

CHAPTER.....

AN ACT relating to search warrants; setting forth certain requirements relating to the search of the property of an attorney; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law sets forth the grounds upon which a search warrant may be issued by a magistrate of this State. (NRS 179.025, 179.035) **Section 3** of this bill sets forth additional grounds upon which a search warrant may be issued to search and seize the property of an attorney. **Section 4** of this bill: (1) requires such a search warrant to be executed in a manner that minimizes the scrutiny of the property that is subject to the attorney-client privilege; and (2) authorizes a team of certain officers and attorneys to review property during the search to determine whether the property is covered by the search warrant. **Section 5** of this bill requires a district attorney or the Attorney General to ensure that any property seized during a search conducted pursuant to such a search warrant is: (1) reviewed to determine whether the attorney-client privilege applies; and (2) returned to the attorney from whom the property was seized if the seized property is subject to the attorney-client privilege.

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. Chapter 179 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

Sec. 2. *As used in sections 2 to 5, inclusive, of this act, unless the context otherwise requires, “property” has the meaning ascribed to it in NRS 179.015.*

Sec. 3. 1. *A search warrant may be issued by a magistrate of the State of Nevada to search for and seize any property of an attorney engaged in the practice of law if:*

(a) Such a search warrant is authorized pursuant to NRS 179.015 to 179.115, inclusive;

(b) The property to be seized cannot be obtained using a subpoena or other less intrusive means;

(c) The search warrant describes the property to be seized as specifically as possible to minimize, to the extent possible, the search and review of property that is subject to the attorney-client privilege; and

(d) The search warrant includes a statement indicating that it is the intention of the district attorney or the Attorney General that



the search warrant is executed in a manner to ensure that an attorney-client privilege is not violated.

2. In determining whether a subpoena or other less intrusive means can be used to obtain the property to be seized pursuant to the search warrant, the magistrate shall consider whether the use of a subpoena or other less intrusive means of obtaining the property would likely:

- (a) Compromise the criminal investigation or prosecution;*
- (b) Result in the obstruction or destruction of evidence; or*
- (c) Otherwise be ineffective.*

Sec. 4. 1. A search warrant authorized pursuant to section 3 of this act must be executed in such a manner as to minimize, to the greatest extent possible, the scrutiny of any property that is subject to the attorney-client privilege.

2. Property which is arguably subject to the attorney-client privilege may be reviewed during a search conducted pursuant to a search warrant issued pursuant to section 3 of this act to determine whether the property is covered by the search warrant if:

(a) The property is reviewed by a team of officers and attorneys who are designated by the district attorney or the Attorney General and who are not part of the underlying criminal investigation or prosecution;

(b) The attorneys designated to the team described in paragraph (a) do not participate in the search itself; and

(c) The team of officers and attorneys described in paragraph (a) do not disclose any privileged information obtained through the search to the officers and attorneys who are part of the underlying criminal investigation or prosecution.

Sec. 5. A district attorney or the Attorney General shall ensure that any property seized during a search conducted under a search warrant issued pursuant to section 3 of this act is reviewed to determine whether the attorney-client privilege applies and that any seized property that is subject to the attorney-client privilege is returned as provided in NRS 179.105 to the attorney from whom the property was seized.

Sec. 6. NRS 179.105 is hereby amended to read as follows:

179.105 All property or things taken on a warrant must be retained in an officer's custody, subject to the order of the court to which the officer is required to return the proceedings before the officer, or of any other court in which the offense in respect to which the property or things are taken is triable. If it appears that the property taken is not the same as that described in the warrant, ~~for~~



that there is no probable cause for believing the existence of the grounds on which the warrant was issued **H** *or that the property is determined pursuant to section 5 of this act to be subject to the attorney-client privilege*, the magistrate shall cause it to be restored to the person from whom it was taken. However, no search warrant shall be quashed by any magistrate or judge within this State nor shall any evidence based upon a search warrant be suppressed in any criminal action or proceeding because of mere technical irregularities which do not affect the substantial rights of the accused.

