to (4), inclusive, of paragraph (a) of  
33 subsection 5.~~

34 ~~(f)~~ "Shooting range" has the meaning ascribed to it in NRS 40.140.

35 ~~(g)~~ "State land" has the meaning ascribed to it in NRS 383.425.

36 **Sec. 2.** ~~[Chapter 40 of NRS is hereby amended by adding thereto a new  
37 section to read as follows:~~

38 ~~If an owner of private property upon which a highway, road or public way  
39 described in subparagraphs (1) to (5), inclusive, of paragraph (a) of subsection 5  
40 of NRS 202.450 suffers damage or injury as a result of another person's use of  
41 the highway, road or way, the owner may commence a civil action against the  
42 person to recover the actual damages suffered by the owner and reasonable  
43 attorney's fees.] (Deleted by amendment.)~~

44 **Sec. 3.** NRS 244.363 is hereby amended to read as follows:

45 244.363 Except as otherwise provided in subsection 3 of NRS 40.140 and  
46 subsection ~~[7.]~~ 8 of NRS 202.450, the boards of county commissioners in their  
47 respective counties may, by ordinance regularly enacted, regulate, control and  
48 prohibit, as a public nuisance, excessive noise which is injurious to health or which  
49 interferes unreasonably with the comfortable enjoyment of life or property within  
50 the boundaries of the county.

51 **Sec. 4.** NRS 266.335 is hereby amended to read as follows:

52 266.335 The city council may:

1           1. Except as otherwise provided in subsections 3 and 4 of NRS 40.140 and  
2 subsections ~~7 and~~ 6, 8 and 9 of NRS 202.450, determine by ordinance what shall  
3 be deemed nuisances.

4           2. Provide for the abatement, prevention and removal of the nuisances at the  
5 expense of the person creating, causing or committing the nuisances.

6           3. Provide that the expense of removal is a lien upon the property upon which  
7 the nuisance is located. The lien must:

8           (a) Be perfected by recording with the county recorder a statement by the city  
9 clerk of the amount of expenses due and unpaid and describing the property subject  
10 to the lien.

11           (b) Be coequal with the latest lien thereon to secure the payment of general  
12 taxes.

13           (c) Not be subject to extinguishment by the sale of any property because of the  
14 nonpayment of general taxes.

15           (d) Be prior and superior to all liens, claims, encumbrances and titles other  
16 than the liens of assessments and general taxes.

17           4. Provide any other penalty or punishment of persons responsible for the  
18 nuisances.

19           **Sec. 5.** NRS 268.412 is hereby amended to read as follows:

20           268.412 Except as otherwise provided in subsection 3 of NRS 40.140 and  
21 subsection ~~7~~ 8 of NRS 202.450, the city council or other governing body of a city  
22 may, by ordinance regularly enacted, regulate, control and prohibit, as a public  
23 nuisance, excessive noise which is injurious to health or which interferes  
24 unreasonably with the comfortable enjoyment of life or property within the  
25 boundaries of the city.

26           **Sec. 6.** ~~[Chapter 405 of NRS is hereby amended by adding thereto a new  
27 section to read as follows:~~

28           ~~1. An owner of private property upon which a public road or way is located  
29 may erect and maintain a fence or gate across the public road or way if:~~

30           ~~(a) The owner submits a request to the governmental entity which has  
31 jurisdiction over the public road or way; and~~

32           ~~(b) The governmental entity approves the request pursuant to subsection 2.~~

33           ~~2. A governmental entity may approve a request submitted by an owner  
34 pursuant to subsection 1 if the governmental entity determines that the proposed  
35 fence or gate will not greatly inconvenience the traveling public. The  
36 governmental entity may impose such conditions on the erection and  
37 maintenance of the fence or gate as it determines necessary for the safety and  
38 convenience of the traveling public.~~

39           ~~3. If an owner erects and maintains a fence across a public road or way  
40 pursuant to this section, the owner shall maintain a gate at a location on the  
41 property through which members of the public may access the public road or  
42 way.~~

43           ~~4. Any gate erected and maintained across a public road or way pursuant to  
44 this section must be kept unlocked and in such condition as to allow members of  
45 the public to access the road or way without unnecessary delay.~~

46           ~~5. A conspicuous sign must be posted and maintained upon each gate  
47 described in subsections 3 and 4 which advises the reader that:~~

48           ~~(a) A public road or way is located on the property;~~

49           ~~(b) Members of the public may access the public road or way; and~~

50           ~~(c) Members of the public who access the public road or way through the  
51 gate must, if the gate was shut before passing through it, shut the gate after such  
52 passage, and must otherwise leave the property in the same condition as when  
53 they entered.~~

1 ~~6. A fence or gate that is erected and maintained pursuant to this section~~  
 2 ~~does not constitute:~~

3 ~~(a) A public nuisance pursuant to NRS 202.450; or~~

4 ~~(b) A violation of NRS 405.230.~~

5 ~~7. As used in this section, "public road or way" means:~~

6 ~~(a) A public road, as defined in subsection 2 of NRS 405.191;~~

7 ~~(b) A public way, as defined in NRS 202.450; or~~

8 ~~(c) A general or minor county road designated pursuant to NRS 403.170~~  
 9 ~~which is unpaved.] (Deleted by amendment.)~~

10 **Sec. 7.** ~~[NRS 405.230 is hereby amended to read as follows:~~

11 ~~405.230 1. [Any] Except as otherwise provided in section 6 of this act, a~~  
 12 ~~person who, in any manner, obstructs any road, street or alley, or in any manner~~  
 13 ~~damages it or prevents travel thereon, or who obstructs, dams or diverts any stream~~  
 14 ~~or water so as to throw it, or cause the flowage thereof, upon, across or along the~~  
 15 ~~pathway of any road, highway, street or alley is guilty of a public offense, as~~  
 16 ~~prescribed in NRS 193.155, proportionate to the extent of damage to the section of~~  
 17 ~~the road, street, alley or highway damaged, and in no event less than a~~  
 18  ~~misdemeanor.~~

19 ~~2. The court before which the conviction is had shall order the sheriff or any~~  
 20  ~~constable of the county to abate, as a nuisance, any fence or other obstruction, to~~  
 21  ~~the free and convenient use and travel of the road, street or alley, or any obstruction~~  
 22  ~~from the stream so as to allow it to flow in its natural bed.~~

23 ~~3. The department of public works or any other appropriate county agency is~~  
 24  ~~authorized to remove from the highways any unlicensed obstacle or encroachment~~  
 25  ~~which is not removed, or the removal of which is not commenced and thereafter~~  
 26  ~~diligently prosecuted, before the expiration of 5 days after personal service of~~  
 27  ~~notice and demand upon the owner of the obstacle or encroachment or the owner's~~  
 28  ~~agent. In lieu of personal service upon that person or the person's agent, service of~~  
 29  ~~the notice may also be made by registered or certified mail and by posting, for a~~  
 30  ~~period of 5 days, a copy of the notice on the obstacle or encroachment described in~~  
 31  ~~the notice. Removal by the department or other agency of the obstacle or~~  
 32  ~~encroachment on the failure of the owner to comply with the notice and demand~~  
 33  ~~gives the department or other agency a right of action to recover the expense of the~~  
 34  ~~removal, investigative costs, attorney's fees, cost and expenses of suit, and in~~  
 35  ~~addition thereto the sum of \$250 for each day the obstacle or encroachment remains~~  
 36  ~~after the expiration of 5 days from the service of the notice and demand.~~

37 ~~4. As used in this section, "obstacles or encroachments" mean any objects,~~  
 38  ~~materials or facilities not owned by the county that are placed within a right of way~~  
 39  ~~of the county for storage purposes or decorative improvements for front lots that are~~  
 40  ~~not a part of a highway facility. The term does not include vehicles parked in a~~  
 41  ~~lawful manner within that right of way.] (Deleted by amendment.)~~