

Assembly

MINUTES

0047

COMMERCE COMMITTEE - NEVADA STATE LEGISLATURE - 58TH SESSION

March 3, 1975

The meeting was called to order by Chairman Robinson at 3:00 P.M.

MEMBERS PRESENT: Mr. Benkovich
Mr. Demers
Mr. Getto
Mr. Hickey
Mr. Harmon
Mr. Moody
Mr. Schofield
Mr. Wittenberg
Mr. Chairman

MEMBERS ABSENT: None

SPEAKING GUESTS: Joy D. Rogers - individual
James Joyce - American Society of Acupuncture
Janice Sanchez - Division for Aging Services
Assemblyman Brookman
Assemblyman Dreyer
Eileen Hinson - Division for Aging Services
John R. Kimball - individual
George Archer - American Association of Retired People
Frank W. Young - individual
William Edwards - Secretary-Board of Chinese Medicine

The purpose of this public hearing was to hear testimony on the following bills: AB 26, AB 91, AB 95, AB 96, AB 133 and AB 276.

The hearing commenced with testimony on AB 26 which:

Requires health insurance policies to include coverage for services by practitioners of traditional Chinese medicine.

Mr. Demers spoke on behalf of this bill. It is a result of the interim subcommittee which met to study the practice of Chinese medicine. He said it was really an oversight that it was not included at the last Session. At the present time the bill includes those individuals that seek relief from whatever ails them so that there will be insurance coverage in this area of health treatment.

Mr. Frank Young spoke saying he interpreted the bill to mean that insurance companies would be forced to include acupuncture treatment in all of their health policies and he felt it should be at the option of the insured. If an insurance company could provide insurance without including Chinese medicine coverage at a lesser premium rate, they would be prevented from doing so. Mr. Harmon pointed out that other areas of medical treatment are optional such as dental and visual. Mr. Demers commented that this bill would not make it mandatory. It would provide that the insurance companies cannot exclude it on a policy if an insured asks for it. He added that currently many companies are refusing to include it.

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Mr. Wittenberg brought to the attention of the committee lines 14 and 15 of the bill which state "No policy of health insurance shall exclude coverage....." and wondered if perhaps the way the bill was worded that it would make this coverage mandatory. Dr. Robinson said they would be well advised to research this matter to determine the exact meaning of the bill as written.

Joy Rogers then spoke. Her testimony is attached. She is in favor of AB 26. In her individual case, acupuncture treatment was more effective and would have cost her insurance company less were they to cover such treatments than for other methods of treatment. She, however, had to discontinue acupuncture treatment as it was too costly without insurance coverage. For further detail as to her testimony, please see the attached.

Dr. William Edwards spoke in favor of the bill. He said he checked with the insurance the State employees have and since 1973 they are covered for three treatments of acupuncture. He did say that Federal programs will not cover acupuncture nor will physician sponsored programs. He did say that they had received many letters from insurance companies regarding this matter and many say they would like to include it and many say they would refuse. He said if you are "white and rich" you can get acupuncture treatment but if you are "poor, or on welfare, or non-white" you cannot get it. He added that many insurance companies are beginning to pay for it.

Dr. Robinson asked if it were put on insurance policies if the companies would have the option to increase their fees. Dr. Edwards said he thought that they could put it on their fee schedules. Mr. Getto suggested that the Insurance Commissioner be contacted with regard to the machinery of doing this.

(Dr. William Edwards is an MD working for the State Health Department.)

Discussion was then concluded on this bill and continued to AB 91 which:

Requires practitioners of traditional Chinese medicine to obtain mal-practice insurance under certain circumstances.

Mr. Dreyer spoke on behalf of this bill saying he thought it a good measure that would protect the people and give them recourse. This is another bill that came out of the interim study of acupuncture. The attempt is to tighten controls on all sides to protect practitioners as well as the people. Currently they are practicing without malpractice insurance. Mr. Demers commented that in the 1 1/2 years that acupuncture has been legal in this State, there has been one suit which has since been dropped. Mr. Wittenberg's concern was if a suit was filed and since there are only a few licensed practitioners who know anything about this field, who would determine if, in fact, malpractice was committed. Mr. Dreyer said it would depend on the case. Mr. Getto asked if without malpractice insurance would this be limiting the number of practitioners or if some would go out of business.

Mr. Dreyer replied that he did not believe so but that it would be giving the people recourse should anything occur. Mr. Getto also questioned if malpractice insurance would increase the number of suits simply because with malpractice insurance, attorneys would then not hesitate to become involved.

Mr. Demers commented that the intent here and in most of these bills was one of equity so that no branch of medical arts would be discriminated against. Mr. Dreyer said there is great concern about the methods of control, etc., because Nevada is the first state to legalized acupuncture and other states are thus looking to Nevada for precedents.

~~The question of requiring insurance~~ for practitioners of Chinese medicine was brought up when it was stated that it is optional to the other medical arts. Mr. Demers said there should be equality so if it is optional for other forms, it should be optional for this field and the bill should then be amended. Dr. Edwards commented, however, that the Board of Chinese Medicine feels they should have this insurance because most of the practitioners are oriental and if they get into any problems, they will be sent back out of the country. This insurance will really protect them from such incidents. He went on to say that the application says satisfactory evidence must be supplied that the applicant has malpractice coverage if available in the minimum amounts of \$100,000 to \$300,000. It has never been available. The Board of Chinese medicine has asked its secretary to ask the Legislature to have the law changed in the Chinese Medicine Act providing: "If ~~professional~~ liability insurance [malpractice insurance] is available to licensees and the rates are reasonable, such insurance shall be required of all licensees of the State Board of Chinese Medicine".

Mr. Wittenberg asked what would be considered reasonable rates. Dr. Edwards said he had received information from some companies in New Jersey primarily stating that if an MD is practicing acupuncture, he could obtain this additional coverage for \$400 to \$600 above his regular rate.

Mr. Benkovich asked if Section 2 of the bill was amended to change the coverage from mandatory to optional if the bill would still have merit. Dr. Edwards said he thought that would still be fine. The important factor is that it does become available.

Discussion was then concluded on this bill and continued to AB 95 which:

Clarifies jurisdiction of state board of Chinese medicine.

Mr. Dreyer spoke on behalf of this bill. It provides that the rules and regulations include a code of ethics. It also provides that the fees to be charged be under the authority of the Board under their general rule-making power. The fees are not provided for by statute. These fees are not refundable. The Board has promulgated what they consider an ethical code. The desire is to inspect the buildings and set up a code of ethics these doctors have to live by.

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Mr. Dreyer pointed out that the code of ethics will probably be more strict than in other medical arts fields because this field is so new. Mr. Demers commented that the fees include costs for transcriptions (due to language obstacle) and for investigation costs (this is set up on the same basis as the Gaming Commission).

Mrs. Brookman commented that these bills have been proposed by the interim subcommittee because since the passage of the bill legalizing acupuncture, there needed to be guidelines simply because it is something new. They are doing this for themselves and she felt too much was being read into them by some members of the committee. She added that this field is going to grow and it is absolutely necessary that there be rules and regulations established.

Dr. Edwards said the Board has been changing the above mentioned fees without it really being set out in the statutes and even though they feel they have the power to do this, they feel it should be set out in the statutes and that these fees are not refundable. There is a \$100 application fee and a \$300 investigative fee deposit and they are not refundable. Mr. Dreyer suggested if there were still any questions in the minds of the committee members that they could probably be answered in Legislative Report No. 116. Dr. Edwards commented that he felt the Board should be self-supporting by its own licenses and investigative fees, etc.

Mr. Schofield felt "fees" on line 23 of AB 95 should be clarified that they pertain to fees for application, translation and investigation. Dr. Robinson asked Dr. Edwards to draft an amendment to AB 95 clarifying this matter. Mr. Wittenberg said he thought most every other Board in the medical arts spells out every fee and what it is to be used for and that explicit amounts should be set. Mr. Demers said this could cause a problem with regard to translations since the dialects are so numerous, it is sometimes difficult to obtain a translator and what would happen if a translator would not translate for the set fee.

Discussion was then concluded on this bill and continued to AB 96 which:

Permits waiver of licensing requirements by state board of Chinese medicine for educational seminars.

Mr. Demers commented that under present law, an actual physical demonstration cannot be given by anyone who is not licensed in the State of Nevada. Even though it is an ancient art, there are always innovations and presently, if an acupuncturist from outside the State is asked to come into the State to enlighten our licensees, he is forbidden from giving an actual demonstration. He added that he thought the bill will require some amendments and also said that this bill would not allow or enable persons to come into the State to make a quick dollar by conducting seminars.

Dr. Edwards said the Board felt Nevada has been missing out on these seminars because of the present law. We believe the statutes should make provisions for the Board to waive the licensing requirements for bonafide, non-profit, educational programs. This would be done

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only after investigation to determine that the group is truly non-profit and for educational purposes. Mr. Wittenberg commented that he wondered if this would be a vehicle for "semi-promoting" of acupuncture and he also said it would be fine for doctors to be participating but he questioned the participation of students. He questioned if a person is not "licensed", should he be conducting the seminar. Dr. Edwards said the Board has not really given its attention to all these details as yet but it feels teaching seminars should be allowed and that they should be allowed to promulgate rules and regulations governing them.

Mr. James Joyce then spoke saying the American Society of Acupuncture is extremely concerned about AB 96. Their trepidation was of diploma mills, fast buck artists and opportunists who would conduct a short course and issue diplomas which people could buy, if you will, indicating that they are somehow or in some way proficient in the area of oriental medicine. We don't believe this is the intent of the bill. Conversely, there are many masters around the world who could come to Nevada to share their knowledge and they are needed and perhaps the language suggested by Dr. Edwards (bonafide, non-profit, educational programs) would handle this situation. We think the concept of this bill to have a legitimate sharing of acupuncture knowledge is very critical but it does need to be amended substantially in order to prevent these types of activities in Nevada. We would like to see "non-profit" in the bill. Mr. Wittenberg commented that he did not believe "non-profit" would be sufficient as it seemed there could be ways of getting around that.

Discussion was then concluded on this bill and continued to AB 133 which:

Changes denomination of traditional Chinese medicine to traditional Oriental medicine.

Dr. Edwards said this was another bill suggested by the State Board of Chinese medicine because they feel it is a misnomer to call this Chinese medicine because Oriental medicine would be much more appropriate as acupuncture is used in other Asian countries also although it originated in China. We suggest the word Chinese be deleted and Oriental inserted. This bill is only a name change, that is all it does.

John Crossley, Chief Legislative Auditor for the Counsel Bureau, then spoke recommended two amendments to the bill as a result of our audit on Chinese medicine. We found the fees were coming in to the Board sometimes payable to the secretary, sometimes to the Board and we felt it would be better if all of the fees were made payable to the Board instead of to individuals. So, on page 4, line 25 of this bill, we would like the words "the secretary-treasurer of" to be removed. This same language would be in line 34 on page 4, i.e. delete the words "the secretary-treasurer of".

Discussion was then concluded on this bill and continued to AB 276 which:

Provides for early termination of dwelling lease executed by married senior citizens upon death of either.

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Mrs. Brookman spoke in favor of this bill saying it was very difficult legally to break a lease and for senior citizens, who are most hit by the times we are going through, if a spouse dies, their income is drastically reduced and all or most of their money must then go to rent. This bill would allow them to terminate their lease within 30 days with written notice. She said this was only for people with incomes up to \$8,000 and at least 60 years of age. Dr. Robinson questioned how she arrived at the figure of \$8,000. She said it came from the people who were questioned and if it were put down lower, it really wouldn't help many people. Mr. Hickey asked if there would be any objection to amended the dollar amount to a higher figure and she said there would not be. Mr. Wittenberg wondered if Social Security pays in a lump sum upon death of a spouse and Mrs. Brookman said it was not and that the income is cut by more than half. Mr. Hickey added that the average income of a working was a median amount of \$9,600 so he felt the bill should at least include incomes up to that amount.

Janice Sanchez spoke on behalf of this bill saying when a death occurs, the spouse finds the living quarters too large or too expensive for himself or may wish to move closer to family. In addition, the remaining spouse may be a shut-in or an invalid needing to go to a medical facility. Death of a spouse is tramatic enough without having to cope with a dwelling they cannot afford or which no longer fits their lifestyle.

Eileen Hinson said she would like to stress the emotional and mental factors in a situation like this. It may be too painful for a remaining spouse to stay where memories are strong. The spouse may have been sick or died at the residence. They must leave to get relief mentally but financially cannot afford to do this at the time because of the lease and the added expense of burying the spouse and the reduction in income.

George Archer spoke. He is the past president of the American Association of Retired People. He said about 80% of the members are alone. He said this bill would not cause a rush to break leases. It would occur in isolated cases. He didn't feel the bill would work a hardship on the landlord. He commented that if anything should happen to him, the income to his wife will be cut in half.

Mr. John Kimball who is a psychiatric social worker dealing primarily with senior citizens spoke in favor of AB 276. He said raising the figure from \$8,000 would be acceptable to the committee and he urged a unanimous "do pass" on this bill.

This concluded hearings on these bills and Dr. Robinson proceeded to give assignments as to preparing amendments for the various bills.

Mr. Demers was asked to address himself to an amendment to AB 26 regarding optional vs. mandatory coverage of acupuncture by health insurance companies.

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Mr. Demers was also asked to check the other boards to see if they require malpractice insurance or if it is just optional and prepare an amendment to AB 91 if necessary to make the requirements equal.

Dr. Edwards was asked to prepare an amendment to AB 95, lines 23 and 24 regarding the clarification of fees.

Mr. Hickey was asked to prepare amendments to AB 96 on line 7 and line 18-22 to clarify non-profit organizations and specific rules against any certificates or diplomas being issued.

Dr. Robinson will take care of preparing an amendment to AB 133 as to whom fee checks are to be made payable.

Mr. Demers moved the minutes of the previous meeting be adopted. Mr. Wittenberg seconded this motion and it carried the committee unanimously.

Mr. Demers moved the meeting be adjourned. This was seconded by Mr. Benkovich and carried the committee unanimously. The meeting was adjourned by Chairman Robinson at 5:05 P.M.

Respectfully submitted,

Joan Anderson, Secretary

ASSEMBLY
HEARING

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COMMITTEE ON.....COMMERCE.....

Date MARCH 3, 1975 Time 3:00 P.M. Room 316.....

Bill or Resolution
to be considered

Subject

- | Bill or Resolution
to be considered | Subject |
|--|---|
| A.B. 26 <i>DO PASS</i> | Requires health insurance policies to include coverage for services by practitioners of traditional Chinese medicine. |
| A.B. 91 <i>I.P.</i> | Requires practitioners of traditional Chinese medicine to obtain malpractice insurance under certain circumstances. |
| A.B. 95 <i>DO PASS AS AMENDED</i> | Clarifies jurisdiction of State Board of Chinese Medicine. |
| A.B. 96 <i>DO PASS AS AMENDED</i> | Permits waiver of licensing requirements by State Board of Chinese Medicine for educational seminars. |
| A.B. 133 <i>DO PASS AS AMENDED</i> | Changes denomination of traditional Chinese medicine to traditional Oriental medicine. |
| A.B. 276 <i>DO PASS AS AMENDED</i> | Provides for early termination of dwelling lease executed by married senior citizens upon death of either. |

Testimony of Joy D. Rogers (representing self)

It is my contention that passage of AB 26 will benefit many citizens and harm none.

My reasons are as follows:

1. Insurance companies will still retain their right to insert exclusion or limitation clauses as they do now in the case of optometric care, dental care, etc. However the insureds will have the option of purchasing acupuncture coverage if they wish.
2. Clarification of Nevada's insurance law is imperative to correct the inequities which now exist. There is great diversity in the interpretation of the phrase "services within the scope of his license rendered by any individual while duly licensed under the following:". This confusion exists because rulings are made by out-of-state home offices in which the practice of acupuncture is either illegal, reserved for M.D.'s, or allowed only under the supervision of M.D.'s.
3. Amendment of Nevada's law will result in bringing all policies written before acupuncture was legalized into conformity with state law, thus carrying out the intent of the insurance law.
4. A random survey of major group health companies in this area showed many companies have already voluntarily broadened coverage to include acupuncture treatment. However many have not. There seemed to be no common criteria for establishing the validity of claims.
5. Over-all claims rates should not be adversely affected because a high percentage of acupuncture patients suffer from chronic diseases and already have a higher than average claims rate. Reimbursements for these insureds would simply shift from one mode of therapy to another which seems to be offering them more substantial results.
6. Conceivably reimbursement costs could drop because for many individuals acupuncture replaces two or more other therapeutic methods. (Example--in my own case it has replaced physical therapy, eliminated need for cortisone injections, emergency room treatment for acute arthritic attacks, and allowed great reductions in medication.)
7. Comparative costs: (drawn from my own experience)
Physical therapy -- \$23.50 Treatment rate 2-3
times weekly for over seven years. Results: some
gains post-operatively, but balance of treatments
were taken merely to avoid regression and finally
discontinued on medical advice because they were
doing more harm than good.

Acupuncture Therapy: \$25.00 Produces rapid response, not only in the muscular and joint condition, but in internal medical problems at the same time. Not enough continuity has been possible in treatment to establish minimum needed for maintainance, but probably weekly during summer and twice weekly in winter. Makes possible large reductions in pharmacy bills, and has eliminated need for orthopedic maintainance care and steroid treatment which is hazardous to the patient's general health.

Incidental savings:

1. Eliminated need for gastro-intestinal x-rays (approx \$50.00) needed periodically to check on ulcer caused by large doses of medication.
2. Employed by county -- no sick leave used this year for first time in 26 years.
3. No claims to income protection company because of inability to perform work.
4. Acupuncture treatment received in 1974 averted imminent need to apply for state disability retirement.

My insurance rights have been violated because my insurance company, owned by doctors, refuses to pay full percentage of the "normal and customary fee for that area" as provided for in my contract, if the claim is for acupuncture treatment.

The Nevada State Insurance Commission cannot enforce my right to the proper reimbursement until the Nevada insurance law is amended to force all companies to bring their policies into conformance with state statute which have established acupuncture as a legal form of medical treatment in this state.

Jay R. Rogers
1425 Sprague Way
Sparks, Nev. 89431
558-1343

RAPPAPORT

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Clark County Legal Services Program

900 WEST BONANZA, ROOM L
LAS VEGAS, NEVADA 89106
(702) 648-6970

ARLENE WEST JOYCE
DIANA AXLEY
JACK F. ANDERSON

WILLIAM G. RUYMANN
SANDRA L. McILVEEN
MARTRICIA MINTON

JOSHUA LANDISH
R. ELLIOT DONALDSON
PINKY MANEVAL

JAMES ORAN PORTER

JEAN PARROTT

November 13, 1974

RECEIVED

NOV 18 1974

CONSUMER AFFAIRS DIVISION
LAS VEGAS

Mr. Rex Lundberg
Bureau of Consumer Affairs
1111 Las Vegas Blvd., South
Las Vegas, Nevada 89104

Dear Rex:

The following is the suggested version of a Writ of Immediate Possession.

Section A

The plaintiff may, upon filing his complaint, have immediate possession by Writ of Possession issued by the Court, and directed to the sheriff of the county, or constable or marshall for execution where it appears to the satisfaction of the Court, after hearing on the motion, from the verified complaint and from any affidavits filed or oral testimony given by or on behalf of the parties, if one of four grounds is present.

- a. that the defendant resides out of state.
- b. that upon reasonable belief the defendant has departed from the state.
- c. after due diligence the defendant cannot be found within the state and;
- d. if the defendant has concealed himself to avoid service of process.

Written notice of hearing and motion shall be served on defendant by plaintiff in accordance with provisions of Nevada Revised Statutes. Said notice shall inform the defendant that he may file affidavits on his behalf with the Court and may appear and present testimony on his behalf, and that if the defendant fails to appear the plaintiff will apply to the Court for a Writ of Possession.

Rex. Lundberg

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Joshua M. Landish

The plaintiff shall file an undertaking with good and sufficient sureties, to be approved by the Judge in such sum as shall be fixed and determined by the Judge to the effect that if the plaintiff fails to recover judgment against the defendant for the possession of the premises, or if the suit is dismissed, the plaintiff will pay to the defendant such damages, not to exceed the amount fixed in the undertaking as may be sustained by the defendant by reason of such dispossession under the Writ of Possession

When an action to recover such damages shall be commenced by the defendant in a Court of competent jurisdiction within one year from date of entry of dismissal and of final judgment in favor of the defendant.

Section B

Upon issuance of A Writ of Possession the management may enter the premises to prepare said premises for a future resident. The management may remove any and all items belonging to the former resident. These items shall be stored and after the statutory period for abandonment as defined under Nevada Revised Statutes may be disposed of as determined by the management.

If the former resident requests his property prior to the expiration of the statutory period for abandonment, the manager shall return said property, charging only reasonable storage fees. However, this provision shall not apply if there is an outstanding judgment against the former resident in favor of the management, in which case the goods may be used to satisfy said judgment unless exempted from judgment and execution pursuant to NRS 21.090.

The part that sounds goods has been plagiarized from

Rex Lundberg

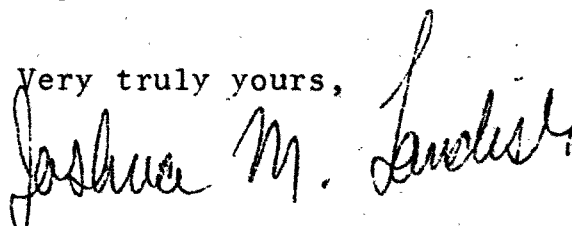
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Joshua M. Landish

California, the part that sounds bad is written by me. Nevertheless this gives the landlords what they wanted most; a way to get immediate possession of the property and renovate it for the next tenant instead of waiting thirty days and losing money for that thirty day period.

If you have any questions, please do not hesitate to call me.

Very truly yours,



Joshua M. Landish, Esq.
Director of Litigation

JML:gt

AS ADAPTED FROM
(UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT)

ARTICLE I

GENERAL PROVISIONS AND DEFINITIONS

Part 1

SHORT TITLE, CONSTRUCTION, APPLICATION
AND SUBJECT MATTER OF THE ACT

SECTION 1.101 Short Title. This Act shall be known and may be cited as the "Fair Rental Housing Act."

Sec 2 SECTION 1.102 Purposes; Rules of Construction.

(a) This Act shall be liberally construed and applied to promote its underlying purposes and policies.

(1) to simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants,

(2) to encourage landlords and tenants to maintain and improve the quality of housing; and

(3) to make uniform the law with respect to the subject of this Act.

SECTION 1.103 Supplementary Principles of Law Applicable. Unless displaced by the provisions of this Act, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions.

SECTION 1.104. This Act being a general act intended as a unified coverage of its subject matter, no part of it is to be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

SECTION 1.105. Administration of Remedies; Enforcement.

(a) The remedies provided by this Act shall be so administered that an aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.

(b) Any right or obligation declared by this Act is enforceable by action unless the provision declaring it specifies a different and limited effect.

SECTION 1.106. Settlement of Disputed Claim or Right. A claim or right arising under this Act or on a rental agreement, if disputed in good faith, may be settled by agreement.

PART II

SCOPE AND JURISDICTION

SECTION 1.201 Territorial Application. This Act applies to, regulates, and determines rights, obligations and remedies under a rental agreement, wherever made, for a dwelling unit located within this state.

SECTION 1.202. Exclusions from Application of Act. Unless created to avoid the application of this Act, the following arrangements are not governed by this Act:

(1) Residence in an institution, public or private, incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service.

(2) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest.

(3) Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization.

(4) Transient occupancy in a hotel, or motel. Occupancy for less than 60 consecutive days is presumed to be a transient occupancy. The presumption created by this subdivision shall affect the burden of proof.

(5) Occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises.

(6) Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative.

(7) Occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes.

PART III

GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION: NOTICE

SECTION 1.301 General Definitions. Subject to additional definitions contained in subsequent Articles of this Act which apply to specific Articles or Parts thereof, and unless the context otherwise requires, in this Act

(1) "Action" includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) "Building, housing, and health codes" include any law, ordinance, or governmental regulation concerning health, safety, sanitation fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of any premises or dwelling unit.

(3) "Court" means the justice of the peace or small claims court situated in the county wherein the management's property is located, unless the damages exceed the authority of said court in which case the proper court will be determined by existing laws or practice [as per NRS 40.410].

(4) "Dwelling unit" means a structure or the part of a structure that is used as a home, resident, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

(5) "Good faith" means honesty in fact in the conduct of the transaction concerned.

- (6) "handicapped" means physically or visually handicapped to the extent that relocation is a substantial and unusual burden on the household of which the handicapped person is a member.
- (7) "Indigent" means eligible for Old Age Assistance, Aid to Dependent Children, county aid to the indigent under NRS 428.010, or any other Federal or State programs which defines eligibility on the basis of poverty.
- (8) "Management" means the owner, landlord, lessor, or sublessor of the dwelling unit or the building of which it is a part and it also means a manager of the premises who fails to disclose as required by Section 2.102.
- (9) "Normal wear and tear" means that deterioration which occurs without negligence, carelessness, or abuse of the premises or equipment, or chattels by the resident or members of his household, or his invitees or guests.
- (10) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.
- (11) "Owner" means one or more persons, jointly or severally, in whom is vested
- (i) all or part of the legal title to property or
 - (ii) all or part of the beneficial ownership and a right to present use and enjoyment of the premises. The term includes mortgagee in possession.
- (12) "Person" includes an individual or organization.
- (13) "Premises" means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas, and facilities held out for the use of tenants generally or whose use is promised to the resident.
- (14) "Rent" means all payments to be made to the management under the rental agreement, in consideration for the occupancy of the dwelling unit, but does not include such payments as late fees, penalties, security deposits, parking fees, appliance fees, pet fees, or similar non-occupancy related payments.

- (15) "Rental agreement" means all written agreements, and valid rules and regulations adopted under Section 3.102 embodying the terms and conditions ruling the use and occupancy of a dwelling unit and premises.
- (16) "Resident" means a tenant or person entitled under a rental agreement to occupy a dwelling unit.
- (17) "Roomer" means a person occupying a dwelling that does not include a toilet and either a bath or a shower and a refrigerator, stove, and kitchen sink provided by management and where one or more of the facilities are used in common by occupants in the structure.
- (18) "Single family resident" means a structure retained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family resident if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment nor any other essential facility or service with another dwelling unit.
- (19) "Resident" means a person or tenant entitled under a rental agreement to occupy a dwelling unit.

SECTION 1.302 Obligation of Good Faith. Every duty under this Act and every act which must be performed as a condition precedent to the exercise of a right or remedy under this Act imposes an obligation of good faith in its performance or enactment.

SECTION 1.303 Unconscionability.

- (a) If the court, as a matter of law, finds
- (1) a rental agreement or any provision thereof was unconscionable when made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result; or

(2) a settlement in which a party waives or agrees to forego a claim or right under this Act or under a rental agreement was unconscionable when made, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.

(b) If unconscionability is put into issue by a party or by the court upon its own motion the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination.

SECTION 1.304. Notice.

(a) A person has notice of a fact if

(1) he has actual knowledge of it,

(2) he has received a notice or notification of it, or

(3) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

(b) Written notices to the resident prescribed by this Act shall be served in the manner prescribed by NRS 40.280.

(c) Written notices to the management prescribed by this Act may be delivered at the place of business of the management designated in the rental agreement or at any place held out by the management as the place for the receipt of communications from the resident.

(d) If the management is an organization, any notice required by this chapter is effective for a particular transaction from the time it is brought to the attention of the individual conducting that particular transaction, and in any event from the time it would have been brought to his attention if the organization had exercised reasonable diligence.

GENERAL PROVISIONS

SECTION 1.401 Written Rental Agreement Required; Contents. Any lease or contract for the renting or leasing of a dwelling for a period of one month or longer shall be in writing and shall be signed by the management or his agent and the resident or his agent. The lease shall contain, but is not limited to, provisions relating to the following subjects:

- (a) Duration of the lease or contract.
- (b) Amount of rent and the manner and time of the payment of rent.
- (c) Occupancy by children or pets.
- (d) Services included with the apartment rental.
- (e) Fees which may be required and the purposes for which they are required.
- (f) Deposits which may be required and the conditions for their refund.
- (g) Charges which may be required for late or partial payment of rent or for return of any dishonored check.
- (h) Reasonable inspection rights of the management.
- (i) A listing of persons or number of persons who are to occupy the apartment.
- (j) Respective responsibilities of the management and the resident as to the payment of utility charges.

SECTION 1.402. Prohibited Provisions in Rental Agreements.

- (a) A rental agreement may not provide that the resident
 - (1) agrees to waive or forego rights or remedies of this Act;
 - (2) authorizes any person to confess judgment on any claim arising out of the rental agreement;
 - (3) agrees to pay the management's attorney's fees;
 - (4) agrees to the exculpation or limitation of any liability of the management arising under law or to indemnify the management for that liability or the costs connected therewith.

See pg. 20 →
and pg. 23

(b) A provision prohibited by subsection (a) included in a rental agreement is unenforceable. If a manager deliberately uses a rental agreement containing provisions known by him to be prohibited, the resident may recover in addition to his action damages in an amount up to three months periodic rent and reasonable attorney's fees.

SECTION 1.403 Separation of Rents and Obligations to Maintain Property Forbidden.

A rental agreement, assignment, conveyance, trust deed, or security instrument may not permit the receipt of rent free of the obligation to comply with Section 2.105.

ARTICLE II

MANAGEMENT OBLIGATIONS

SECTION 2.101. Security Deposits; Prepaid Rent.

(a) Any payment deposit, fee, or charge, including, but not limited to, an advance payment of rent that is to be used for any of the following purposes, shall be governed by the provisions of this section:

- (1) To remedy resident defaults in the payment of rent,
- (2) To repair damages to the premises other than normal wear and tear, caused by the resident,
- (3) To clean the premises upon termination of the tenancy.

(b) An advance payment, deposit, fee or charge to secure the execution of a rental agreement shall be excluded from the provisions of this section provided that it does not exceed the rental value of the premises for the period during which it is held vacant by the management after the execution of the rental agreement and prior to occupancy by the resident.

(c) Any payment, deposit money, fee, or charge shall be held by the management for the resident who is party to such agreement. The claim of a resident to such payment, deposit, fee, or charge shall be prior to the claim of any creditor of the management.

(d) A manager may not demand or receive security, however denominated, and including last month's rent, in an amount or value in excess of two month's periodic rent, except as provided in (e) below.

(e) If any indigent prospective resident requests the right to pay a security deposit in installments, the management may not demand or receive security in an amount or value in excess of one-half month's periodic rent per installment for a maximum of four installments.

(f) Within twenty-four hours of the initial date of occupancy or upon delivery of possession, the management, or his designated representative, and the resident shall inventory the premises. A written record detailing the condition of the premises and any furnishings and/or appliances provided, shall be prepared by the management and the resident. Duplicate copies of the record shall be signed by the management and the resident as an indication the inventory was completed. The resident shall be given a copy of the inventory. In any action under this section the management shall have the burden of proof as to the correctness of the inventory.

(g) Upon termination of the tenancy by either party for any reason, the management may claim of such payment, deposit, fee, or charge only such amounts as are reasonably necessary to remedy resident defaults in the payment of rent, to repair damages to the premises caused by the resident other than normal wear and tear, or to clean the premises. The management shall provide the resident with a detailed written accounting as to the disposition of such payment, deposit, fee, or charge and return any remaining portion of such payment, deposit, fee, or charge to the resident no later than one week after termination of his tenancy.

(h) Upon termination of the management's interest in the dwelling unit in question, whether by sale, assignment, death, appointment of receiver, or otherwise, the management or his agent shall, within a reasonable time, do one of the following acts, either of which shall relieve him of further liability with respect to such payment, deposit, fee, or charge:

(1) Transfer the portion of such payment, deposit, fee, or charge remaining after any lawful deductions made under subdivision (g) to the management's successor in interest, and thereafter notify the resident by registered or certified mail of such transfer, and of the transferee's name and address.

(2) Return to the resident the portion of such payment, deposit, fee, or charge remaining after any lawful deductions made under subdivision (g).

(i) Upon receipt of any portion of such payment, deposit, fee, or charge under paragraph (1) of subdivision (f), the transferee shall have all of the rights and obligations of a manager holding such payment, deposit, fee, or charge with respect to such payment or deposit.

(j) The bad faith retention by a manager or transferee of a payment, deposit, fee, or charge or any portion thereof, in violation of this section, may subject the manager or his transferee to treble the actual damages. In any action under this section, the management shall have the burden of proof as to the reasonableness of the amounts claimed by him.

No
(k) No lease or rental agreement shall contain any provision characterizing any payment, deposit, fee, or charge under this section as "nonrefundable" nor contain any provision waiving or modifying a resident's rights under this section. Any such provision shall be void as contrary to public policy.

(l) An action for damages under subdivision (j) may be maintained in small claims court if the damages claimed, whether ordinary or penal or both, are within the jurisdictional amounts allowed by NRS 73.010.

SECTION 2.102. Disclosure.

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(a) A manager or any person authorized to enter into a rental agreement in his behalf shall disclose to the resident in writing at or before the commencement of the tenancy the name and address of

- (1) the person authorized to manage the premises; and
- (2) an owner of the premises or a person authorized to act for and on behalf of the owner for the purpose of service of process and receiving and receipting for notices and demands.

(b) The information required to be furnished by this Section shall be kept current and this Section extends to and is enforceable against any successor landlord, owner, or manager.

(c) If a party who enters into a rental agreement on behalf of the owner fails to comply with this section, he is deemed an agent of each person who is an owner:

- (1) for the purpose of service of process and receiving and receipting for notices and demands;
- (2) For the purpose of performing the obligations of the owner under law and under the rental agreement.

(d) Nothing in this section limits or excludes the liability of any undisclosed owner.

SECTION 2.103. Alternative Methods of Disclosure.

(a) Notwithstanding subdivisions (a) and (b) of Section 2.102, the information required by Section 2.102 to be disclosed to a resident may, instead of being disclosed in the manner described in subdivisions (a) and (b) of Section 2.102 be disclosed by the following methods:

- (1) In each multi-unit dwelling structure containing an elevator, a printed or typewritten notice containing the information required by Section 2.102 shall be placed in every elevator and in one other conspicuous place.

(2) In each multi-unit dwelling structure not containing an elevator a printed or typewritten notice containing the information required by Section 2.102 shall be placed in at least two conspicuous places.

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(b) Except as provided in subdivision (a), all the provisions of Section 2.102 shall be applicable.

SECTION 2.104. Management to Supply Possession of Dwelling. At the commencement of the term a manager shall deliver possession of the premises to the resident in compliance with the rental agreement and Section 2.105. The management may bring an action for possession against any person wrongfully in possession and may recover the damages provided in Section 4.301(c).

SECTION 2.105. Management to Maintain Fit Premises.

(a) The management of a dwelling unit shall put it into a condition fit for human habitation and repair all subsequent dilapidations thereof that render it uninhabitable. A manager shall do all of the following:

- (1) comply with the requirements of applicable building, housing and health codes materially affecting health and safety;
- (2) keep all common areas of the premises in a clean and safe condition;
- (3) maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances including elevators, supplied or required to be supplied by him;
- (4) provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish and other waste incidental to the occupancy of the dwelling unit and arrange for their removal; and

(5) supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except where the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the resident and supplied by a direct public utility connection.

(b) If the duty imposed by paragraph (1) of subsection (a) is greater than any duty imposed by any other paragraph of that subsection, the management's duty shall be determined by reference to paragraph (1) of subsection (a).

(c) A manager shall not be relieved of his duties provided by subdivisions (a) and (b) by the reason of any transfer of rents or payments of rents to another in an assignment, conveyance, trust deed, or security instrument.

(d) The management and resident of a single family residence may agree in writing that the resident performs the manager's duties specified in paragraphs (4) and (5) of section (a) and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the management.

(e) The management and resident of any dwelling unit other than a single family residence may agree that the resident is to perform specified repairs, maintenance tasks, alterations, or remodeling only if

(1) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the management and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(2) the work is not necessary to cure noncompliance with subsection (a) (1) of this Section; and

(3) the agreement does not diminish or affect the obligation of the management to other residents in the premises.

(f) The management may not treat performance of the separate agreements described in subsections (d) or (e) as a condition to any obligation or performance of any rental agreement.

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SECTION 2.106. Arbitration Agreements. The management and resident may agree that any controversy relating to retention of security under Section 2.101 or relating to a condition of the dwelling unit claimed to make it uninhabitable may by application of either party be submitted to arbitration. The arbitrator shall be a member of the American Arbitration Association, the Federal Conciliation and Mediation Service, or any other party mutually acceptable to both management and resident. Costs of arbitration shall be apportioned by the arbitrator between the parties. The existence of an arbitration agreement shall not foreclose a resident from asserting a breach of Section 2.105 as a defense in any action brought by the management.

SECTION 2.107. Limitation of Liability,

(a) Unless otherwise agreed, management who conveys property that includes a dwelling unit subject to a rental agreement in a good faith sale to a bona fide purchaser is relieved of liability under the rental agreement and this Act as to events occurring after written notice to the resident of the conveyance. However, he remains liable to the resident for any property and money to which the resident is entitled under Section 2.101.

(b) Unless otherwise agreed, a manager of a premises that include a dwelling unit is relieved of liability under the rental agreement and this Act as to events occurring after written notice to the resident of the termination of his management.

ARTICLE III

RESIDENT OBLIGATIONS

SECTION 3.101. Resident to Maintain Dwelling Unit. A resident shall

- (1) comply with all obligations primarily imposed on residents by applicable provisions of building, housing and health codes materially affecting health and safety;
- (2) keep that part of the premises that he occupies and uses as clean and safe as the condition of the premises permit;
- (3) dispose from his dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner;
- (4) keep all plumbing fixtures in the dwelling unit or used by the resident as clean as their condition permits;
- (5) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators in the premises;
- (6) not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so; and
- (7) conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbor's peaceful enjoyment of the premises.

SECTION 3.102. Rules and Regulations.

(a) Management, from time to time, may adopt a rule or regulation, however described, concerning the resident's use and occupancy of the premises. It is enforceable against the resident only if

- (1) its purpose is to promote the convenience, safety, or welfare of the residents in the premises, preserve the management's property from abusive use, or make a fair distribution of services and facilities held out for the residents generally;

- (2) it is reasonably related to the purpose for which it is adopted;
- (3) it applies to all residents in the premises in a fair manner;
- (4) it is sufficiently explicit in its prohibition, direction, or limitation of the resident's conduct to fairly inform him of what he must or must not do to comply;
- (5) it is not for the purpose of evading the obligation of the management; and
- (6) the resident has notice of it at the time he enters into the rental agreement, or when it is adopted.

(b) If a rule or regulation is adopted after the tenant enters into the rental agreement that works a substantial modification of his bargain it is not valid unless the resident consents to it in writing.

SECTION 3.103. Access.

(a) A resident shall not unreasonably withhold consent to the management peaceably to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations; or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, residents, workmen, or contractors.

(b) Management may enter the dwelling unit without consent of the resident in case of emergency.

(c) Management shall not abuse the right of access or use it to harass the resident. Except in case of emergency, the management shall give the resident at least twenty-four hours notice of his intent to enter and may enter only at reasonable times during normal business hours.

(d) Management has no other right of access except

- (1) pursuant to court order,
- (2) as permitted by Sections 4.202 and 4.203(b), or
- (3) unless the resident has abandoned or surrendered the premises.

SECTION 3.104. Notice of Extended Absence. The rental agreement may require 0077 that the resident notify the management of any anticipated extended absence from the premises in excess of fourteen days, no later than the first day of the extended absence.

ARTICLE IV

REMEDIES

Part 1

RESIDENT REMEDIES

SECTION 4.101. Noncompliance by the Management - Termination of Rental Agreement.

(a) Except as provided in this Act, if there is a material noncompliance by the management with the rental agreement or a noncompliance with Section 2.105 materially affecting health and safety, the resident shall deliver a written notice to the management specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty days after receipt of the notice if the breach is not remedied in fourteen days, and the rental agreement shall terminate as provided in the notice subject to the following:

(1) If the breach is remediable by repairs, the payment of damages or otherwise and the management adequately remedies the breach before the date specified in the notice, the rental agreement shall not terminate by reason of the breach.

(2) If substantially the same act or omission which constituted a prior noncompliance of which notice was given occurs within six months, the resident may terminate the rental agreement upon at least fourteen days written notice specifying the breach and the date of the termination of the rental agreement.

(3) The resident may not terminate for a condition caused by the deliberate or negligent act or omission of the resident, a member of his family, or other person on the premises with his consent.

(4) If the rental agreement is terminated, the management shall return all security recoverable by the resident under Section 2.101 and all prepaid rent.

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SECTION 4.102. Noncompliance by the Management - In General.

(a) Except as provided in this Act, if there is a material noncompliance by the management with the rental agreement or a noncompliance with Section 2.105 materially affecting health and safety, the resident shall deliver a written notice to the management specifying the acts and omissions constituting the breach. If the breach is not remedied in fourteen days, by repairs, the payment of damages, or otherwise, the resident may

(1) Recover damages and obtain injunctive relief for any noncompliance by the management with the rental agreement or Section 2.105. If the management's noncompliance is willful the resident may recover punitive damages and reasonable attorney's fees.

(2) Apply to the Justice Court or the District Court in the county wherein the rental premises is located, for any of the following relief, which may be granted after a hearing:

(i) Withhold his rent and deposit it in an escrow account until such time as the management remedies the specified breach. The resident shall designate as escrow agent any banking institution or savings and loan association or any attorney at law licensed to practice law in the State of Nevada. The escrow agent shall hold such rent and notify the management by written notice of each such payment until he is otherwise directed by a court pursuant to Section 4.102(a)(2)(ii) or until he has received a written agreement of the management and the resident specifying the disposal of the escrowed rent.

(ii) An order authorizing the resident to deposit rent as it accrues

or to deposit rent already escrowed in accordance with Section 4.102(a)(2)(i) with the court. The court, after first awarding to the resident an amount reasonably necessary to reimburse the resident for the proportionate loss of use of the premises, may disperse the remaining money solely for the purpose of fulfilling the management's obligations under Section 2.105. When the expense for repair and maintenance of the management's breach are not otherwise provided for by the deposited rent, the court may enter an order approving the expenses and requiring the management assume the liability for said expense or be held in contempt of court.

(iii) Where a resident who has been authorized to deposit rent in accordance with Section 4.102(a)(2)(ii), the resident may petition the court to release to him funds so accumulated not in excess of three times the monthly rent as a relocation allowance if he chooses to vacate the premises while any conditions that threaten health, safety and welfare are present. No money shall be returned to the management while any conditions threatening to health, safety and welfare remain uncorrected.

(iv) An order reducing the periodic rent owed the management by the resident.

(v) An order authorizing or requiring any or all residents of the same management residing in the same rental structure or rental development as the party resident, whether or not the management has fulfilled his warranties to them, to deposit rent as it accrues with the court to be dispersed upon court order solely for the purpose of fulfilling the management's obligations.

(b) In any proceeding pursuant to this section or in any proceeding brought for possession of real property, the court may order an appropriate governmental agency to inspect residential real property in order to discover if there are present conditions which constitute a threat to health, safety or welfare. If such conditions are found, the court may issue an order forbidding the re-rental of the property for residential purposes until such conditions are corrected.

SECTION 4.103. Failure to Deliver Possession.

(a) If the landlord fails to deliver possession of the dwelling unit to the resident as provided in Section 2.104, rent abates until possession is delivered and the resident may

(1) terminate the rental agreement upon at least five days written notice to the management and upon termination the management shall return all prepaid rent and security; or

(2) demand performance of the rental agreement by the management and if the resident elects, maintain an action for possession of the dwelling unit against the management or any person wrongfully in possession and recover the damages sustained by him. However, if the management can affirmatively prove he has exercised due diligence within five days after the resident's demand for possession, either to evict the holdover resident or remedy the condition keeping the new resident from taking possession, he shall not be liable for damages.

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(b) If a person's failure to deliver possession is willful and not in good faith, an aggrieved person may recover from that person an amount not more than three month's periodic rent or three times the actual damages sustained, whichever is greater, and reasonable attorney's fees.

SECTION 4.104. Self-Help for Minor Defects.

(a) If the management fails to comply with the rental agreement or Section 2.105, and the reasonable cost of compliance is less than \$100, or an amount equal to the periodic rent, whichever amount is greater, the resident may recover damages for the breach under Section 4.102 or shall notify the management of his intention to correct the condition at the management's expense. If the management fails to comply within the time it would take a diligent person to repair, not to exceed fourteen days after being notified by the resident in writing, or as promptly as conditions require in case of emergency, the resident may petition the court for permission to cause the work to be done in a workmanlike manner and, after submitting to the management an itemized statement, deduct from his rent the actual and reasonable cost or the fair and reasonable value of the work, not exceeding the amount specified in this subsection.

(b) A resident may not repair at the management's expense if the condition was caused by the deliberate or negligent act or omission of the resident, a member of his family, or other person on the premises with his consent.

SECTION 4.105 Failure to Supply Heat, Water, Hot Water or Essential Services.

(a) If contrary to the rental agreement or Section 2.105 the management fails to supply heat, running water, hot water, electric, gas, air conditioning, or other essential service to the extent the supply is within control of the management, the resident may give written notice to the management specifying the breach and if the notice is disregarded within one business day may

(1) procure reasonable amounts of heat, hot water, running water, electric, gas, and other essential service during the period of the management's noncompliance and deduct their actual and reasonable cost from the rent;

(2) recover damages based upon the lack of use of the premises or the diminution in the fair rental value of the dwelling unit; or

(3) procure reasonable substitute housing during the period of the management's noncompliance, or that the rent for the original premises shall fully abate during this period.

(b) As an alternative to the remedy provided in paragraph (3) of subsection (a) the resident may recover the actual and reasonable cost or fair and reasonable value of the substitute housing not in excess of an amount equal to the periodic rent, and in any case under subsection (a) reasonable attorney's fees.

(c) If the resident proceeds under this section, he may not proceed under Section 4.101 or Section 4.103 as to that breach.

(d) Rights of the resident under this Section do not arise until he has given written notice to the management or if the condition was caused by the deliberate or negligent act or omission of the resident, a member of his family, or other person on the premises with his consent.

SECTION 4.106. Management's Noncompliance as Defense to Action for Possession or Rent

(a) In an action for possession based upon nonpayment of the rent or in an action for rent when the resident is in possession, the resident may counter-claim for any amount he may recover under the rental agreement or this chapter. In that event, the court from time to time may order the resident to pay into court all or part of the rent thereafter accruing, and shall determine the amount due to each party. Such order shall order the release or exclusion of payment of any moneys owing to any mortgagee or beneficiary under a deed of trust, in proportion that the rent bears to the obligation owing from such escrowed funds. The party to whom a net amount is owed shall be paid first from the money paid into court, and the balance by the other party. If no rent remains due after application of this section judgment shall be entered for the resident in the action for possession. If the

defense or counter-claim by the resident is without merit and is not raised in good faith, the management may recover reasonable attorney's fees.

(b) In any action for rent when the resident is not in possession, he may counter-claim as provided in subdivision (a) but is not required to pay any rent into court.

SECTION 4.107. Fire or Casualty Damage.

(a) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the resident may do one of the following:

(1) Immediately vacate the premises and notify the management within 14 days thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating;

(2) If continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the resident's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit or lack of use of the dwelling unit.

(b) If the rental agreement is terminated the management shall return all security recoverable under Section 2.101 and all prepaid rent. Accounting for rent in the event of termination or apportionment shall be made as of the date of the casualty.

(c) This section shall not apply if it is determined that the fire or casualty were caused by deliberate or negligent acts of the resident or other persons on the premises with his consent.

SECTION 4.108. Resident's Remedies for Management's Unlawful Ouster, Exclusion, or Diminution of Service. If management unlawfully removes or excludes the resident from the premises or willfully diminishes services to the resident by interrupting or causing the interruption of heat, running water, hot water, electric, gas or other

essential service, the resident may recover possession or terminate the rental agreement and, in either case, recover an amount not more than three month's periodic rent or (three-fold) the actual damages sustained by him, whichever is greater, and a reasonable attorney's fee. If the rental agreement is terminated, the management shall return all security recoverable under Section 2.101 and all prepaid rent.

Part II

MANAGEMENT REMEDIES

SECTION 4.201. Noncompliance with Rental Agreement; Failure to Pay Rent.

(a) Except as provided in this Act, if there is a material noncompliance by the resident with the rental agreement or a noncompliance with Section 3.101 materially affecting health and safety, the management may deliver a written notice to the resident specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty days after receipt of the notice. If the breach is not remedied in fourteen days, the rental agreement shall terminate as provided in the notice subject to the following. If the breach is remediable by repairs or the payment of damages or otherwise and the resident adequately remedies the breach before the date specified in the notice, the rental agreement shall not terminate. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six months, the management may terminate the rental agreement upon at least fourteen days written notice specifying the breach and the date of termination of the rental agreement.

(b) If rent is unpaid when due and the resident fails without lawful excuse to pay rent within three days, as required by NRS 40.250(c), after written notice by management of non-payment and his intention to terminate the rental agreement if the rent is not paid within that period, the management may terminate the rental agreement.

(c) Except as provided in this Act, the management may recover damages and obtain injunctive relief for any noncompliance by the resident with the rental agreement or Section 3.101. The prevailing party may recover reasonable attorney's fees.

SECTION 4.202. Failure to Maintain.

(a) If there is noncompliance by the resident with Section 3.101 materially affecting health and safety that can be remedied by repair, replacement of a damaged item or cleaning, and the resident fails to comply as promptly as conditions require in case of emergency, or within fourteen days after written notice by the management specifying the breach and requesting that the tenant remedy it within that period of time, the management may enter the dwelling unit and cause the work to be done in a workmanlike manner and submit the itemized bill for actual and reasonable cost or the fair and reasonable value thereof as rent on the next date periodic rent is due, or if the rental agreement has terminated, for immediate payment.

(b) If the cost exceeds the resident's deposits for this purpose, the management may petition the court for relief or may arrange payments by installments from the resident.

SECTION 4.203. Remedies for Absence, Non-use and Abandonment.

(a) If the rental agreement requires the resident to give notice to the management of an anticipated extended absence in excess of fourteen days as required in Section 3.104 and the resident willfully fails to do so, the management may recover actual damages from the resident.

(b) During any absence of the resident in excess of fourteen days, the management may enter the dwelling unit at times reasonably necessary.

(c) If the resident abandons the dwelling unit, the management shall make reasonable efforts to rent it at a fair rental. If the management rents the dwelling unit for a term beginning before the expiration of the rental agreement, it terminates as of the date of the new tenancy. If the management fails to use reasonable efforts

to rent the dwelling unit at a fair rental or if the management accepts the abandonment as a surrender, the rental agreement is deemed to be terminated by the management as of the date the management has notice of the abandonment. If the tenancy is from month-to-month or week-to-week, the term of the rental agreement for this purpose is deemed to be a month or a week, as the case may be.

SECTION 4.204. Waiver of Management's Right to Terminate. Acceptance of rent with knowledge of a default by the resident or acceptance of performance by him that varies from the terms of the rental agreement constitutes a waiver of the management's right to terminate the rental agreement for that breach, unless otherwise agreed after the breach has occurred.

SECTION 4.205. Remedy After Termination. If the rental agreement is terminated, the management may have a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement and reasonable attorney's fees as provided in Section 4.201(c).

SECTION 4.206. Recovery of Possession Limited. Management may not recover or take possession of the dwelling unit by action or otherwise, including willful diminution of services to the resident by interrupting or causing the interruption of heat, electric, running water, hot water, gas, or other essential service to the resident, except in case of abandonment, surrender, or as permitted in this Act.

Part III

PERIODIC TENANCY; HOLDOVER; ABUSE OF ACCESS

SECTION 4.301. Periodic Tenancy; Holdover Remedies.

(a) The management or the resident may terminate a week-to-week tenancy by a written notice given to the other at least seven days before the termination date specified in the notice.

(b) The management or the resident may terminate a month-to-month tenancy by a written notice given to the other at least thirty days before the periodic rental date specified in the notice.

(c) If the resident remains in possession without the management's consent after expiration of the term of the rental agreement or its termination, the management may bring an action for possession and if the resident's holdover is willful and not in good faith the management may also recover an amount not more than three month's periodic rent or threefold the actual damages sustained by him, whichever is greater, and reasonable attorney's fees. If the management consents to the resident's continued occupancy, Section 1.401 applies.

SECTION 4.302. Elderly and Handicapped Persons: Cause Required for Eviction.

(a) ~~If the resident is 60 years of age or older, or handicapped,~~ no rental agreement may be terminated except for cause.

(b) "Cause" includes one or more of the following:

- (1) Nonpayment of rent and utility charges.
- (2) Failure of the resident to comply with reasonable rules and regulations as established by the management at the inception of the tenancy or as amended subsequently.
- (3) Condemnation of the building.
- (4) Failure of the resident to comply with obligations imposed on the resident pursuant to Section 3.101.
- (5) Intended use of the dwelling unit as a residence by the management or a member of his immediate family. If the management, however, uses or allows use of the premises for another purpose within one year of the date of the notice of termination, he shall be liable to the former resident for damages, plus reasonable attorney's fees.

- (6) Intended use of the premises for a purpose other than as a residential dwelling unit. If the management, however, uses or allows the use of the premises as a residential dwelling unit within one year of the date of the notice of termination, he shall be liable to the former resident for damages, plus reasonable attorney's fees.

Nothing in paragraphs 5 or 6 shall be construed, however, to impose liability on management for damages or attorney's fees if the premises are used or allowed to be used for another purpose within one year of the date of notice if circumstances unexpected by, and not within the control of, the management defeat that intended use which precipitated the resident's removal.

- (c) The management shall specify the reason for any rent increase or other change of terms of the tenancy or notice of termination. If such statement be controverted by the resident, the management shall have the burden of proof to establish the intended action is not designed to avoid this section.

SECTION 4.303. Management and Resident Remedies for Abuse of Access.

- (a) If the resident refuses to allow lawful access, the management may obtain injunctive relief to compel access, or terminate the rental agreement. In either case the management may recover actual damages and reasonable attorney's fees.
- (b) If the management makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the resident, the resident may obtain injunctive relief to prove the re-occurrence of the conduct or terminate the rental agreement. In either case the resident may recover actual damages (not less than an amount equal to one month's rent and reasonable attorney's fees).

ARTICLE V

RETLIATORY CONDUCT

SECTION 5.101. Retaliatory Conduct Prohibited.

(a) Except as provided in this section, management may not retaliate by terminating the tenancy, by refusing to renew a tenancy, or by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after any of the following has occurred:

(1) The resident has complained to a governmental agency charged with responsibility for enforcement of a building, housing or health code of a violation applicable to the premises materially affecting health and safety.

(2) The resident has complained to the management of a violation under this Act.

(3) The resident has organized or become a member of a resident's union or similar organization.

(4) A citation has been issued resulting from a complaint described in paragraph (1), of which the management did not have notice.

(5) In a judicial proceeding or arbitration an issue of habitability has been determined adversely to the lessor.

(b) If management acts in violation of subsection (a), the resident is entitled to the remedies provided in Section 4.101 or 4.102 and has a defense in any retaliatory action against him for possession. In an action by or against the resident, evidence of a complaint within one year before the alleged act of retaliation creates a presumption that the management's conduct was in retaliation. The presumption does not arise if the resident made the complaint after notice of a proposed rent increase or diminution of services. "Presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(c) Notwithstanding subsections (a) and (b), management may bring an action for possession if:

- (1) the violation of the applicable building, housing or health code was caused primarily by lack of reasonable care by the resident or other person in his household or upon the premises with his consent;
 - (2) the resident is in default in rent; or
 - (3) compliance with the applicable building, housing or health code requires alteration, remodeling, or demolition which would effectively deprive the resident of use of the dwelling unit.
- (d) The maintenance of an action under subsection (c) does not release the management from liability under Section 4.102(a)(1).

ARTICLE VI

EFFECTIVE DATE AND REPEALER

SECTION 6.101. Effective Date. This Act shall become effective on July 1, 1975. It applies to rental agreements entered into or extended or renewed on and after that date. For purpose of this Section month-to-month tenancies shall be considered to renew themselves each month.

SECTION 6.102. Savings Clause. Transactions entered into before the effective date of this Act, and not extended or renewed on and after that date, and the rights, duties, and interests flowing from them remain valid and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law amended or repealed by this Act as though the repeal or amendment had not occurred.

SECTION 6.103. Severability. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6.104. Nevada Revised Statutes 108.480, 108.510, 108.520, 108.530, 118.190, 118.200 and 118.210 are hereby repealed.

111.205 1. No estate or interest in lands, [other than for leases for a term not exceeding 1 year,] nor any trust or power over or concerning lands, or in any manner relating thereto, shall be created, granted, assigned, surrendered or declared after December 2, 1861, unless by act or operation of law, or by deed or conveyance, in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent thereunto authorized in writing.

2. Subsection 1 shall not be construed to affect in any manner the power of a testator in the disposition of his real property by a last will and testament, nor to prevent any trust from arising or being extinguished by implication or operation of law.

SECTION 6.106. NRS 111.210 is hereby amended to read as follows:

111.210 1. Every contract for the leasing [for a longer period than one year, or for the] *renting* or sale of any lands, or any interest in lands, shall be void unless the contract, or some note or memorandum thereof, expressing the consideration, be in writing, and be subscribed by the party by whom the lease, *rental* or sale is to be made.

2. Every instrument required to be subscribed by any person under subsection 1 may be subscribed by the agent of the party lawfully authorized.