

Senate Bill No. 233—Senators Cegavske; and Hardy

CHAPTER.....

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:

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

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

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

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

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

Section 1. NRS 449.040 is hereby amended to read as follows:
449.040 Any person, state or local government or agency thereof desiring a license under the provisions of NRS 449.030 to 449.240, inclusive, must file with the Health Division an application on a form prescribed, prepared and furnished by the Health Division, containing:

1. The name of the applicant and, if a natural person, whether the applicant has attained the age of 21 years.
2. The type of facility to be operated.
3. The location of the facility.



4. In specific terms, the nature of services and type of care to be offered, as defined in the regulations.

5. The number of beds authorized by the Director of the Department of Health and Human Services or, if such authorization is not required, the number of beds the facility will contain.

6. The name of the person in charge of the facility.

7. Such other information as may be required by the Health Division for the proper administration and enforcement of NRS 449.030 to 449.240, inclusive.

8. Evidence satisfactory to the Health Division that the applicant is of reputable and responsible character. If the applicant is a firm, association, organization, partnership, business trust, corporation or company, similar evidence must be submitted as to the members thereof, and the person in charge of the facility for which application is made. If the applicant is a political subdivision of the State or other governmental agency, similar evidence must be submitted as to the person in charge of the institution for which application is made.

9. Evidence satisfactory to the Health Division of the ability of the applicant to comply with the provisions of NRS 449.030 to 449.240, inclusive, and the standards and regulations adopted by the Board.

10. Evidence satisfactory to the Health Division that the facility conforms to the zoning regulations of the local government within which the facility will be operated or that the applicant has applied for an appropriate reclassification, variance, permit for special use or other exception for the facility.

~~11. If the facility to be licensed is a residential establishment as defined in NRS 278.02384, and if the residential establishment is subject to the distance requirements set forth in subsection 3 of NRS 278.02386, evidence satisfactory to the Health Division that the residential establishment will be located and operated in accordance with the provisions of that subsection.~~

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

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

