

SENATE BILL NO. 233—SENATORS CEGAVSKE; AND HARDY

MARCH 11, 2013

Referred to Committee on Health and Human Services

SUMMARY—Revises certain provisions pertaining to zoning. (BDR 40-890)

FISCAL NOTE: Effect on Local Government: No. 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 land use planning; repealing zoning provisions concerning group homes that conflict with federal law; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Under existing state law, a “residential establishment” is defined to include  
2 certain homes for individual residential care, halfway houses for recovering alcohol  
3 and drug abusers and residential facilities for groups. (NRS 278.02384) Existing  
4 state law, in relevant part, provides that in a county whose population is 100,000 or  
5 more (currently Clark and Washoe Counties), the governing body of the county,  
6 and of each city in such a county (currently Boulder City, Henderson, Las Vegas,  
7 Mesquite, North Las Vegas, Reno and Sparks) is required to establish by ordinance  
8 a minimum distance between residential establishments that is at least 1,500 feet  
9 but not more than 2,500 feet. (NRS 278.02386) Existing state law also establishes a  
10 registry of “group homes,” which includes residential establishments and facilities  
11 providing similar services, and requires the governing body of each county and city  
12 to ensure that the zoning of residential establishments is carried out in observance  
13 of any mandatory minimum distances. (NRS 278.02387, 278.02388)

14 Existing federal law, with respect to persons with disabilities, expressly  
15 preempts conflicting state laws which discriminate in housing on the basis of  
16 disability or which fail to afford such persons the reasonable accommodations  
17 necessary to use and enjoy a dwelling. As held by the United States District Court  
18 for the District of Nevada, the provisions of the federal Fair Housing Amendments  
19 Act (42 U.S.C. §§ 3601 et seq.) preempt NRS 278.0238 to 278.02388, inclusive.  
20 (*Nevada Fair Housing Center, Inc. v. Clark County*, 565 F.Supp. 2d 1178 (D. Nev.  
21 2008))

22 This bill repeals each section of the Nevada Revised Statutes which the federal  
23 District Court held in *Nevada Fair Housing Center* to be federally preempted,  
24 including the provision which directs certain governing bodies to establish a  
25 minimum distance between residential establishments.



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

- 1       **Section 1.** NRS 449.040 is hereby amended to read as follows:  
2       449.040 Any person, state or local government or agency  
3 thereof desiring a license under the provisions of NRS 449.030 to  
4 449.240, inclusive, must file with the Health Division an application  
5 on a form prescribed, prepared and furnished by the Health  
6 Division, containing:
- 7       1. The name of the applicant and, if a natural person, whether  
8 the applicant has attained the age of 21 years.
  - 9       2. The type of facility to be operated.
  - 10      3. The location of the facility.
  - 11      4. In specific terms, the nature of services and type of care to  
12 be offered, as defined in the regulations.
  - 13      5. The number of beds authorized by the Director of the  
14 Department of Health and Human Services or, if such authorization  
15 is not required, the number of beds the facility will contain.
  - 16      6. The name of the person in charge of the facility.
  - 17      7. Such other information as may be required by the Health  
18 Division for the proper administration and enforcement of NRS  
19 449.030 to 449.240, inclusive.
  - 20      8. Evidence satisfactory to the Health Division that the  
21 applicant is of reputable and responsible character. If the applicant is  
22 a firm, association, organization, partnership, business trust,  
23 corporation or company, similar evidence must be submitted as to  
24 the members thereof, and the person in charge of the facility for  
25 which application is made. If the applicant is a political subdivision  
26 of the State or other governmental agency, similar evidence must be  
27 submitted as to the person in charge of the institution for which  
28 application is made.
  - 29      9. Evidence satisfactory to the Health Division of the ability of  
30 the applicant to comply with the provisions of NRS 449.030 to  
31 449.240, inclusive, and the standards and regulations adopted by the  
32 Board.
  - 33      10. Evidence satisfactory to the Health Division that the  
34 facility conforms to the zoning regulations of the local government  
35 within which the facility will be operated or that the applicant has  
36 applied for an appropriate reclassification, variance, permit for  
37 special use or other exception for the facility.
  - 38      ~~11. If the facility to be licensed is a residential establishment~~  
39 ~~as defined in NRS 278.02384, and if the residential establishment is~~  
40 ~~subject to the distance requirements set forth in subsection 3 of NRS~~  
41 ~~278.02386, evidence satisfactory to the Health Division that the~~



1 residential establishment will be located and operated in accordance  
2 with the provisions of that subsection.]

3 **Sec. 2.** NRS 278.0238, 278.02381, 278.02382, 278.02383,  
4 278.02384, 278.02385, 278.02386, 278.02387 and 278.02388 are  
5 hereby repealed.

6 **Sec. 3.** This act becomes effective upon passage and approval.

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## LEADLINES OF REPEALED SECTIONS

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**278.0238** Definitions.

**278.02381** “Halfway house for recovering alcohol and drug abusers” defined.

**278.02382** “Health Division” defined.

**278.02383** “Home for individual residential care” defined.

**278.02384** “Residential establishment” defined.

**278.02385** “Residential facility for groups” defined.

**278.02386** Certain homes and facilities required to be included in definition of “single-family residence” in city and county ordinances; exclusions; siting of residential establishments in certain larger counties; special use permits; restriction on application of section.

**278.02387** Registry of group homes: Transmission of information; compilation and maintenance by Health Division; contents; availability.

**278.02388** Prerequisites to approval or issuance of rezoning, zone variance or special use permit necessary to operate residential establishment; conditional approval or issuance.

