

**Amendment No. 600**

Assembly Amendment to Senate Bill No. 94 First Reprint (BDR 15-440)

**Proposed by:** Assembly Committee on Judiciary

**Amends:** 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.

SJQ/NCA



Date: 5/17/2021

S.B. No. 94—Provides that an unlocked gate does not, in and of itself, constitute a public nuisance. (BDR 15-440)





SENATE BILL NO. 94—SENATOR SETTELMAYER

FEBRUARY 3, 2021

Referred to Committee on Judiciary

SUMMARY—~~Provides that an unlocked gate does not, in and of itself, constitute a public nuisance.~~ Revises provisions relating to property. (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 ~~public nuisances~~ property; providing that an unlocked gate which is erected and maintained across certain public roads in certain counties does not, in and of itself, constitute a public nuisance ~~under certain circumstances; removing a provision making a place where vagrants resort a public nuisance; authorizing a board of county commissioners and board of county highway commissioners to take certain actions relating to the erection and maintenance of gates across certain public roads;~~ and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Existing law ~~states that: (1) a public nuisance is a crime against the order and economy~~  
2 ~~of the State; and (2) a person commits a public nuisance if he or she engages in certain~~  
3 ~~activities. (NRS 202.450) A person who commits or maintains a public nuisance for which no~~  
4 ~~special punishment is prescribed is guilty of a misdemeanor and a court may order the person~~  
5 ~~to abate the nuisance and pay a civil penalty of not less than \$500 but not more than \$5,000.~~  
6 ~~(NRS 202.470, 202.480) creates in each county, except for a county whose population is~~  
7 ~~100,000 or more (currently Clark and Washoe Counties), a board of county highway~~  
8 ~~commissioners which has the exclusive control of all matters pertaining to the~~  
9 ~~construction, repair and maintenance of public highways, roads and bridges within its~~  
10 ~~county. (NRS 403.005, 403.010, 403.090) Existing law authorizes a board of county~~  
11 ~~highway commissioners to make certain rules and regulations. (NRS 403.050) Section 5.3~~  
12 ~~of this bill authorizes a board of county highway commissioners to make rules and~~  
13 ~~regulations to allow the erection and maintenance of gates across certain public roads in~~  
14 ~~the county. Section 5.3: (1) requires such rules and regulations to specify that such a gate~~  
15 ~~is to be kept unlocked; and (2) authorizes such rules and regulations to set forth any~~  
16 ~~specifications, standards and requirements concerning such a gate as the board~~  
17 ~~determines to be necessary.~~  
18 Section 5.6 of this bill authorizes the board of county commissioners in a county  
19 whose population is 100,000 or more to adopt an ordinance or enter into a written  
20 agreement with a person authorizing the person to erect and maintain a gate across a

21 public road in the county. Section 5.6 requires any such ordinance or agreement to  
 22 contain provisions: (1) specifying that the gate is to be kept unlocked; and (2) ensuring  
 23 that public access to the public road is not restricted in any manner and that the  
 24 traveling public is able to travel on the public road without unnecessary delay.

25 Existing law makes it a public nuisance for a person, by force, threat, intimidation  
 26 or any other unlawful means, to prevent or obstruct the free passage or transit over or  
 27 through certain highways, roads, state lands or other public lands or lands dedicated to  
 28 public use or to knowingly misrepresent the status of or assert any right to the exclusive  
 29 use and occupancy of any of those highways, roads, state lands or other public lands or  
 30 lands dedicated to public use if the person has no leasehold interest in or claim or color  
 31 of title to the highway, road, state land or other public land or land dedicated to public  
 32 use. (NRS 202.450) Section 1 of this bill ~~revises the provisions setting forth the activities~~  
 33 ~~that constitute a public nuisance to specify~~ provides that an unlocked gate **which is erected**  
 34 **and maintained across a public road** does not, in and of itself, constitute a public nuisance  
 35 **if the gate is erected and maintained in accordance with the rules and regulations**  
 36 **made pursuant to section 5.3 or an ordinance adopted or written agreement entered into**  
 37 **pursuant to section 5.6, as applicable. Section 1 further provides that it is not a public**  
 38 **nuisance for a person to fence or enclose public land if the fencing or enclosure is**  
 39 **authorized or required by a federal agency having jurisdiction over the public land.**  
 40 **Section 1 also removes a provision of existing law making a place where vagrants resort**  
 41 **a public nuisance.**

42 Sections 3-5 of this bill make conforming changes to reflect the addition of the provision  
 43 made by section 1.

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

1 **Section 1.** NRS 202.450 is hereby amended to read as follows:  
 2 202.450 1. A public nuisance is a crime against the order and economy of  
 3 the State.

4 2. Every place:  
 5 (a) Wherein any gambling, bookmaking or pool selling is conducted without a  
 6 license as provided by law, or wherein any swindling game or device, or bucket  
 7 shop, or any agency therefor is conducted, or any article, apparatus or device useful  
 8 therefor is kept;

9 (b) Wherein any fighting between animals or birds is conducted;  
 10 (c) Wherein any dog races are conducted as a gaming activity;  
 11 (d) Wherein any intoxicating liquors are kept for unlawful use, sale or  
 12 distribution;

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

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

18 ~~(e) Where vagrants resort.~~  
 19 ~~is a public nuisance.~~

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

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

24 (b) Offends public decency;

25 (c) Unlawfully interferes with, befouls, obstructs or tends to obstruct, or  
 26 renders dangerous for passage, a lake, navigable river, bay, stream, canal, ditch,

1 millrace or basin, or a public park, square, street, alley, bridge, causeway or  
2 highway; or

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

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

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

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

21 5. ~~¶¶~~ Except as otherwise provided in subsections 6 and 7, it is a public  
22 nuisance for any person:

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

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

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

28 (3) Main, general or minor county road designated pursuant to NRS  
29 403.170;

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

31 (5) State land or other public land; or

32 (6) Land dedicated to public use; or

33 (b) To knowingly misrepresent the status of or assert any right to the exclusive  
34 use and occupancy of such a highway, road, state land or other public land or land  
35 dedicated to public use,

36 ↪ if the person has no leasehold interest, claim or color of title, made or asserted in  
37 good faith, in or to the highway, road, state land or other public land or land  
38 dedicated to public use.

39 6. An unlocked gate which is erected and maintained across:

40 (a) A road described in subparagraph (3) or (4) of paragraph (a) of  
41 subsection 5 located in a county whose population is less than 100,000, does not,  
42 in and of itself, constitute a public nuisance ~~¶~~ if the gate is erected and  
43 maintained in accordance with the rules and regulations of the board of county  
44 highway commissioners made pursuant to section 5.3 of this act.

45 (b) A road described in subparagraph (4) of paragraph (a) of subsection 5  
46 located in a county whose population is 100,000 or more, does not, in and of  
47 itself, constitute a public nuisance if the gate is erected and maintained pursuant  
48 to an ordinance adopted or an agreement entered into by the board of county  
49 commissioners pursuant to section 5.6 of this act.

50 7. It is not a public nuisance for a person to fence or otherwise enclose any  
51 public land if such fencing or enclosure is authorized or required by a federal  
52 agency having jurisdiction over the public land.

1 8. Agricultural activity conducted on farmland consistent with good  
2 agricultural practice and established before surrounding nonagricultural activities is  
3 not a public nuisance unless it has a substantial adverse effect on the public health  
4 or safety. It is presumed that an agricultural activity which does not violate a  
5 federal, state or local law, ordinance or regulation constitutes good agricultural  
6 practice.

7 ~~7-9.7~~ 9. A shooting range is not a public nuisance with respect to any noise  
8 attributable to the shooting range if the shooting range is in compliance with the  
9 provisions of all applicable statutes, ordinances and regulations concerning noise:

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

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

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

18 ~~18-9.7~~ 10. A request for emergency assistance by a tenant as described in  
19 NRS 118A.515 and 118B.152 is not a public nuisance.

20 ~~19-10.7~~ 11. As used in this section:

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

22 (b) "Controlled substance analog" has the meaning ascribed to it in NRS  
23 453.043.

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

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

26 (e) "Shooting range" has the meaning ascribed to it in NRS 40.140.

27 (f) "State land" has the meaning ascribed to it in NRS 383.425.

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

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

30 244.363 Except as otherwise provided in subsection 3 of NRS 40.140 and  
31 subsection ~~7-9.7~~ 9 of NRS 202.450, the boards of county commissioners in their  
32 respective counties may, by ordinance regularly enacted, regulate, control and  
33 prohibit, as a public nuisance, excessive noise which is injurious to health or which  
34 interferes unreasonably with the comfortable enjoyment of life or property within  
35 the boundaries of the county.

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

37 266.335 The city council may:

38 1. Except as otherwise provided in subsections 3 and 4 of NRS 40.140 and  
39 subsections 6, 7, 8 and 9 and 10 of NRS 202.450, determine by ordinance  
40 what shall be deemed nuisances.

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

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

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

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

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

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

1 4. Provide any other penalty or punishment of persons responsible for the  
2 nuisances.

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

4 268.412 Except as otherwise provided in subsection 3 of NRS 40.140 and  
5 subsection ~~7-9~~ 9 of NRS 202.450, the city council or other governing body of a  
6 city may, by ordinance regularly enacted, regulate, control and prohibit, as a public  
7 nuisance, excessive noise which is injurious to health or which interferes  
8 unreasonably with the comfortable enjoyment of life or property within the  
9 boundaries of the city.

10 **Sec. 5.3.** Chapter 403 of NRS is hereby amended by adding thereto a  
11 new section to read as follows:

12 1. The board of county highway commissioners may make rules and  
13 regulations to allow a person to erect and maintain a gate across a public road in  
14 the county. Such rules and regulations:

15 (a) Must require such a gate to be kept unlocked; and

16 (b) May set forth any specifications, standards and requirements concerning  
17 the erection and maintenance of such a gate as the board of county highway  
18 commissioners determines to be necessary.

19 2. As used in this section, "public road" means a:

20 (a) Main, general or minor county road designated pursuant to NRS  
21 403.170.

22 (b) Public road, as defined in subsection 2 of NRS 405.191.

23 **Sec. 5.6.** Chapter 405 of NRS is hereby amended by adding thereto a  
24 new section to read as follows:

25 1. In a county whose population is 100,000 or more, the board of county  
26 commissioners of the county may, by ordinance or by written agreement with a  
27 person, authorize a person to erect and maintain a gate across a public road. Any  
28 such ordinance or agreement must contain provisions:

29 (a) That require such a gate to be kept unlocked; and

30 (b) To ensure that:

31 (1) Public access to the public road is not restricted in any manner; and

32 (2) The traveling public is able to travel on the public road without  
33 unnecessary delay.

34 2. As used in this section, "public road" has the meaning ascribed to it in  
35 subsection 2 of NRS 405.191.

36 **Sec. 6.** (Deleted by amendment.)

37 **Sec. 7.** (Deleted by amendment.)