

SENATE BILL NO. 338—COMMITTEE ON JUDICIARY

MARCH 23, 2009

Referred to Committee on Judiciary

SUMMARY—Authorizes a landlord who leases or subleases any commercial premises to dispose of any abandoned personal property left on the commercial premises under certain circumstances. (BDR 10-1152)

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 property; authorizing a landlord who leases or subleases any commercial premises to dispose of any abandoned personal property left on the commercial premises without incurring any civil or criminal liability under certain circumstances; authorizing the landlord to charge and collect certain reasonable and actual costs before releasing the abandoned personal property; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 **Section 1** of this bill authorizes a landlord who leases or subleases any
2 commercial premises under a rental agreement that has been terminated for any
3 reason to dispose of any abandoned personal property left on the commercial
4 premises without incurring any civil or criminal liability if the landlord takes
5 certain steps to notify any holder of a perfected lien or security interest of the
6 existence of the abandoned property and notifies, by certified mail, the tenant who
7 left the property on the premises of his intention to dispose of the property. If the
8 landlord and any holder of a perfected lien or security interest have a written
9 agreement concerning the removal and disposal of abandoned property, that
10 agreement determines the rights and obligations of those parties with respect to the
11 removal and disposal of abandoned property.

12 **Section 2** of this bill defines “abandoned personal property” as any personal
13 property which is left unattended on the commercial premises after the termination
14 of the tenancy and which is not removed within a certain period after the landlord
15 has provided certain notices to the tenant and any holder of a perfected lien or
16 security interest in the property. If the abandoned personal property is a vehicle,
17 **section 1** requires the vehicle to be disposed of in the manner provided in chapter
18 487 of NRS for abandoned vehicles.



19 **Section 1** of this bill also authorizes the landlord to charge and collect the
20 reasonable and actual costs of inventory, moving and safe storage, if necessary, of
21 the abandoned personal property before releasing the abandoned personal property
22 to the tenant or his authorized representative. If the tenant disputes the costs
23 claimed by the landlord, **section 1** authorizes the dispute to be resolved using the
24 procedure specified in NRS 40.253, as amended by **section 3** of this bill.

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

1 **Section 1.** Chapter 118 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 *1. Except as otherwise provided in subsection 2, a landlord*
4 *who leases or subleases any commercial premises under a rental*
5 *agreement that has been terminated for any reason may, in*
6 *accordance with the following provisions, dispose of any*
7 *abandoned personal property, regardless of its character, left on*
8 *the commercial premises without incurring any civil or criminal*
9 *liability:*

10 *(a) The landlord may dispose of the abandoned personal*
11 *property and recover his reasonable costs out of the abandoned*
12 *personal property or the value thereof if the conditions set forth in*
13 *subparagraphs (1) and (2) are satisfied:*

14 *(1) The landlord has notified the tenant in writing of his*
15 *intention to dispose of the abandoned personal property and 14*
16 *days have elapsed since the notice was mailed to the tenant. The*
17 *notice must be mailed, by certified mail, return receipt requested,*
18 *to the tenant at the tenant's present address, and if that address is*
19 *unknown, then at the tenant's last known address.*

20 *(2) The landlord has taken reasonable steps to:*

21 *(I) Determine whether the tenant has subjected the*
22 *abandoned personal property to a perfected lien or security*
23 *interest; and*

24 *(II) If the landlord determines that the tenant has*
25 *subjected the abandoned personal property to a perfected lien or*
26 *security interest, notify the holder of the perfected lien or the*
27 *security interest that the abandoned personal property has been*
28 *left on the premises.*

29 *↳ The landlord shall be deemed to have taken the reasonable*
30 *steps required by subparagraph (2) if the landlord has reviewed*
31 *the results of a current search of the records in which a financing*
32 *statement must be filed in order to perfect a lien or security*
33 *interest pursuant to chapter 104 of NRS for a financing statement*
34 *naming the tenant as the debtor of a debt secured by the*
35 *abandoned personal property and, if such a financing statement is*



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1 *found, mailed, to any secured party named on the financing*
2 *statement at the address indicated on the financing statement, by*
3 *certified mail, return receipt requested, a written notice stating*
4 *that the abandoned personal property has been left on the*
5 *premises.*

6 *(b) The landlord may charge and collect the reasonable and*
7 *actual costs of inventory, moving and safe storage, if necessary,*
8 *before releasing the abandoned personal property to the tenant or*
9 *his authorized representative rightfully claiming the abandoned*
10 *personal property within the appropriate period set forth in*
11 *paragraph (a).*

12 *(c) Vehicles must be disposed of in the manner provided in*
13 *chapter 487 of NRS for abandoned vehicles.*

14 *2. If a written agreement between a landlord and a secured*
15 *party who has a perfected lien on, or a perfected security interest*
16 *in, any abandoned personal property of the tenant contains*
17 *provisions which relate to the removal and disposal of abandoned*
18 *personal property, the provisions of the agreement determine the*
19 *rights and obligations of the landlord and the secured party with*
20 *respect to the removal and disposal of the abandoned personal*
21 *property.*

22 *3. Any dispute relating to the amount of the costs claimed by*
23 *the landlord pursuant to paragraph (b) of subsection 1 may be*
24 *resolved using the procedure provided in subsection 7 of*
25 *NRS 40.253.*

26 **Sec. 2.** NRS 118.171 is hereby amended to read as follows:

27 118.171 As used in NRS 118.171 to 118.205, inclusive, *and*
28 *section 1 of this act*, unless the context otherwise requires:

29 *1. "Abandoned personal property" means any personal*
30 *property which is left unattended on any commercial premises*
31 *after the termination of the tenancy and which is not removed by*
32 *the tenant or a person who has a perfected lien on, or perfected*
33 *security interest in, the personal property within 14 days after the*
34 *later of the date on which the landlord:*

35 *(a) Mailed, by certified mail, return receipt requested, notice of*
36 *his intention to dispose of the personal property, as required by*
37 *subparagraph (1) of paragraph (a) of subsection 1 of section 1 of*
38 *this act; or*

39 *(b) Provided notice to a person who has a perfected lien on, or*
40 *a perfected security interest in, the personal property that the*
41 *personal property has been left on the premises, as required by*
42 *subparagraph (2) of paragraph (a) of subsection 1 of section 1 of*
43 *this act.*



1 2. “Real property” includes an apartment, a dwelling, a mobile
2 home that is owned by a landlord and located on property owned by
3 the landlord and commercial premises.

4 ~~2-~~ 3. “Rental agreement” means an agreement to lease or
5 sublease real property for a term less than life which provides for
6 the periodic payment of rent.

7 ~~3-~~ 4. “Tenant” means a person who has the right to possess
8 real property pursuant to a rental agreement.

9 **Sec. 3.** NRS 40.253 is hereby amended to read as follows:

10 40.253 1. Except as otherwise provided in subsection 10, in
11 addition to the remedy provided in NRS 40.2512 and 40.290 to
12 40.420, inclusive, when the tenant of any dwelling, apartment,
13 mobile home, recreational vehicle or commercial premises with
14 periodic rent reserved by the month or any shorter period is in
15 default in payment of the rent, the landlord or his agent, unless
16 otherwise agreed in writing, may serve or have served a notice in
17 writing, requiring in the alternative the payment of the rent or the
18 surrender of the premises:

19 (a) At or before noon of the fifth full day following the day of
20 service; or

21 (b) If the landlord chooses not to proceed in the manner set forth
22 in paragraph (a) and the rent is reserved by a period of 1 week or
23 less and the tenancy has not continued for more than 45 days, at or
24 before noon of the fourth full day following the day of service.

25 ➔ As used in this subsection, “day of service” means the day the
26 landlord or his agent personally delivers the notice to the tenant. If
27 personal service was not so delivered, the “day of service” means
28 the day the notice is delivered, after posting and mailing pursuant to
29 subsection 2, to the sheriff or constable for service if the request for
30 service is made before noon. If the request for service by the sheriff
31 or constable is made after noon, the “day of service” shall be
32 deemed to be the day next following the day that the request is made
33 for service by the sheriff or constable.

34 2. A landlord or his agent who serves a notice to a tenant
35 pursuant to paragraph (b) of subsection 1 shall attempt to deliver the
36 notice in person in the manner set forth in paragraph (a) of
37 subsection 1 of NRS 40.280. If the notice cannot be delivered in
38 person, the landlord or his agent:

39 (a) Shall post a copy of the notice in a conspicuous place on the
40 premises and mail the notice by overnight mail; and

41 (b) After the notice has been posted and mailed, may deliver the
42 notice to the sheriff or constable for service in the manner set forth
43 in subsection 1 of NRS 40.280. The sheriff or constable shall not
44 accept the notice for service unless it is accompanied by written
45 evidence, signed by the tenant when he took possession of the



1 premises, that the landlord or his agent informed the tenant of the
2 provisions of this section which set forth the lawful procedures for
3 eviction from a short-term tenancy. Upon acceptance, the sheriff or
4 constable shall serve the notice within 48 hours after the request for
5 service was made by the landlord or his agent.

6 3. A notice served pursuant to subsection 1 or 2 must:

7 (a) Identify the court that has jurisdiction over the matter; and

8 (b) Advise the tenant of his right to contest the matter by filing,
9 within the time specified in subsection 1 for the payment of the rent
10 or surrender of the premises, an affidavit with the court that has
11 jurisdiction over the matter stating that he has tendered payment or
12 is not in default in the payment of the rent.

13 4. If the tenant files such an affidavit at or before the time
14 stated in the notice, the landlord or his agent, after receipt of a file-
15 stamped copy of the affidavit which was filed, shall not provide for
16 the nonadmittance of the tenant to the premises by locking or
17 otherwise.

18 5. Upon noncompliance with the notice:

19 (a) The landlord or his agent may apply by affidavit of
20 complaint for eviction to the Justice Court of the township in which
21 the dwelling, apartment, mobile home or commercial premises are
22 located or to the district court of the county in which the dwelling,
23 apartment, mobile home or commercial premises are located,
24 whichever has jurisdiction over the matter. The court may thereupon
25 issue an order directing the sheriff or constable of the county to
26 remove the tenant within 24 hours after receipt of the order. The
27 affidavit must state or contain:

28 (1) The date the tenancy commenced.

29 (2) The amount of periodic rent reserved.

30 (3) The amounts of any cleaning, security or rent deposits
31 paid in advance, in excess of the first month's rent, by the tenant.

32 (4) The date the rental payments became delinquent.

33 (5) The length of time the tenant has remained in possession
34 without paying rent.

35 (6) The amount of rent claimed due and delinquent.

36 (7) A statement that the written notice was served on the
37 tenant in accordance with NRS 40.280.

38 (8) A copy of the written notice served on the tenant.

39 (9) A copy of the signed written rental agreement, if any.

40 (b) Except when the tenant has timely filed the affidavit
41 described in subsection 3 and a file-stamped copy of it has been
42 received by the landlord or his agent, and except when the landlord
43 is prohibited pursuant to NRS 118A.480, the landlord or his agent
44 may, in a peaceable manner, provide for the nonadmittance of the
45 tenant to the premises by locking or otherwise.



1 6. Upon the filing by the tenant of the affidavit permitted in
2 subsection 3, regardless of the information contained in the
3 affidavit, and the filing by the landlord of the affidavit permitted by
4 subsection 5, the Justice Court or the district court shall hold a
5 hearing, after service of notice of the hearing upon the parties, to
6 determine the truthfulness and sufficiency of any affidavit or notice
7 provided for in this section. If the court determines that there is no
8 legal defense as to the alleged unlawful detainer and the tenant is
9 guilty of an unlawful detainer, the court may issue a summary order
10 for removal of the tenant or an order providing for the
11 nonadmittance of the tenant. If the court determines that there is a
12 legal defense as to the alleged unlawful detainer, the court shall
13 refuse to grant either party any relief, and, except as otherwise
14 provided in this subsection, shall require that any further
15 proceedings be conducted pursuant to NRS 40.290 to 40.420,
16 inclusive. The issuance of a summary order for removal of the
17 tenant does not preclude an action by the tenant for any damages or
18 other relief to which he may be entitled. If the alleged unlawful
19 detainer was based upon subsection 5 of NRS 40.2514, the refusal
20 by the court to grant relief does not preclude the landlord thereafter
21 from pursuing an action for unlawful detainer in accordance with
22 NRS 40.251.

23 7. The tenant may, upon payment of the appropriate fees
24 relating to the filing and service of a motion, file a motion with the
25 court, on a form provided by the clerk of the court, to dispute the
26 amount of the costs, if any, claimed by the landlord pursuant to NRS
27 118A.460 *or section 1 of this act* for the inventory, moving and
28 storage of personal property left on the premises. The motion must
29 be filed within 20 days after the summary order for removal of the
30 tenant or the abandonment of the premises by the tenant, or within
31 20 days after:

32 (a) The tenant has vacated or been removed from the premises;
33 and

34 (b) A copy of those charges has been requested by or provided
35 to the tenant,
36 ↳ whichever is later.

37 8. Upon the filing of a motion pursuant to subsection 7, the
38 court shall schedule a hearing on the motion. The hearing must be
39 held within 10 days after the filing of the motion. The court shall
40 affix the date of the hearing to the motion and order a copy served
41 upon the landlord by the sheriff, constable or other process server.
42 At the hearing, the court may:

43 (a) Determine the costs, if any, claimed by the landlord pursuant
44 to NRS 118A.460 *or section 1 of this act* and any accumulating
45 daily costs; and



1 (b) Order the release of the tenant's property upon the payment
2 of the charges determined to be due or if no charges are determined
3 to be due.

4 9. A landlord shall not refuse to accept rent from a tenant that
5 is submitted after the landlord or his agent has served or had served
6 a notice pursuant to subsection 1 if the refusal is based on the fact
7 that the tenant has not paid collection fees, attorney's fees or other
8 costs other than rent, a reasonable charge for late payments of rent
9 or dishonored checks, or a security. As used in this subsection,
10 "security" has the meaning ascribed to it in NRS 118A.240.

11 10. This section does not apply to the tenant of a mobile home
12 lot in a mobile home park or to the tenant of a recreational vehicle
13 lot in an area of a mobile home park in this State other than an area
14 designated as a recreational vehicle lot pursuant to the provisions of
15 subsection 6 of NRS 40.215.

