ASSEMBLY JUDICIARY COMMITTEE
March 22, 1977
8:05 a.m.

Members Present: Chairman Barengo
Vice Chairman Hayes
Mr. Price
Mr. Coulter
Mr. Sena
Mr. Ross
Mr. Polish
Mr. Banner
Mrs. Wagner

Chairman Barengo brought this meeting to order at 8:05.

Assembly Bill 423:

Mr. Bart Jacka, Asst. Sheriff of Las Vegas Metropolitan Police Dept., testified in opposition to this bill. He stated that this bill would appear to do nothing more than protect those officers who are corrupt and involved in activities of a criminal nature. Historically, law enforcement has been given enormous powers of authority over private citizens. As a result of the abuses of those powers by the minority, all of law enforcement has been restricted by rules handed down by the Courts. Examples are the search and seizure rules and the Miranda decision. What this amounts to is this would give those police officers who have a tendency to be corrupt much more credability in conduct that is acceptable than was allowed the general public. Mr. Jacka specified section 4 on page 1, stating that he thinks the section itself conflicts with itself. He also pointed out section number 5 regarding polygraph examinations stating that it is clearly an effective tool that they can use in law enforcement to weed out those bad people that they are sometimes saddled with and he feels they have a heavy responsibility to the public to make sure that their people stay incorruptible and they don't enter into conflict. Section 7 referring to the search of a police officer's locker, stating that the courts have held and local legal opinion has held that the school administration has the right to search lockers in the schools and to do something less than that to policemen is unjust. In regard to Section 8, he stated that he does not know what that section means. Regarding Section 9 and its wording throughout of "interrogation of police officer", the Miranda decision caused them to stop the wording of "interrogation" and to further use "interview". Mr. Jacka stated that he does not agree with the statement that there is no fiscal impact to this bill. There is fiscal impact in the form of internal investigations. He pointed out section 9, line 16 on page 3 agreeing with its concept, however, there are times when disclosure is necessary. In regard to line 32 of § 8, he stated that he needs to have "formal written statement of charges" defined. Regarding § 2 of Section 9 on line 38, he feels this is a ridiculous statement. He also pointed out line 48 stating that this conflicts with good basic discipline. In summary, Mr. Jacka stated that he believes statewide legislation is not necessary and further he feels that if something like this were necessary, that it should be left to local option. He feels that problems can be handled by rules and regulations, by Civil Service Agreements or other means available on the local level. He sees this as totally unnecessary for honest, sincere policemen and it is an umbrella

for those who are not. Thereafter there was discussion of his comments and questioning by the committee.

Mr. Nick Harkins, representing the Nevada Peace Officer's Association, testified on the bill. He pointed out that the reason that they are having controversies over the Bill of Rights can be viewed from the standpoint that management of police forces doesn't want to give up any of their management prerogatives. This bill is supported by the Nevada Peace Officer's Association with some modifications which are attached hereto and marked as Exhibit "A".

Mr. Charlie Crump, President of the Nevada Peace Officer's Association, testified in regard to this bill citing first the evolution of the police officer. He stated that their new bill (Exhibit "A") which is quite similar to Mr. Coulter's bill is an innocuous instrument. There is nothing in it that any person in the United States of America should not be allowed these rights. They support this bill. In answer to a question from Assemblyman Wagner, Mr. Crump stated that he does not think that it is even practical in Nevada to resort to local option as Mr. Jacka mentioned in prior testimony. There was some further questioning of Mr. Crump by members of the committee.

Chief James Parker, Reno Police Department, was next to testify on this bill and a copy of his testimony is attached hereto and marked as Exhibit "B". In addition, Chief Parker submitted their department's policy regarding the officer's rights while under investigation which is attached hereto and marked Exhibit "C".

Mr. Barney Dehl, Asst. Chief of Nevada Highway Patrol and Mr. Vince Swinney, Undersheriff of Washoe County Sheriff's Office, were next to testify and a copy of Mr. Dehl's testimony is attached hereto and marked as Exhibit "D".

Mr. Vince Swinney did want to point out in regard to Mr. Crump's statement of representation of the entire Nevada Peace Officer's Association, he stated that the membership was not polled and it is not the unanimous decision of them to support this bill. There are a number of them that do not support the bill or its concept. REgarding the section in the bill that states that an officer be required to be given 72 hours notice before he is interrogated, he feels is an abhorrent thing and an impossibility to abide by. He concurs with everything said by Mr. Jacka and Chief Parker, as well as, Mr. Dehl with regard to the fact that the majority of these things are covered by local rules.

Mr. Bob Warren, Nevada League of Cities, stated that it appears that some of the police officers are seeking a special employee management relations act for police officers in addition to the one presently on the books. Most of the items that are being requested in AB 423 can be and have been handled under their present employee relations act. The act is available to the police officers in any community. They feel it is unnecessary and problems can be dealt with by means of bargaining procedures, by civil service rights, by protective rights in union contracts, etc. Essentially this bill will do nothing more than provide the protection for those officers who might be involved in criminal activities.

Mr. George Wendell, appearing on behalf of Mr. Vern Calhoun of the State Division of Investigation of Narcotics, testified on this bill in opposition

to it. He is a polygraph examiner and a law enforcement officer for the State of Nevada for more than 14 years. He expressed that before any decision is made in regard to this bill, more particularly section 5, that the committee will spend some time reviewing those Supreme Court decisions regarding allowing a law enforcement officer to be dismissed on the grounds of refusing to take a polygraph examination. Attached hereto and marked as Exhibit "E" is Mr. Wendell's copy of Interim Report on Polygraph Usage which contains the aforemention citations. He further expressed his and Mr. Calhoun's opinion by quoting from the Supreme Court's ruling on Gardner v. Broderick, 392 U.S. 273, 88 S. Ct. 1913, 20 L.Ed. 2d 1882 (1968).

Mr. Bob Gagnier, representing the State of Nevada Employee Association, testified in regard to this bill stating that the State Personnel Advisory Commission has banned the use of polygraph examinations. There seemed to be some discrepancy as to this statement amongst the committee and Chairman Barengo ultimately asked that this statement be verified. Their association is in support of this bill, particularly as to section 5 and section 12 because they feel that they do have most of the benefits by rule that are in this, however, they can be changed and section 12 states that they would have to maintain a minimum set of standards.

Assembly Bill 418:

Mr. Ned Solomon, Associate Director of the Clark County Juvenile Court, testified in support of this bill. He stated that at the present time once a child is certified, the next offense that they commit, if they are under the age of 18, they are still handled as a juvenile. This causes a mixing of children in the system, especially in detention facilities where they have very sophisticated young people with children who are not that sophisticated. Also, there is a possibility that they are handled in two court systems at one time, i.e., they are handled as an adult on the charge which they have been certified on and then if they commit another offense, they could possibly be handled as a juvenile. Therefore, what they request is that this bill be passed in order that any child who is certified would then come back on any criminal offense, they would automatically be handled as an adult offender and be handled in just the adult court.

Assembly Bill 451:

Mrs. Daisy J. Talvitie, State President of League of Women Voters, testified on this bill and a copy of her statement is attached hereto and marked as Exhibit "F".

The Report to the Legislative Commission of the Recommendations by the Citizens' Advisory Committee Studying Sexual Discrimination in Nevada's Laws, which is being referred to during testimony on this bill, is attached hereto and marked as Exhibit "G".

Mrs. Maryann Murphy, representing Eagle Forum in Carson City, testified on this bill. She made reference to page 4 of the bill, Section 7, beginning with line 39 through 50, stating that she believes this to be Nevada's basic support law and she believes that a woman who elects to remain in the home and raise her own babies should have the right to support of her husband and to have that right recognized by law. She would like this section deleted from the bill. She would also like to see lines 18 and 19 on page

5 deleted from the bill. Chairman Barengo advised her that it does state that married persons shall make adequate provisions for the support of their spouse, in other words, that they should look out for one another. He stated that, as he reads the bill, this reads exactly what marriage is, stating both parties will take care of each other. Mrs. Wagner and Mr. Barengo continued attempts to explain to Mrs. Murphy the intent of this law.

Mrs. Ione Minister testified in support of this bill. Attached hereto and marked as Exhibit "H" is a copy of her testimony. Mrs. Wagner asked Mrs. Minister if she knew what some of the suggestions were from her committee that might not have been included in this bill. Mrs. Minister stated that sexual battery is not included and that support laws, alimony, property rights, separate maintenance and highway patrol's employment of women are also not included.

Barbara Weinert, also a member of the Citizens Advisory Committee, testified in support of this bill and concurred with the remarks made by Mrs. Minister.

Assembly Bill 76:

Barbara Weinert, testified specifically as to this bill in addition to her testimony on A.B. 451. She stated that the bulk of this bill is an attempt to equalize and provide alimony, temporary maintenance and separate maintenance for either spouse. Her specific interest is as to page 2, beginning on line 38, the relevant factors that must be taken into account in awarding alimony or maintenance. She believes quite strongly that it is important to list the specific factors in order to guide the discretion of judges and therefore, accomplish a certain equality of action. Mrs. Weinert stated that she feels the major asset than can be calculated in marriages is the earning capacity of the wage-earning spouse, generally the husband. Therefore, that should be balanced by a recognition of the non-monetary contribution of the homemaker which is included on line 41. Finally, that detailed factors and standards provided for judges will hold them accountable if someone is to go back and appeal an award. She stated that she would hope that the committee would take the opportunity to write into law a specific statement that sets up the significance of the contribution of the homemaker.

Assembly Bill 451 and Assembly Bill 76:

Phyllis Adkins, Esq., Reno, Nevada then testified on these two bills. She thanked the committee for bringing out A.B. 76 which is intended to coddify alot of things that the courts already do in their decisions, so far as custody, temporary support, etc. are concerned. Mrs. Adkins stated that she appreciates having them spelled out because she is not so sure that the judges always consider all of it, or the attorneys who bring it to their attention. Particularly, she pointed out her approval or appreciation of page 2, A.B. 76, lines 15 through 18. Mrs. Adkins also liked the part in regard to divorces, that the alimony must be considered in the same circumstances to either party. She also appreciates Section 3, § b, "the nonmonetary contribution of the homemaker". She also appreciated § e, wherein it states that the court should consider "the work experience and earning capabilities of the parties". In regard to Assembly Bill 451, she stated that removing the distinctions based on sex from the various state laws is a great idea and glad that they have addressed themselves to it. She wondered if they should not delete the entire section which deals with the idea of the Protestant Episcopal Church that was passed in 1862 before there was a Constitution, if we might not be in violation of Article I, section 4. With respect to the section regarding support, it

is simply saying that they should be able to make adequate provision. If they refuse to support them and someone else supplies necessary articles, better the family should be out than the individuals. Mrs. Adkins stated that she feels strongly on section 8, page 5, § 3, lines 18 and 19, she feels that the reverse should also be reflected because many courts feel that by example, when a boy is 10 or 12 years of age that father should automatically have custody of the child, so, this has to be dealt with case by case and not simply based on the fact that the parent is the mother or the parent is the father. In regard to page 18, Section 58 dealing with widows and widowers, she suggested that perhaps sometime in the future the legislators might deal with the problem of many single people (divorced) who have the house and children who might need some help and perhaps it should be based more on need, rather than just the fact they are widows or widowers. She also made reference to page 23, lines 29 and 30, stating that perhaps they could delete the entire section because if it was not necessary for both of them before, maybe it is not necessary for either of them.

Assembly Bill 377:

Mr. Charles W. Johnson, an attorney from Las Vegas, Nevada, here as a private citizen, testified in support of this bill. His interest in the bill arises out of his specialty in the practice of law in the field of trusts and estates. Primarily senior citizens of modest means have a real need for the provisions of this bill. He pointed out that as he sees this bill, it attempts to do four things. 1) For a person who dies in the state of Nevada, who has no relatives, and leaves no Will, there is no one to administer that person's estate. Under current law, that is being handled by the Public Administrator. 2) It is designed to cover the person who becomes incompetent and unable to manage his own affairs and, again, has no family who can be appointed guardian. He further stated that he understands that S.B. 163 is being enacted in the Senate to cover this particular need. 3) This area has to do with the person who wants to make a Will but has no one to whom he can designate as the Executor or Trustee and his estate is not of sufficient size where a bank or trust company would be willing to handle it. 4) This is a situation where a person, even though not incompetent, feels inadequate or unable to manage his own affairs and would like to establish a trust for his own benefit and for the benefit of his heirs or beneficiaries after his death. At this point he went over the bill in detail for the committee.

Assembly Bill 173:

Mr. Rusty Nash, Washoe County District Attorney's Office and Mr. Clinton Wooster, attorney in Reno, Nevada testified on this bill. Attached hereto and marked as Exhibit "I" is a copy of the Proposed Amendments to AB 173. Mr. Clinton Wooster advised of the following points of disagreement between himself and Mr. Nash in regard to these proposed amendments. He made reference to Section 16, stating that the difference there is in the word "periodic". Mr. Wooster would like that word deleted and he detailed his reasoning for the committee. Mr. Nash stated that if you look in Webster's, you will find that the word "rent" means periodic payments. Secondly, he stated that this act does expand the summary proceedings to more than just defaults in the rental payments. He stated that under section 64, even with the definition we have, the summary procedures could still be utilized for violation of rental agreement. Mr. Nash stated that he does not see this as a major problem, however, he does feel that the definition of "rent" should include the word "periodic" because he thinks that is what the idea is. He disagrees with Mr. Wooster's

interpretation of the landlords' rights that are available under the current definition. He believes that summary procedures are available if someone does not pay. The next area of disagreement is with Section 20. Mr. Wooster stated that he has three arguments with this, 1) over the number, the landlords feel that should be 6 instead of 3, 2) over the applicability to single family dwellings, the landlords feel we should be talking about rental units, 3) he felt the idea in the new proposed section 20 was that the people who were excluded from the act , whether you go with three single family homes or six rental units or however you decide what people are to be excluded from this act, there are some basic provisions now in Chapter 118 that apply to all landlord/tenant relationships. He stated that Mr. Nash and himself had agreed that those provisions should continue to apply to all landlords and tenants and even the excluded ones. Therefore, they are faced with some dilemmas, do we leave 118 as is and try to make it then applicable to the people excluded under the Residential Landlord/Tenant Act or do we repeal all of 118 and put those existing provisions into the residential Landlord/Tenant Act and say "three or under are excluded from the act, except for sections 1,2, 3, 4 and so on , which would then be 118. He stated that they have come to kind of a conclusion that they would go this latter route, i.e., still repeal 118 , but stick 118 into this bill and state as Mr. Nash has done, "except for the provisions of certain sections . . . this chapter does not apply to certain people". Another difficulty to compound this is that Mr. Nash has expanded that so that there are many sections of the existing act that now apply to the people excluded, supposedly, from the act. He stated that in the interest of clarity that for the excluded people, we would just stay with the existing law. Mr. Nash then explained to the committee the approach that he and Mr. Wooster took on these amendments for the bill, stating that most of the amendments that they came out with were at the request of the landlords. A large concern at the last hearing seemed to be having the results of not having a written lease spelled out and he feels that they accomplished that. The way they have written it, the small operator does not have to have a written lease. In addition, he does not believe that they should have any exclusions from this bill as to the number of units an operator has as he does not think that the provisions are really onerous on the landlords. In trying to figure out which sections the small landlord should be covered by, he figured that most of the sections that are included there are ones that are in the current law or to the landlords' favor. The only part that might not be either in favor of the landlords or included in current law is the question of the security deposit, which is section 27. Mr. Nash stated that he is not adverse to simply excluding those sections of the act and going with existing law as it applies to the small landlord. Although, he doesn't think it is that tough for the small landlord to go to this Act if it is passed. All he has to do is go to Section 20 and this section spells out which sections apply to him. He would urge that we leave the exclusion of three single family dwellings as we now have in the fair housing act. Thereafter there was considerable questioning and discussion by the committee of Mr. Nash and Mr. Wooster. Chairman Barengo asked both Mr. Nash and Mr. Wooster if they had any objections to Mr. Len Howard's proposed amendments. Said amendments are attached hereto and marked as Exhibit "J".

There being no further business to discuss, Chairman Barengo adjourned this meeting at 11:00 a.m.

Respectfully submitted,

Anne M. Peirce

Anne M. Peirce, Secretary

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March 21, 1977

The Honorable Robert R. Barengo
Assemblyman, Washoe County
Legislative Building
Carson City, Nevada 89701

Re: A.B. 423
Nevada Peace Officer's
Bill of Rights

Dear Bob:

It is our understanding that the above-referenced bill will be heard by the Judiciary Committee on Tuesday, March 22, 1977, at 8:00 A.M. We would like to testify at the hearing regarding this bill and wish to indicate to you the differences between the above bill and the bill-draft request heretofore made under number 1465:

1. We would like to see a public policy declaration stated at the beginning of the bill as follows:

> "The Legislature hereby finds and declares that the rights and protections provided to peace officers and firemen under this chapter constitute a matter of statewide conern. The Legislature further finds and declares that effective law enforcement and fire protection depends upon the maintenance of stable employer-employee relations between Public Safety Employers and their employees. In order to assure that such stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all Public Safety Officers as defined in this chapter, wherever situated in the State of Nevada."

EXHIBIT A

2. The definition of "Peace Officer" in BDR 23-1107 is insufficiently extensive to encompass firemen.

3. As to Section 5 of BDR 23-1107 the prohibition against required submission to polygraph examinations should be broad enough to include voice-prints and mechanical examination.

4. Section 8 of BDR 23-1107 should be deleted.

5. Paragraph B of Section 9 of BDR 23-1107 should be modified to provide at least three judicial day's notice before any interrogation and further the section should be modified to limit the interrogation by one interrogator at a time and also to provide at least three judicial day's advance notice of the nature of the investigation.

6. BDR 23-1107 omits to provide for the officer's right to face his accusers and any adverse witnesses and it also does not provide a right to written charges lodged against the officer.

7. BDR 23-1107 does not provide for mandatory recordation of the interrogation.

8. Section 10 of BDR 23-1107 does not provide for protections against the punitive actions brought against the officer for exercise of the rights under the act.

9. BDR 23-1107 does not provide the following language as requested by the NPOA:

"Any Public Safety Officer who has incurred expenses in connection with any successful defense of any complaint or formal action brought against him shall be entitled to reimbursement from the employing agency or political subdivision thereof, for all such expenses, including reasonable attorney's fees."

If you have any questions regarding this matter, please permit us to respond to the same.

Sincerely yours,

ECK & HARKINS, LTD.

by Dick
Nicolaus R. Harkins

NRH:nd

Jim Parker

POLICE OFFICERS' RIGHTS WHILE UNDER INVESTIGATION

General:

All sworn personnel of the Reno Police Department shall be entitled to the protection of what shall hereinafter be termed as the "Rights of Police Officers While Under Investigation."

The wide-ranging powers and duties given to the Department of Police and its members on and off-duty, involve them in all manner of contacts and relationships with the public. Of these contacts come many questions concerning the action of members. These questions often require investigation by superior officers and/or an investigative staff formulated by the office of the Chief of Police. In an effort to insure that these investigations are conducted in a manner which is conducive to good order and discipline, the investigative process, and recent court decisions, the following guidelines are promulgated.

Section I. Departmental Investigations.

The procedures contained in this section apply only to investigations conducted by the Reno Police Department.

A. Advance notice.

Prior to being subjected to interview by this Department for any reason which could lead to disciplinary action, demotion or dismissal, the employee shall be:

1. Informed of the nature of the investigation and whether he is a witness or a suspect, and other information necessary to reasonably apprise him of the nature of the allegations of the complaint;

2. Afforded an opportunity and facilities to contact and consult privately with an attorney of his choosing;

EXHIBIT 979B

3. Whenever delay in conducting the interview will not jeopardize the successful accomplishment of the investigation, or when criminal culpability is not at issue, advance notice shall be given the officer before the initial interview commences or written reports are required from the officer;

4. If the officer being interviewed is under arrest or is likely to be placed under arrest as a result of the proceedings, he shall be completely informed of all of his Constitutional rights prior to the commencement of the interview.

B. Interview safeguards.

1. Any interview of an officer shall take place when the officer is on duty, unless the seriousness of the investigation dictates otherwise.

2. Should the officer be required to appear at a time not during his normal duty period, he shall be allowed to submit for overtime compensation.

C. Review By Officer

An officer who is under investigation by the Reno Police Department may review the written report of that investigation after the following guidelines are met.

a. The report is completed; and,

b. A request for review is made through the Chief of Police.

D. Resulting disciplinary action proposed.

When the investigation results in a determination of a sustained complaint and disciplinary action is to be proposed to the office of the City Manager, only the findings and the disciplinary order may be placed in the officer's personnel files.

E. Interviews shall not be overly long. The officer shall be entitled to such reasonable intermissions as he shall request for personal reasons, with one 10-minute intermission every hour, at his request.

F. All interviews shall be limited to activities, circumstances, events, conduct or acts which pertain to the matter under investigation.

G. If the circumstances under investigation warrant a recorded interview, the officer being interviewed will be advised that his statement is being recorded. The transcribed statement will be reviewed and signed by the officer, providing he finds it accurate. The officer will have access to the statement as provided above, and the tape recording itself will be placed into evidence where it is accessible after following specified legal procedures.

Section IV. Personal Information

No officer shall be required for the purpose of a departmental investigation or other personnel action, to disclose any item of his property, assets, source of income, or personal or domestic expenditures, including those of a member of his family, unless proper legal procedures have been instituted, and only when it may tend to indicate a conflict of interest with respect to the performance of his official duties.

Finally, it should be noted that if an officer answers questions untruthfully, he can be terminated for lying. Or, if he is criminally prosecuted, takes the stand in his own behalf and presents a conflicting story, the prior statement is admissible at the criminal trial to impeach his credibility as a witness. *Harris v. New York*, 401 U.S. 222 (1971).

REFUSAL TO SUBMIT TO POLYGRAPH

In general, a police officer whose conduct or fitness is under investigation, may be required to submit to a polygraph examination. This test is used, by the administration, as an investigative lead in conducting its internal investigation.

Three cases have reinstated uncooperative officers who were dismissed after refusing to take a polygraph exam. In *Stape v. Civil Service Comm. of Philadelphia*, 404 Pa. 354, 172 A.2d 161 (1961) and *Molino v. Board of Public Safety of City of Torrington*, 225 A.2d 805 (1966), the officers were not dismissed for insubordination for failure to obey a direct order to submit to examination, but were discharged for the failure to cooperate in an investigation. A Florida case, *City of Miami v. Jervis*, 139 So. 2d 513 (Fla. App. 1962), reinstated an officer because the civil service authority improperly drew an inference of guilt from the officer's refusal to submit to the exam.

In *Stape v. Civil Service Commission of City of Philadelphia*, mentioned above, the court held that under a city civil service regulation authorizing discharge by the appointing authority, a police officer's refusal to take a polygraph test was not "just cause" for discharge. The rationale was the fact that the *commission* lacked the authority to order the test, in the absence of a specific provision. The issue of whether the *police commissioner* could have ordered the test, and charged the officer for insubordination, was not presented in the case.

New Jersey has a statute which makes it a misdemeanor to order, as an employer an employee to submit to a polygraph examination as a condition of retention. *Engel v. Woodbridge Twp.*, 306 A. 2d 485 (N.J. App. Div. 1973) construed the statute, N.J.S.A. §2A:170-90.1 as prohibiting a police department from requiring its officers to take a polygraph exam.

The proper method of establishing the procedure is to (a) order the officer to submit under penalty of dismissal, and then (b) discharge him for insubordination of a direct order from a superior officer. Thus in *Fischera v. State Personnel Board*, 217 Cal. App. 2d 613, 32 Cal. Rptr. 159 (1963) the court upheld dismissal of the officers concerned for "insubordination and willful disobedience." In accord are other California cases,

EXHIBIT C

Frazee v. Civil Service Board of City of Oakland, 338 P.2d 943 (Cal. 1959) and *McCain v. Sheridan*, 324 P.2d 923 (Cal. 1958).

Louisiana courts have uniformly upheld the right of a police administrator to order an officer suspected of misconduct to submit to a polygraph exam. In *Roux v. New Orleans*, 223 So. 2d 905 (La. 1969), *cert. den.* 397 U.S. 1008 (1970), the state supreme court held that the officer's refusal impeded and hindered the internal investigation and he could no longer be said to possess the high standards of conduct required of policemen. The *Roux* case was followed by another in 1970, *Clayton v. City of New Orleans Police Dept.*, 236 So. 2d 548 (La. App.) and one in 1972, *Dieck v. Department of Police*, 266 So. 2d 500 (La. App. 1972).

In a fourth case, and most recent, *Frey v. Department of Police*, 288 So. 2d 410 (La. App. 1973) the court of appeals of Louisiana again affirmed the right of the New Orleans Police Superintendent to order an accused officer to submit to a polygraph exam, under penalty of discharge. In view of the serious nature of the charge and his sensitive position, the court held the officer was not entitled to a two-week delay in the administration of the test, despite his claim of physical and mental exhaustion.

In *Richardson v. City of Pasadena*, 500 S.W. 2d 175 (Tex. Cir. App. 1973), Texas' highest court held it is insubordination for a police officer to refuse a direct order of a superior to submit to a polygraph examination during a departmental investigation, where reasonable cause exists to believe the officer can supply relevant knowledge or information. The court said that since the system of police administration is premised on discipline, it could not uphold insubordination in refusing a reasonable and constitutional command. Accordingly, the department could indefinitely suspend or permanently dismiss an officer who so refused when faced with allegations of impropriety.

Compelled polygraph examinations were the subject of a civil suit recently adjudicated in Washington, brought by the police union. In Seattle, serious and notorious charges of crime and corruption had been levied against numerous members of the municipal police force, all of which cast serious public doubt on the integrity, morality and fidelity of the force; suspected officers were properly ordered to submit to a polygraph examination. The action sought declaratory and injunctive relief against the exams. The state supreme court concluded that the administration of polygraph examinations as "an investigatory tool" to test the dependability of prior answers of the suspected officers was proper, since the questions formulated directly related to the performance of their duties. *Seattle Police*

Officers' Guild v. City of Seattle, 494 P.2d 485, 80 Wash. 2d 307 (Wash. 1972).

It is instructive to note the progress of the Illinois courts in deciding the polygraph issue. In *Seneca v. Board of Fire and Police Com'rs of Village of Lyons, Cook County*, 217 N.E. 2d 320 (Ill. App. 1966), it was held reversible error to admit the results of a polygraph exam before the board where there was no proof of the qualifications of the person who administered the exam. However, since the officer's defense was based on the alleged mistaken identity of the witness who submitted to the exam, and not his truthfulness, the evidence was considered harmless error. In accord, *Peo. ex rel. Perz v. Schneemilch*, 213 N.E. 2d 50, 65 Ill. App 2d 337.

In *Coursey v. Bd. of Fire and Police Comr's Village of Skokie*, 234 N.E. 2d 339 (Ill. App. 1967), the court said that although as a private individual the accused did not have to submit to a polygraph exam, he was obligated to do so as a police officer, and his failure to do so warranted his removal for insubordination.

In *Austin v. City of East Moline etc.*, 288 N.E. 2d 133 (Ill. App. 1972), the court again upheld the administration's right to order an exam and found that the fact the police commissioners were first made aware of the results of the test prior to conducting their hearing, was not reversible error. The rationale was that since the test results were not admitted into evidence, and since the commissioners were admonished five times not to consider the results, no harm occurred.

In *Madigan v. Police Bd City of Chicago*, 290 N.E. 2d 665 (Ill. App. 1972), it was held that an officer, suspected of intoxication, could be lawfully ordered to submit to a chemical test, and his refusal would justify disciplinary action. A contemporary case, *Slocum v. Fire and Police Commission of City of East Peoria*, 290 N.E. 2d 28 (Ill. App. 1972) specifically held that an officer's disobediance to a command given by a superior officer was grounds for disciplinary action. See also, *Williams v. Police Bd. City of Chicago*, 290 N.E. 2d 669 (Ill. App. 1972).

Finally, on June 6, 1974, a unanimous three-judge appellate court upheld the admission of polygraph evidence before a police commission in a disciplinary case. The specifications charged that Officer Chambliss of the East St. Louis Police Department assisted another officer in an act of rape. Chambliss, his fellow officer and victim were all administered polygraph examinations by the St. Louis, Missouri, Police Department, without apparent objection. The examiner, an operator with more than a year's experience, testified as to the results of the

examinations. The attorney for Chambliss, in his cross- examination, did not challenge the competency of the examiner, but rather dwelt on the results, as they pertained to his client.

Distinguishing *Seneca* and *Perz*, *supra*, on the grounds the operators in those cases had not established their qualifications to administer the exams, the court said:

> In response to a question from a Board member the polygraphist stated that he administered the examination and reached the decision as to the results as a certified polygraphist...Consequently the polygraphist was a competent witness and the results of the test conducted by him could be considered by the Board in making its decision.

The question as to whether the polygraph actually serves as a reliable indicator of veracity was never discussed by the court. *Chambliss v. Bd. of Fire and Police Comr's of East St. Louis*, 312 N.E. 2d 842, 847 (Ill. App. 1974). Undoubtedly the *Chambliss* case will provide a new round of arguments in behalf of the substantive value of the polygraph.

Police chiefs should consider the substantive use of the polygraph, and may wish to bring a test case. It is recommended that the case involve strong evidence of guilt from other sources, so that if a court reverses the trial board or other hearing authority on the admissibility issue, it will sustain the findings under the harmless error doctrine in *Allen v. Murphy*, discussed elsewhere in this issue.

It should be noted that polygraph results are usually admissible in civil and criminal cases, on the merits, when the parties have entered into a stipulation to that effect. See *Peo. v. Hauser*, 85 Cal. App. 2d 686 (1948); *State v. Chambers*, 451 P.2d 27 (Ariz. 1969); *Peo. v. Potts*, 220 N.E. 2d 251 (1966). Recently several courts have admitted test results into evidence without stipulations. In these cases, for the most part, the results were not admitted for the truth or falsity of the statements (the merits); rather, the results were admitted as indicia of the credibility of the witness (impeachment of veracity).

Barry Hill

COMMENTS WITH REGARD TO ASSEMBLY BILL 423 (POLICEMAN'S BILL OF RIGHTS):

Police, because of their inherent authority over others, have long been required to adhere to higher standards of honesty and integrity than the average citizen or employee. This has led many to complain of not having as many rights as others. This bill proposes to grant to all peace officers greater rights and privileges than granted the citizens whom they serve.

A few examples of these certain rights are:

1. A peace officer shall not be compelled to submit to a polygraph examination against his will. There are many court decisions which have held that polygraph examinations during internal investigations are lawful so long as certain guidelines are followed, state personnel regulations notwithstanding.

2. Lockers assigned to a peace officer may not be searched except in the officer's presence, with his consent, and pursuant to a valid search warrant, or, after reasonable notice that a search is to be conducted. There are court decisions on the right to search lockers. Why would an officer object to a search of equipment belonging to his employer unless he has something to hide?

3. There are stringent rules to follow when an interrogation is to be conducted. The officer's address and photograph may not be given to the news media without permission. Does a legislator have these rights under his employer? Whenever an interrogation focuses on matters which are likely to result in punitive action, he may be represented by a person of his choice. Court decisions have held that so long as a case in in the investigative stages, the employee does not have the right to counsel. At a hearing, he does have that right.

There are numerous decisions, regulations, and laws that apply to the rights of all citizens which include police. Peace officers should be willing to abide by the rights accorded to all.

This bill would allow the efforts of sincere police administrators to provide an efficient and effective police service to be subverted. Their investigations into misconduct by officers would be delayed by protracted formalities and paper work in a mockery to any disciplinary system. When disposition of investigations is inordinately delayed, contempt for the system is encouraged and the public suffers thereby.

EXHIBIT D

TO: Personnel Advisory Commission

FROM: James F. Wittenberg
State Personnel Administrator

Refer: May 26, 1976 Agenda

INTERIM REPORT ON POLYGRAPH USAGE

In accordance with the directive of the Commission, the Personnel Division has extensively reviewed the pertinent case authorities regarding the legal status accorded requiring various public employees to undergo polygraph examinations concerning a classified employee's use or abuse of his public trust.

PART I: LEGAL STATUS EVALUATION

In a recent disciplinary matter heard before the Commission, counsel for the respective parties offered opposing interpretations of the import of the United States Supreme Court's decision in Garrity v. New Jersey, 385 U.S. 493, 87 S. Ct. 616, 17 L.Ed. 2d 562 (1967). Therein the Court decided that the protection of the Fifth Amendment prohibited the admission into evidence in a criminal prosecution of incriminating statements obtained from police officers under threat of dismissal from office for failure to answer. The conflict in interpretation is found in the companion case of Spevack v. Klein, 385 U.S. 511, 87 S. Ct. 625, 17 L.Ed 2d 574 (1967), delivered the same day as the Garrity, *supra*, decision. Although Spevack, *supra*, concerned the disbarment of an attorney for invocation of the Fifth Amendment in response to a bar association investigation, Justice Douglas, who had also authored the majority decision in Garrity, *supra*, in footnote three at 516, stated:

> "Whether a policeman, who invokes the privilege [against self-incrimination] when his conduct as a police officer is questioned in disciplinary proceedings, may be discharged for refusing to testify is a question we did not reach."

While the Court in Spevack, *supra*, held in a plurality decision that disbarment could not be used to "water down" the privilege against self-incrimination, Justice Fortas, as swing man, wrote a concurring opinion wherein at 519 he stated:

> "I would distinguish between a lawyer's right to remain silent and that of a public employee who is asked questions specifically, directly, and narrowly relating to the performance of his official duties as distinguished from his beliefs or other matters that are not within the scope of the specific duties which he undertook faithfully to perform as part of his employment by the State. This Court has never held, for example, that a policeman may not be discharged for refusal

EXHIBIT E

in disciplinary proceedings to testify as to his conduct as a police officer. It is quite a different matter if the State seeks to use the testimony given under this lash in a subsequent criminal proceeding. Garrity v. State of New Jersey, [ante, p. 493.] 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed. 2d 562 (1967)."

These initial two decisions were followed in short order by the Supreme Court's ruling in Gardner v. Broderick, 392 U.S. 273, 88 S.Ct. 1913, 20 L.Ed. 2d 1082 (1968). While striking down a New York statute requiring the waiver of immunity from self-incrimination and criminal prosecution under penalty of forfeiture of office, the Court noted at 277 that:

"It is argued that although a lawyer cannot constitutionally be confronted with Hobson's choice between self-incrimination and forfeiting his means of livelihood, the same principle should not protect a policeman. Unlike the lawyer, he is directly, immediately, and entirely responsible to the city or State which is his employer. He owes his entire loyalty to it. He has no other "client" or principal. He is a trustee of the public interest, bearing the burden of great and total responsibility to his public employer. Unlike the lawyer who is directly responsible to his client, the policeman is either responsible to the State or to no one.

We agree that these factors differentiate the situations. If appellant, a policeman, had refused to answer questions specifically, directly, and narrowly relating to the performance of his official duties, without being required to waive his immunity with respect to the use of his answers or the fruits thereof in a criminal prosecution of himself, Garrity v. New Jersey, *supra*, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed. 2d 562 (1967), the privilege against self-incrimination would not have been a bar to his dismissal."

In the companion case of Uniform Sanitation Men Ass'n. v. Commissioner of Sanitation, 392 U.S. 280, 88 S.Ct. 1917, 20 L.Ed. 2d 1089 (1968), decided the same day as Garner, *supra*, the Court again held the New York statute violative of the Fifth Amendment but advised court observers at 284 that:

"As we stated in Gardner v. Broderick, *supra*, 392 U.S. 273, 88 S.Ct. 1913, 20 L.Ed. 2d 1082 (1968), if New York had demanded that petitioners answer questions specifically, directly, and narrowly relating to the performance of their official duties on pain of dismissal from public employment without requiring relinquishment of the benefits of the constitutional privilege, and if they had refused to do so, this case would be entirely different. In such a case, the employee's right to immunity as a result of his compelled testimony would not be at stake. But here the precise and plain impact of the proceedings against petitioners as well as of Section 1123 of the New York Charter was to present them with a choice between surrendering their constitutional rights or their jobs. Petitioners as public employees are entitled, like all other persons, to the benefit of the Constitution, including the privilege against self-incrimination. Gardner v. Broderick, *supra*, Garrity v. New Jersey, *supra*, [385 U.S. 493, 87 S.Ct. 616, 17 L.Ed. 2d 562 (1967)]. *Cf.* Murphy v. Waterfront Commission, 378 U.S. 52, at 79, 84 S.Ct. 1594, 12 L.Ed. 2d 678, (1964).

At the same time, petitioners, being public employees, subject themselves to dismissal if they refuse to account for their performance of their public trust, after proper proceedings, which do not involve an attempt to coerce them to relinquish their constitutional rights."

While some have argued that the comments are simply *obiter dicta* and therefore not the law of the land, Justice Harlan in concurring in Uniform Sanitation, *supra*, succinctly summarized the four cases at 285 as follows:

"I find in these opinions a procedural formula whereby, for example, public officials may now be discharged and lawyers disciplined for refusing to divulge to appropriate authority information pertinent to the faithful performance of their offices. I add only that this is a welcome breakthrough in what *Spevack* [Spevack v. Klein, 385 U.S. 511, 87 S.Ct. 625, 17 L.Ed. 2d 574 (1967)] and *Garrity* [Garrity v. New Jersey, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed. 2d 562 (1967)] might otherwise have been thought to portend."

The United States Circuit Court of Appeals for the Ninth Circuit, which circuit encompasses Nevada within its territorial jurisdiction, has chosen to regard Justices Douglas' and Harlan's comments as the law of the land. Thus in the case of Clifford v. Shoultz, 413 F. 2d 868 (9th Cir. 1969), the Ninth Circuit Court in reference to Gardner, *supra*, and Uniformed Sanitation, *supra*, stated at 875:

"The [Supreme] Court stated, however, that a public employee may be discharged from his job if, without being required to waive immunity, he refuses to answer questions specifically, directly and narrowly related to the performance of his official duties. An employee's invoking of his constitutional privilege against self-incrimination would not, in such case, be a bar to his dismissal from public employment. 392 U.S. at 278 and 283-284, 88 S.Ct. 1082, 1089."

Significantly, Clifford, *supra*, involved the use of a polygraph examination for national security clearance purposes. More factually relevant to the former disciplinary case heard by the Commission is the case of Seattle Police Officers' Guild v. City of Seattle, 80 Wash. 2d 307, 494 P. 2d. 485 (1972). In its decision, the Washington Supreme Court held that the City of Seattle could dismiss or otherwise discipline members of the Seattle Police Department for refusing, on the grounds of the Fifth Amendment privilege against self-incrimination, to answer intra-departmental inquiry questions specifically, directly, and narrowly related to the officer's performance of his official duties. Such personnel action was held permissible provided that the officers were advised that their answers could not be used against them in later criminal proceedings and that refusal to cooperate could result in their dismissal. That the United States Supreme Court meant this interpretation to be placed upon its quartet of cases has been decided in at least three other jurisdictions. In Re Addonizio, 53 N.J. 107, 248 A. 2d 531 (1968); Silverio v. Municipal Court, 355 Mass. 623, 247 N.E. 2d 379, cert. denied 396 U.S. 878, 90 S.Ct. 151, 24 L.Ed. 2d 135 (1969); and Krammerer v. Board of Fire and Police Comm'rs., 44 Ill. 2d 500, 256 N.E. 2d 12 (1970).

In Silverio, *supra*, which was later denied *certiorari* by the United States Supreme Court, the Supreme Judicial Court of Massachusetts held, *inter alia*, at 334:

> "Thus an employee knows that if he fails to divulge information pertinent to the issue of his use or abuse of his public trust he may lose his job. The fact of employment poses the continuing choice of whether to divulge such information. The Constitution of the United States, however, as we understand its construction, does not require that a public employer continue to employ in a position of public trust an employee who declines or renders himself unable to perform the duties of his position on the ground of the constitutional protection against self-incrimination. No threat or pressure of his superior coerces his choice. His choice is his own, even though it may be affected by his expectation that his superiors will perform their own public duties in the light of their appraisal of his conduct.

The investigation of the Division thus having shown that under appropriate circumstances a public employee, typically a police officer, may be disciplined for refusing to answer pertinent job-related questions, the Commission must still address the question of whether refusal to submit to a polygraph examination during an intra-departmental investigation is grounds for dismissal.

Research indicates that only six states have apparently considered this question. In State v. Civil Service Commission of City of Philadelphia, 172 A. 2d 161 (Penn. 1961) it was held that by virtue of (1) the cooperation given by the police officer involved; (2) the lack of specific legislative authority authorizing the use of polygraphs and/or dismissal for failure to submit thereto; and (3) the lack of scientific acceptance of polygraph results, that the employees could not be dismissed for "just cause" for refusing to submit to a polygraph examination. In accord is the Connecticut decision reached in Molino v. Board of Public Safety of City of Torrington, 225 A. 2d 805 (Conn. 1966).

In contrast are decisions in California, Illinois, Louisiana and Washington. In Fichera v. State Personnel Board, 217 Cal. App. 2d 613, 32 Cal. Rptr. 159 (1963), it was held:

> "The polygraph is an extension of the age-old process of assessing the veracity of a witness, by scrutinizing his facial expression, rebescence, tremors, evasion of meeting the eye, and the like. It works through externals and is quite distinct from drug induced revelation, hypnosis, or any other form of narco-analysis. In the limited field of cases such as this one, and those of the prior cases cited above, we find no deprivation of constitutional or legal rights.
>
> "It may be conceded that there is a considerable degree of fallibility with the polygraph (see Sholnick, Scientific Theory and Scientific Evidence: An Analysis of Lie-Detection, 70 Yale L.J. 694). It is not considered to have enough reliability to justify the admission of expert testimony in the courts based on its results, and a person's willingness or unwillingness to take the test is without enough probative value to justify its admission. (People v. Carter, 48 Cal. 2d 737, 752, 312 P. 2d 655.) It was recognized in the Frazee case

[France v. Civil Service Board, 170 Cal. App. 2d 333, 338 P. 2d 943 (1959)], however, that it does not follow that the tests are completely without value. (170 Cal. App. 2d at p. 335, 338 P. 2d at pp. 944-945). The test might have proved useful in limiting and channeling the investigation in this case, in which three officers besides appellants were directed to take the tests, and acceded. It might have been an instrument of exculpation and vindication, on the one hand, or of more intensive investigation of the subjects of the test, on the other. We cannot, of course, tell what would have been the ruling of the State Personnel Board, or what our own ruling might have been, had the tests been taken and had produced results considered damaging by appellants' superiors. We do hold, however, that appellants were not entitled to withhold this means of investigation and at the same time retain their positions as officers of the California State Police.

While appellant's refusal to obey the order is not evidence of guilt or of knowledge of the identity of the guilty party, he may not be permitted to refuse to take the polygraph test in view of his sworn duty to cooperate in the investigation of crime. Under all the circumstances in this matter, we find that the order was reasonable."

In Coursey v. Board of Fire and Police Commissioners, 90 Ill. App. 3d 31, 234 N.E. 2d 339 (1967), it was similarly held at 344 that:

"Effective and efficient operation of a police department requires that allegations of police misconduct be thoroughly investigated. The polygraph machine can be a useful investigative tool when the test is skillfully prepared and is administered and interpreted by a qualified person; while it is not accurate to the degree that absolute judgments can be made as to the veracity of the person tested [People v. Triplett, 37 Ill. 2d 234, 226 N.E. 2d 30 (1967)] the results are often reliable within recognized limits. Thus, for example, the results of a polygraph examination may be of help in narrowing the field of persons suspected of an offense or may assist in a determination whether to commence disciplinary action when, as here, there is an accusation against a police officer which he insists is untrue. Be that as it may, the issue is not the accuracy of a polygraph examination, but Coursey's failure to take an examination."

In addressing the issue of the lack of specific legislation allowing polygraph examinations, the Illinois decision furthermore provided at 344 that:

"Although no rule of the Skokie Police Department specifically covers polygraph examinations, one of the department's rules is that the officer assigned to investigate a complaint by a citizen against a member of the department:

> "***shall conduct a thorough and accurate investigation. Such investigation shall include formal statements from all parties concerned, when necessary and pertinent, ***and all other information bearing on the matter."

The authority of the police chief to order an officer to take a polygraph examination, and to determine when the order should be given, can be derived by implication from this rule. *But more important than this, the authority of a police chief under proper circumstances to issue such an order, like any other sound and reasonable order for the good of the service, is inherent in his position."* [emphasis added]

In Roux v. New Orleans Police Department, 223 So. 2d 905 (La. App.) aff'd 254 La. 815, 227 So. 2d 148 (1969), cert. denied 397 U.S. 1008, 90 S.Ct. 1236, 25 L.Ed. 2d 421 (1970), the Louisiana Supreme Court upheld a police officer's dismissal for refusing to undergo a polygraph examination. After quoting extensively with approval the California decision in Fichera, *supra,* the Court held at 912 that:

"While appellant's refusal to obey the order is not evidence of guilt or of knowledge of the identity of the guilty party, he may not be permitted to refuse to take a polygraph test in view of his sworn duty to cooperate in the investigation of crime."

Finally, in Seattle Police Officers' Guild, *supra,* at 493, the Washington Supreme Court in upholding a dismissal for refusal to submit to a polygraph examination, state at 493:

"[W]e conclude and hold that if, in the exercise of prudent judgment, the investigating authority determines it reasonably necessary to utilize the polygraph examination as an investigatory tool to test the dependability of prior answers of suspected officers to questions specifically, narrowly, and directly related to the performance of their official duties, then, such investigating authority may properly request such officers to submit to a polygraph test under pain of dismissal for refusal.

Bearing in mind that the reasonableness of an investigating authority's request, under varying circumstances, can be subjected to judicial scrutiny and abuses of discretion thereby curbed, coupled with the fact that, in any event, the results of a polygraph test and a subject's willingness or unwillingness to take the test cannot be admitted into evidence in subsequent criminal proceedings, we see no constitutional or legal barrier to the conclusion we have reached."

Cf. Clifford, *supra;* see also Kammerer v. Board of Fire and Police Comm'rs., 44 Ill. 2d 500, 256 N.E. 2d 12 (1970), wherein the Illinois Supreme Court held that "If a public employee refuses to testify as to a matter concerning which his employer is entitled to inquire, he may be discharged for insubordination****"; Chambliss v. Board of Fire and Police Comm'rs. of East St. Louis, 20 Ill. App. 3d 24, 312 N.E. 2d 842 (1974) citing Coursey, *supra,* and Kammerer, *supra,* with approval for the proposition that a dismissal may be based upon insubordination for refusing to testify as to matters which his employer is entitled to testify.

All actions taken by the Reno Police Department against any of its employees will follow Civil Service Rules and Regulations.

Section II. Use of Polygraph: Interdepartmental Investigations

A. The polygraph is employed only after a complete and thorough investigation fails to obtain adequately all of the facts needed upon which to make a final decision in a specific case.

B. If a complaint is filed against a police officer by a citizen, and it is apparent that either the complainant or the officer is not being completely truthful about the facts of the case, then consideration will be given to the use of the polygraph.

C. Should a police officer refuse to take a polygraph examination, and reasonable cause exists to warrant the ordering of such an examination, the officer shall be considered insubordinate.

Section III. Interviews

A. Interview shall take place at the Reno Police Department.

B. Interviews shall be done under circumstances devoid of intimidation or coercion, and shall not otherwise violate the officers' Constitutional rights. The officers shall not be subjected to abusive language.

C. Division Commanders shall be notified of all personnel investigations involving their subordinates. Division Commanders shall provide all assistance necessary, as requested by the investigator.

D. All questions directed to the officer under the interview shall be asked by and through one interviewer at any one time.

AB 451 – League of Women Voters by
Daisy J. Talotta, State President

At the beginning of this legislative session, I personally observed the report on sex-discriminatory laws being given before this committee and distinctly remember Mrs Hayes making a motion that bills (plural) be drafted so that each issue could be considered on its merits. Today, we are faced with trying to testify to a bill containing many subjects — many of which are not even related in subject matter. We believe this represents a rather superficial approach to many of the questions involved and does not reflect a serious attempt to really resolve many complex problems that need major attention. For example, this committee at the 1975 session made many improvements in rape laws but there is still need for more work to be done such as re-defining rape as a crime of sexual battery giving protection to both males and females from such acts of violence — I specifically remember testifying to the need for protection of young boys as well as the ~~proper~~ protection of girls. AB 451 does not really address these problems — ~~It does not~~ The same can be said for divorce laws – a failure to address many real problems – The League, at this point, can only express regret at the approach being taken.

But looking at specific areas of AB 451 as written, we do have specific comments on certain portions

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of the bill.

Page 2 — lines 2 through 42. The League wonders why these regulations of Episcopal Churches are included in Nevada statutes at all. The State should not, in our opinion, be in the Church business — The provisions as written here are probably a violation of the federal constitution and in our opinion, should probably be deleted entirely. The League would also refer you to the case of McClure vs Salvation Army, 409 U.S. 896 (1973) which we feel sheds considerable light on the question of sexual discrimination within churches. In this particular case, the court held that Title VII, the anti-discrimination labor laws, could not read "matters of church administration — matters of singular ecclesiastical concern", etc. In any case, this section of AB 451 would seem to be archaic and no longer needed.

One of the chief reasons for League support of the ERA was our concern for the homemaker and the widow and our belief that the ERA would have been of major benefit to this particular group of women. We believe that it is absolutely essential that the law must clearly recognize that the homemaker's contribution in terms of homemaking and child care services be recognized as having financial value ~~to~~ to be taken into consideration in terms of entitlement to support and in divorce cases. When this principle is legally recognized, there is

no reason for women to fear equal responsibility for child support for the services they render will be given recognition by the court and the court should be free to make determinations based on the welfare of the child. Under a State ERA, the Pennsylvania Supreme Court ruled in 1974 that child support should be based on the basis of each spouses ability to contribute and did recognize the monentary value of homemaking and child care services. To the degree that AB #51 deals with this subject, we commend it but we feel more in depth approaches should be taken. We do, however, object to the wording on Page 5, lines 18 and 19, for we feel the language is a tendency to reverse discrimination and would suggest an amendment to state:

Preference in custody shall not be given either parent because of his or her sex

or possibly just deletion of the sentence.

Page 15, lines 19 and 35. Why the disparity based on age? Even though under AB 451, both male and females have been made prostitutes, and in the surface sense, "equality" would then exist in the statutes, the age difference maintained appears to be based on a traditional thought that a female is adult at age 18 and a male at age 21. It seems absurd to legalize a prostitute selling services

at age 18, but forbidding purchase of such services until age 21. The League feels this is again revision of law in a hasty fashion without adequate time and attention or serious thought to the entire problem being considered.

On Page 18 – beginning line 39 – fails to deal with a problem of which we are aware. Many married women use a hyphenated married name, a combination of her name and her husband's name. Some married women, for business or other reasons, ~~use~~ retain their maiden names in marriage. Yet we do know of at least one instance in which a registrar of voters advised a would-be candidate that, if she ran for office, she would be required to use her husband's name. Yet, I believe there is no such law on the books, and that Flora Duncan probably now under her name rather than her husband's. It happened in the case where the would-be candidate would have liked to have run, she would not have been a candidate for other reasons, having just changed her party affiliation, but regardless of that, perhaps the committee should consider a prohibition against discrimination based solely on required usage of the husband's name.

The League is also concerned about the failure to address discrimination in pension laws relating to widows. Again, we stress

the community of the family and the usual contribution of the family to the pension fund, recognizing that that contribution has been a sacrifice of finances by both the husband & wife, even though the wife was not an employee. Yet we find provisions that state such things as "if the husband dies before retirement, the wife receives no pension or annuity." I can personally testify to this problem. My own husband died 3 days after retirement for permanent disability and during that 3 days, his death was expected at any moment. Had the retirement board not met and given him emergency retirement while he was still alive, I would have been denied the income I live on today, even though the pension is based on 30 years of service. There are many inequities in the law relating to widows that we feel need study and correction which AB 451 fails to address.

Finally, we are concerned about residency requirements that are not addressed. Why should it be assumed that a woman's residency follows her husband (based on common law)? Let's take a hypothetical case — Suppose a husband decides to desert his wife & moves in Cal. For some reason — maybe she has a good job — maybe he doesn't want her to follow him — ~~he refuses [illegible] to join him and~~ ~~[illegible] community, in which case [illegible]~~

however, because of the Nevada common law practice of a wife's residency she may become liable for California income taxes even though she still lives in Nevada; she suddenly finds she is forced to pay out-of-state tuition at the University of Nevada, and may even be denied the right to vote in Nevada. Certainly this is another whole area needing to be addressed. In short, we feel AB 451, while taking a first step to bite and piece of correcting discriminatory legislation, must be regarded as just that — "a small bit." The League hopes to see much more study of this problem by this legislative body and much more consideration of recommendations found in the reports that resulted from the Governor's Commission on Status of People States of Nevada. We commend to your attention the study of domestic law written by Phyllis Atkins and the ~~of~~ references given in that report. At the same time, we commend those legislator and this committee where separate laws addressing ~~as~~ problems in more in-depth fashion have been drafted and introduced & considered.

Fiscal Impact.

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RECOMMENDATIONS BY THE CITIZENS' ADVISORY COMMITTEE STUDYING SEXUAL DISCRIMINATION IN NEVADA'S LAWS:
LCB BULLETIN NO. 77-16

HTTP://WWW.LEG.STATE.NV.US/LCB/RESEARCH/1977INTERIMREPORTS/BULLETIN77-16.PDF

Mr. chairman,

My name is Ione Minister and I am from Yerington.

I was a member of the Citizens Advisory Committee which worked on the recommendations contained in this bill, A.B. 451. I support passage of this bill.

The seventy sections contained in the bill represent very comprehensive coverage of the study done by the advisory committee. It was recommended by our committee that a series of small bills be submitted, but obviously this bill is not by any means a small bill.

I have studied the many sections fo this bill and I have compared the suggested changes with the results of the advisory committee's work, and find that it accurately reflects the opinion of the advisory committee who did the study.

The bill does not cover the entire results of the committee's work, but I believe that what is in the bill will achieve and reflect that Nevada law shall apply eqully to men and to women. I believe that the people of this state of Nevada will benefit from the recommendations in this Act I would also hope further that what has been omitted from this bill will at sometime in the future be subject to further study and recommednation as to revisions in Nevada law.

As a mbmer of the advisory committee to study laws pertaining to sexual discrimination, I urge your favorable consideration of A. B. 451.

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Principal Church affairs were of low priority
Natural persons" reference P.23

EXHIBIT H

PROPOSED AMENDMENTS TO AB 173
Residential Landlord and Tenant Act

SUMMARY: Amend the summary to read "Enacts Residential Landlord and Tenant Act."

TITLE: Amend the title by deleting the following phrase from lines 2-3 thereof: "declaring state public policy respecting discrimination in housing based on marital status;"

SEC. 2 Delete line 12, page 1, and insert:

"Sec. 2. This chapter may be cited as the Residential Landlord and Tenant Act."

"(New) Sec. 2.1. The legislature finds and declares that the business of renting dwelling units, particularly the contractual relationship between the landlord and the tenant, affects the public interest of this state."

"(New) Sec. 2.2. 1. This Act shall be liberally construed and applied to promote its underlying purposes and policies.

2. The underlying purposes and policies of this Act are:

(a) to simplify, clarify, modernize and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants; and
(b) to encourage landlords and tenants to maintain and improve the quality of housing."

"(New) Sec. 2.3. 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 cause supplement its provisions."

"(New) Sec. 2.4. 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."

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"(New) Sec. 2.5. 1. 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.

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

"(New) Sec. 2.6. A claim or right arising under this Act or on a rental agreement, if disputed in good faith, may be settled by agreement."

SEC. 3 Delete line 14, page 1, and insert:

"the terms defined in sections 3.5 to 19, inclusive, of this act have the"

"(New) Sec. 3.5. "Abandoned Property" means any property left unattended for a period of 30 days following the termination of a lease or the end of a rental period, provided the owner of such property had not indicated an expressed intent to return for it.

SEC. 6 Delete lines 5 to 6, page 2, and insert:

"1. Nonpayment of rent.
2. Nonpayment of utility charges if the land-"

Delete lines 10-11, page 2, and insert:

"(a) Basic obligations imposed on the tenant by section 37 of this act;
(b) Valid rules or regulations established pursuant to section 38 of this act; or"

SEC. 8 Delete line 17, page 2, and insert:

"Sec. 8. 'Dwelling' or 'dwelling unit' means a structure or the"

Delete lines 22 to 31, page 2.

"(New) Sec. 8.5. "Exclude" means to evict or to prohibit entry by locking doors or by otherwise blocking or attempting to block entry. The term also means to make a dwelling unit uninhabitable by interrupting or causing the interruption of electric, gas, water or other essential services."

SEC. 9 "(New) Sec. 9.5. "Landlord" means the owner, 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 Sections 30 or 31 of this Act."

SEC. 10 Delete lines 34 to 47, page 2.

SEC. 16 Delete lines 21 to 25, page 3, and insert:

"lord under the rental agreement."

SEC. 19 Delete line 35, page 3, and insert:

"to occupy a dwelling unit to the exclusion of others."

SEC. 20 Delete line 36, page 3, and insert:

"Sec. 20. 1. Subject to the limitation contained in subsection 2, this chapter applies to, regulates and determines rights,"

Insert after line 39, page 2.

"(New) Sec. 20. 2. Except for the provisions of sections 2-25, inclusive, 27, 28, 34, 36-40, inclusive, 48-54, inclusive, 56, 60, 60.5, 62, and 63, this chapter does not apply to a single-family house if the owner does not own more than three such single-family houses at any one time and the house was rented without the use in any manner of the rental facilities or services of any real estate broker, real estate broker-salesman or real estate salesman licensed under Chapter 645 of NRS."

SEC. 24 Delete lines 38 to 49, page 4, and lines 1 to 9, page 5, and insert:

"Sec. 24. Any written agreement for the use and occupancy of a dwelling unit or premises shall be signed by the landlord or his agent and the tenant or his agent, and a signed copy shall be delivered to the tenant.

1. The rental agreement shall contain, but shall not be limited to provisions relating to the following subjects:

(a) Duration of the agreement.
(b) Amount of rent and the manner and time of its payment.
(c) Occupancy by children or pets.
(d) Services included with the dwelling 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) Inspection rights of the landlord as governed by this chapter.
(i) A listing of persons or numbers of persons who are to occupy the dwelling.
(j) Respective responsibilities of the landlord and the tenant as to the payment of utility charges.
(k) A separately signed record of the inventory and conditions of the premises under the exclusive custody and control of the tenant.

2. Any inventory, listing or other form required by subsection 1 shall be firmly affixed to the contract or lease.

3. In the absence of a written rental agreement there shall be a rebuttable presumption that:

(a) There are no restrictions or limitations on occupancy by children or pets;
(b) All maintenance and waste removal services are provided without charge;
(c) There are no charges for partial or late payment of rent or for the return of dishonored checks; and
(d) The tenant has left the premises in the same condition, other than for normal wear, in which he found them.

4. (a) It is unlawful for any landlord to use any written contract or lease covering the rental or lease of any dwelling unit subject to the provisions of this section unless such written contract or lease complies with the requirements of subsection 1.
(b) Any device or stratagem intended to avoid the requirements of this section shall be void.

5. In the absence of any agreement, either written or oral, the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit.

6. Rent is payable without demand or notice at the time and place agreed upon by the parties.

Unless otherwise agreed, rent is payable at the dwelling unit and periodic rent is payable at the beginning of any term of one month or less and otherwise in equal monthly installments at the beginning of each month. Unless otherwise agreed, rent is uniformly apportionable from day-to-day.

7. Unless the rental agreement fixes a definite term, the tenancy is week-to-week in case of a tenant who pays weekly rent, and in all other cases month-to-month."

SEC. 25 Delete line 16, page 5, and insert:

"ment may provide that reasonable attorney's fees may be awarded to the prevailing"

Delete lines 21 to 23, page 5, and insert:

"(e) Agrees to give the landlord a different notice of termination than the landlord is required to give to the tenant."

SEC. 26 Delete lines 31 to 44, page 5.

SEC. 27 Delete lines 1 to 17, page 6, and insert:

"(c) Costs of necessary cleaning.

2. "Security" does not include any payment, deposit or fee to secure an option to purchase the premises.

Delete lines 25 and 26, page 6, and insert:

"wear and to pay the costs of necessary cleaning. The landlord shall provide the tenant with a detailed itemized written accounting of the disposition of the security."

Delete line 29, page 6, and insert:

"personally at the place of payment of rent, or by mailing it to him at his pres-"

Delete line 48, page 6, and insert:

"repayment of the money owed to the tenant together with damages in an amount equal to three times the amount wrongfully withheld and reasonable attorney's fees."

SEC. 28 Delete lines 7 and 8, page 7, and insert:

"The tenant may refuse to make any payment until the landlord tenders to him the requested receipt for that payment."

SEC. 29 Delete lines 9 to 29, page 7.

SEC. 30 Delete line 38, page 7, and insert:

"(3) The principal or corporate owner, or alternatively, if the name and address"

Delete line 40, page 7, and insert:

"are located, the landlord shall inform the tenant in writing"

SEC. 32 Delete line 18, page 8, and insert:

"rental agreement and the provisions of section 33"

SEC. 33 Delete lines 19 to 37, page 8, and insert:

"Sec. 33. 1. A landlord shall at all times during the tenancy maintain the dwelling unit in a habitable condition. For purposes of this section, a dwelling unit shall be considered uninhabitable if it substantially lacks:

(a) Effective waterproofing and weather protection of roof and exterior walls, including windows and doors;
(b) Plumbing facilities which conform to applicable law in effect at the time of installation, and maintained in good working order;
(c) A water supply approved under applicable law, which is:

(1) under the control of the tenant or landlord and is capable of producing hot and cold running water;
(2) furnished to appropriate fixtures; and
(3) connected to a sewage disposal system approved under applicable law and maintained in good working order to the extent that the system can be controlled by the landlord;

(d) Adequate heating facilities which conform to applicable law at the time of installation and maintained in good working order;
(e) Electrical lighting with wiring and electrical equipment which conform to applicable

law at the time of installation and maintained in good working order;
(f) Building, grounds and appurtenances at the time of the commencement of the rental agreement in every part plean, sanitary and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin, and all areas under control of the landlord kept in every part clean, sanitary and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin;
(g) An adequate number of appropriate receptacles for garbage and rubbish in clean condition and good repair at the time of the commencement of the lease or rental agreement, and the landlord shall provide and maintain appropriate serviceable receptacles thereafter and arrange for their removal unless the parties by agreement provide otherwise;
(h) Floors, walls, ceilings, stairways and railings maintained in good repair;
(i) Ventilating, air conditioning and other facilities and appliances, including elevators, maintained in good repair if supplied or required to be supplied by the landlord; or
(j) Safety from the hazards of fire.

2. The landlord and tenant may agree that the tenant is to perform specified repairs, maintenance tasks and minor remodeling only if:

(a) The agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord;
(b) The agreement does not diminish the obligations of the landlord to other tenants in the premises; and
(c) The terms and conditions of the agreement are clearly and fairly disclosed, and adequate consideration for the agreement is specifically stated.

3. The landlord may not condition his performance of any obligation under the rental agreement or this chapter on performance by the tenant of the separate agreement described in subsection 2."

SEC. 35 Delete lines 41 to 43, page 8.

SEC. 36 Delete lines 48 to 49, page 8, and insert:

"unit subject to the rental agreement."

SEC. 38 Delete line 34, page 9, and insert:

"into the rental agreement or after it is adopted in accordance with this section."

Delete line 38, page 9, and insert:

"not given 60 days advance written notice of it in the case of a year to year tenancy, or 30 days in the case of a tenancy for a shorter period."

SEC. 41 Delete lines 37 to 38, page 10, and insert:

"dwelling unit in a habitable condition as required by section 33 of this act, the tenant shall deliver a written notice to the"

Delete line 48, page 10, and insert:

"(b) Recover actual damages and reasonable attorney's fees and obtain"

Delete lines 13 to 15, page 11, and insert:

"safety.

5. Rights of the tenant under this section do not arise until he has given notice to the landlord as required under subsection 1."

SEC. 42 Delete lines 18 to 21, page 11, and insert:

"habitable condition as required by section 33 of this act, and the reasonable cost of compliance or repair"

Delete line 26, page 11, and insert:

"within 14"

Delete lines 35 to 37, page 11, and insert:

"by a named person or firm or class of persons or firms qualified to do the work, and the tenant must comply with the specification unless the named person or firm is unavailable or unable to perform the repairs, in which case, the tenant must use another qualified repairman."

Insert after line 44, page 11.

"5. Rights of the tenant under this section do not arise until he has given notice to the landlord as required under subsection 1."

SEC. 43 Delete line 2, page 12, and insert:

"deposit, fee or charge to secure the execution of the rental agreement; or"

Delete lines 7 and 8, page 12, and insert:

"lord has exercised due diligence to evict the holdover tenant or"

SEC. 44 Delete line 14, page 12, and insert:

"Sec. 44. 1. If the landlord willfully or negligently fails to supply heat, running water, hot"

Delete line 17, page 12, and insert:

"tation, the tenant shall give written notice to the landlord specifying the"

Delete line 21, page 12, and insert:

"may, in addition to any other remedies to which he is entitled:"

Delete line 24, page 12, and insert:

"sonable cost from the rent; or"

Delete line 28, page 12, and insert:

"(c) Procure comparable substitute housing during the period of the land-"

Delete lines 31 to 32, page 12, and insert:

"of comparable substitute housing in excess of the rent abated."

Delete line 36, page 12, and insert:

"ceed under section 41 or 42 of this act as to that breach."

SEC. 45 Delete line 47 to 48, page 12, and insert:

"of this act or terminate the rental agreement and, in each case, in addition to any other remedy to which he is entitled, recover damages in an amount equal to three times the actual damages sustained by him,"

SEC. 46 Delete line 5, page 13, and insert:

"unit is substantially impaired, the tenant may, in addition to any other remedy to which he is entitled:"

Delete line 7, page 13, and insert:

"7 days thereafter of his intention to terminate the rental agreement, in"

Delete lines 13 to 15, page 13.

Delete line 19, page 13, and insert:

"occupancy shall be made as of the date the premises are vacated."

SEC. 47 Delete line 26, page 13, and insert:

"attorney's fees or $25, whichever is greater."

SEC. 50 Delete line 50, page 13, and line 1, page 14, and insert:

"efforts to comply within 14 days after written notice by the landlord specifying the"

SEC. 52 Delete lines 21 to 22, page 14, and insert:

"For purposes of this chapter, in the absence of notice of the fact of abandonment as defined by section 22, it is presumed that the tenant has abandoned a"

SEC. 53 Delete line 32, page 14, and insert:

"or the end of the rental period and may charge and collect reasonable and actual inventorying, moving and"

Delete lines 43 to 44, page 14, and insert:

"3. Vehicles, as defined in chapter 482 of NRS, shall be disposed of pursuant to the provisions of NRS 487.210 to 487.270, inclusive, adapted to the purposes of abandonment on private property."

SEC. 54 Delete line 47, page 14, and insert:

"nation, the landlord may bring any action for possession and for rent, and if the tenant's"

SEC. 55 Delete lines 5 to 9, page 15.

SEC. 56 Delete line 15, page 15, and insert:

"1. By an action for possession or other"

SEC. 57 Delete lines 21 to 44, page 15.

SEC. 58 Delete lines 45 to 50, page 15, and lines 1 to 4, page 16 and insert:

"Sec. 58. 1. In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may defend and counterclaim for any amount he may recover under the rental agreement or this Act. In that event the court from time to time may order the tenant to pay into court all or part of the rent accrued and thereafter accruing, and shall determine the amount due to each party. 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 tenant in the action for possession. If the defense or counterclaim by the tenant is without merit and is not raised in good faith, the landlord may recover reasonable attorney's fees.

2. In an action for rent when the tenant is not in possession, he may counterclaim as provided in subsection 1 but is not required to pay any rent into court.

SEC. 59 Delete lines 5 to 11, page 16.

SEC. 60 "(New) Sec. 60.5. 1. It is unlawful for a landlord to exclude or attempt to exclude a tenant from a dwelling unit in any manner other than that provided in this chapter or in NRS 40.215 to 40.420, inclusive, when applicable.

2. Whoever violates the provisions of subsection 1 is guilty of a misdemeanor."

SEC. 61 Delete line 42, page 16, and insert:

"rental agreement thereby requiring the landlord to wait until the time period provided under section 38 has elapsed for the rule or regulation to become enforceable against the tenant."

Delete line 5, page 17, and insert:

"(b) The tenant has provided cause, as

defined in section 6 of this act, for the landlord's action; or

SEC. 62 Delete line 16, page 17, and insert:

"forcible unless created pursuant to a lawful court order after notice and the opportunity for a hearing."

SEC. 64 Delete line 50, page 17, and line 1, page 18, and insert:

"of at least 30 days, except for a notice of at least 7 days in cases of tenancies from week to week, and 60 days in cases of tenancies from year to year."

Delete line 48 to 49, page 18, and line 1, page 19, and insert:

"of the peace shall contain:

(1) The date the tenancy or the rental agreement was allegedly terminated."

Insert after line 3, page 18:

(3) The date the tenancy commenced.
(4) The term of the tenancy, whether week to week, month to month, year to year, or otherwise.
(5) The date the tenant became guilty of an unlawful detainer.
(6) The facts establishing that the tenant's conduct constituted an unlawful detainer.
(7) The date of service of any written notice required under this section.
(8) A statement that the written notice was served on the tenant in accordance with NRS 40.280.
(9) A copy of the written notice served on the tenant.
(10) A copy of the signed written rental agreement, if any.

SEC. 66 Delete lines 6 to 18, page 20.

SEC. 67 Delete lines 19 to 28, page 20.

SEC. 70 Delete lines 46 to 48, page 20, and lines 1 to 3, page 21.

A. B. 173

ASSEMBLY BILL NO. 173—ASSEMBLYMEN VERGIELS, SCHOFIELD, DEMERS, KISSAM, JEFFREY, HORN, MANN, HARMON, HAYES, SENA, DREYER, CRADDOCK, BENNETT, GOMES, CHANEY, MELLO, MURPHY, ROBINSON, WAGNER, KOSINSKI, BANNER, PRICE, POLISH, GOODMAN, DINI, HICKEY, GLOVER, HOWARD AND MOODY

JANUARY 27, 1977

Referred to Committee on Judiciary

SUMMARY—Enacts ~~[illegible]~~ Residential Landlord and Tenant Act. (BDR 10-1106)

FISCAL NOTE: Local Government Impact: No.
State or Industrial Insurance Impact: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to residential landlord-tenant relationships; providing rights, obligations and remedies; ~~[illegible]~~, repealing certain statutory liens of landlords of rental housing; and providing other matters properly relating thereto.

WHEREAS, The legislature finds and declares that the business of renting dwelling units, particularly the contractual relationship between the landlord and the tenant, affects the public interest of this state; now, therefore,

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Title 10 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 63, inclusive, of this act.

SEC. 2. This chapter may be cited as the ~~[illegible]~~ Residential Landlord and Tenant Act.

"(New) Sec. 2.1. The legislature finds and declares that the business of renting dwelling units, particularly the contractual relationship between the landlord and the tenant, affects the public interest of this state."

EXHIBIT J

"(New) Sec. 2.2. 1. This Act shall be liberally construed and applied to promote its underlying purposes and policies.

2. The underlying purposes and policies of this Act are:

(a) to simplify, clarify, modernize and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants; and
(b) to encourage landlords and tenants to maintain and improve the quality of housing."

"(New) Sec. 2.3. 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 cause supplement its provisions."

"(New) Sec. 2.4. 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."

"(New) Sec. 2.5. 1. 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.

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

"(New) Sec. 2.6. A claim or right arising under this Act or on a rental agreement, if disputed in good faith, may be settled by agreement."

3.5

SEC. 3. As used in this chapter, unless the context otherwise requires, the terms defined in sections [illegible] to 19, inclusive, of this act have the meanings ascribed to them in those sections.

"(New) Sec. 3.5. "Abandoned Property" means any property left unattended for a period of 30 days following the termination of a lease or the end of a rental period, provided the owner of such property had not indicated an expressed intent to return for it.

SEC. 4. "Action" includes counterclaim, cross-claim, third-party claim or any other proceeding in which rights are determined.

SEC. 5. "Building, housing and health codes" include any law, ordinance or governmental regulation concerning:

1. Health, safety, sanitation or fitness for habitation; or

1 (b)

2. The construction, maintenance, operation, occupancy, use or appearance,

of any premises or dwelling unit.

SEC. 6. A tenancy is terminated with "cause" for:

1. Nonpayment of rent.

2. Nonpayment of utility charges if the landlord customarily pays such charges and submits a separate bill to the tenant.

3. Failure of the tenant to comply with:

(a) Basic obligations imposed on the tenant by section 37 of this act;

(b) Valid rules or regulations established pursuant to section 38 of this act; or

(c) Valid provisions of the rental agreement.

4. Condemnation of the dwelling unit.

SEC. 7. "Court" means the district court, justice's court or other court of competent jurisdiction situated in the county or township wherein the premises are located.

SEC. 8. "Dwelling" or "dwelling unit" means a structure or the part of a structure that is occupied as, or designed or intended for occupancy as, a residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

"(New) Sec. 8.5 "Exclude" means to evict or to prohibit entry by locking doors or by otherwise blocking or attempting to block entry. The term also means to make a dwelling unit uninhabitable by interrupting or causing the interruption of electric, gas, water or other essential services."

SEC. 9. "Good faith" means honesty in fact in the conduct of the transaction concerned.

"(New) Sec. 9.5 "Landlord" means the owner, 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 Sections 30 or 31 of this Act."

SEC. 11. "Normal wear" means that deterioration which occurs without negligence, carelessness or abuse of the premises, equipment or chattels by the tenant, a member of his household or other person on the premises with his consent.

SEC. 12. "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.

SEC. 13. "Owner" means one or more persons, jointly or severally, in whom is vested:

1. All or part of the legal title to property; or

2. All or part of the beneficial ownership, and a right to present use and enjoyment of the premises.

The term includes a mortgagee in possession.

SEC. 14. "Person" includes a natural person or an organization.

SEC. 15. "Premises" means a dwelling unit and the structure of which it is a part, facilities, furniture, utilities and appurtenances therein and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant.

SEC. 16. "Rent" means all periodic payments to be made to the landlord under the rental agreement, ~~in consideration for the occupancy of the dwelling unit but does not include late fees, penalties, damage deposits, cleaning deposits, pet deposits, purchase or similar payments not related to occupancy of the dwelling unit.~~

SEC. 17. "Rental agreement" means any oral or written agreement for the use and occupancy of a dwelling unit or premises.

SEC. 18. "Single-family house" means a structure maintained and used as a single dwelling unit. Although a dwelling unit shares one or more walls with another dwelling unit, it is a single-family house if it has direct access to a street or thoroughfare and its heating facilities, hot water, ventilating and air cooling equipment and any other essential facility or service is completely separate from that of any other dwelling unit.

SEC. 19. "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit. In the exclusion of others.

1. Subject to the limitation contained in subsection 2, this

SEC. 20. ~~This~~ chapter applies to, regulates and determines rights, obligations and remedies under a rental agreement, wherever made, for a dwelling unit or premises located within this state, except a rental agreement subject to the provisions of NRS 118.230 to 118.290, inclusive.

"(New) Sec. 20. 2. Except for the provisions of sections 2-25, inclusive, 27, 28, 34, 36-40, inclusive, 48-54, inclusive, 56, 60, 60.5, 62, and 63, this chapter does not apply to a single-family house if the owner does not own more than three such single-family houses at any one time ~~and the~~ house was rented without the use in any manner of the rental facilities or services of any real estate broker, real estate broker-salesman or real estate salesman licensed under Chapter 645 of NRS."

SEC. 21. The following arrangements are not governed by this chapter if entered into in good faith and not created to avoid the application of this chapter:

1. Residence in an institution, public or private, incidental to detention or the provisions 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 the purchaser's 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. Occupancy in a hotel or motel for less than 30 consecutive days unless the occupant clearly manifests an intent to remain for a longer continuous period.

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

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

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

SEC. 22. 1. A person has notice of a fact if:

(a) He has actual knowledge of it;

(b) He has received a notice or notification of it; or

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

2. Written notices to the tenant prescribed by this chapter shall be served in the manner provided by NRS 40.280.

3. Written notices to the landlord prescribed by this chapter may be delivered at the place of business of the landlord designated in the rental agreement or at any place held out by the landlord as the place for the receipt of communications or rental payments from the tenant and are effective from the date of delivery.

SEC. 23. 1. If the court, as a matter of law, finds that:

(a) A rental agreement or any of its provisions 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.

(b) A settlement in which a party waives or agrees to forego a claim or right under this chapter 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.

2. If unconscionability is put in 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 its determination.

~~SEC. 24. Any agreement for the use and occupancy of a dwelling unit or premises for a consideration for a period of 1 calendar month or longer without regard to the payment of rent weekly, monthly or otherwise, shall be in writing and shall be signed by the landlord or his agent and the tenant or his agent. The rental agreement shall contain but is not limited to provisions relating to the following subjects:~~

~~1. Duration of the agreement.~~

~~2. Amount of rent and the manner and time of its payment.~~

~~3. Occupancy by children or pets.~~

~~4. Services included with the dwelling rental.~~

~~5. Fees which may be required and the purposes for which they are required.~~

"Sec. 24. Any written agreement for the use and occupancy of a dwelling unit or premises shall be signed by the landlord or his agent and the tenant or his agent, and a signed copy shall be delivered to the tenant.

1. The rental agreement shall contain, but shall not be limited to provisions relating to the following subjects:

(a) Duration of the agreement.
(b) Amount of rent and the manner and time of its payment.
(c) Occupancy by children or pets.
(d) Services included with the dwelling rental.

(e) Fees which may be required and the purposes for which they are required.

~~(e) Deposits which may be required and the conditions for their refund.~~
~~(f) Charges which may be required for late or partial payment of rent or for return of any dishonored check.~~
~~(g) Inspection rights of the landlord as governed by this chapter.~~
~~(h) A listing of persons or numbers of persons who are to occupy the dwelling.~~
~~(i) Respective responsibilities of the landlord and the tenant as to the payment of utility charges.~~

(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) Inspection rights of the landlord as governed by this chapter.
(i) A listing of persons or numbers of persons who are to occupy the dwelling.
(j) Respective responsibilities of the landlord and the tenant as to the payment of utility charges.
(k) A separately ~~written~~ signed record of the inventory and conditions of the premises under the exclusive custody and control of the tenant.

2. Any inventory, listing or other form required by subsection 1 shall be firmly affixed to the contract or lease.

3. In the absence of a written rental agreement there shall be a rebuttable presumption that:

Landlord doesn't agree

(a) There are no restrictions or limitations on occupancy by children or pets;
(b) All maintenance and waste removal services are provided without charge;
(c) There are no charges for partial or late payment of rent or for the return of dishonored checks; and
(d) The tenant has left the premises in the same condition, other than for normal wear, in which he found them.

4. (a) It is unlawful for any landlord to use any written contract or lease covering the rental or lease of any dwelling unit subject to the provisions of this section unless such written contract or lease complies with the requirements of subsection 1.
(b) Any device or stratagem intended to avoid the requirements of this section shall be void.

5. In the absence of any agreement, either written or oral, the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit.

6. Rent is payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit and periodic rent is payable at the beginning of any term of one month or less and otherwise in equal monthly installments at the beginning of each month. Unless otherwise agreed, rent is uniformly apportionable from day-to-day.

7. Unless the rental agreement fixes a definite term, the tenancy is week-to-week in case of a tenant who pays weekly rent, and in all other cases month-to-month."

5 (a)

SEC. 25. 1. A rental agreement shall not provide that the tenant:

(a) Agrees to waive or forego rights or remedies afforded by this chapter;

(b) Authorizes any person to confess judgment on any claim arising out of the rental agreement;

(c) Agrees to pay the landlord's attorney's fees, except that the agreement may provide that attorney's fees may be awarded to the prevailing party in the event of court action;

(d) Agrees to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith; or

(e) Agrees to give the landlord notice of termination, ~~for a shorter period~~ than the landlord is required to give ~~under this section or the rental agreement of this chapter~~ to the tenant.

2. A rental agreement, assignment, conveyance, trust deed or security instrument may not permit the receipt of rent free of obligations under this chapter respecting the habitability of dwelling units.

3. Any provision prohibited by subsections 1 and 2 is void as contrary to public policy and the tenant may recover any actual damages incurred through the inclusion of the prohibited provision along with reasonable attorney's fees.

~~SEC. 26. 1. If the landlord does not sign and deliver a written rental agreement signed and delivered to him by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord.~~

~~2. If the tenant does not sign and deliver a written rental agreement signed and delivered to him by the landlord, acceptance of possession and payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant.~~

~~3. A rental agreement given effect by operation of subsections 1 and 2 is effective for a longer than 1 year notwithstanding any provision of the agreement to the contrary.~~

~~4. A tenant is entitled to the rights and remedies provided him under this chapter even though the rental agreement is not in writing and signed by the parties as provided by this chapter.~~

SEC. 27. 1. Any payment, deposit, fee or charge that is to be used for any of the following purposes is "security" and is governed by the provisions of this section:

(a) Remedying tenant defaults in the payments of rent.

(b) Repairing damages to the premises other than normal wear caused by the tenant.

~~(a) [illegible] the tenant [illegible]~~

~~2. "Security" does not include:~~

~~(a) Any payment, deposit or fee to secure an option to purchase the premises.~~

~~(b) Any cleaning fee if:~~

~~(1) The fee is clearly designated in writing as nonrefundable and the tenant [illegible] in writing to its being nonrefundable before paying the fee;~~

~~(2) It is clearly stated in writing [illegible] the cleaning will be accomplished at the [illegible] or the termination of the tenancy;~~

~~(3) The fee is [illegible] on cleaning the premises [illegible]; and~~

~~(4) It is stated in writing [illegible] actually expended at the [illegible] on cleaning the premises will be refunded to the tenant.~~

"(c) Costs of necessary cleaning.

2. "Security" does not include any payment, deposit or fee to secure an option to purchase the premises.

3. The landlord may not demand or receive security, including the last month's rent, whose total amount or value exceeds 2 months' periodic rent.

4. Upon termination of the tenancy by either party for any reason, the landlord may claim of the security only such amounts as are reasonably necessary to remedy tenant defaults in the payment of rent and to repair damages to the premises caused by the tenant other than normal ~~wear. The landlord shall provide the tenant with a detailed itemized written accounting of the disposition of the security and any cleaning deposit~~

"wear and to pay the costs of necessary cleaning. The landlord shall provide the tenant with a detailed itemized written accounting of the disposition of the security."

and return any remaining portion of the security to the tenant no later than 3 weeks after the termination of the tenancy by handing it to him ~~personally, or upon the tenant's request, by mailing it to him at his pres-~~

"personally at the place of payment of rent, or by mailing it to him at his pres-"

ent address, and if that address is unknown and not reasonably ascertainable, then at the tenant's last-known address.

5. Upon termination of the landlord's interest in the dwelling unit, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or his agent shall within a reasonable time do one of the following, which relieves him of further liability with respect to the security:

(a) Notify the tenant in writing of the name, address and telephone number of his successor in interest, and that he has transferred to the landlord's successor in interest the portion of the security remaining after making any deductions allowed under this section. Upon notification to the tenant, the transferee has all of the rights and obligations of a landlord holding such security.

(b) Return to the tenant the portion of the security remaining after making any deductions allowed under this section.

6. The claim of a tenant to security to which he is entitled under this chapter takes precedence over the claim of any creditor of the landlord.

7. The bad faith retention by the landlord or his transferee of security in violation of this section may subject the landlord or his transferee to ~~[illegible]~~

Disagree

"repayment of the money owed to the tenant together with damages in an amount equal to three times the amount wrongfully withheld and reasonable attorney's fees."

8. A rental agreement shall not contain any provision characterizing

6

any security under this section as nonrefundable or any provision waiving or modifying a tenant's rights under this section. Any such provision is void as contrary to public policy.

SEC. 28. The landlord shall deliver to the tenant upon his request a signed written receipt for security and any other payments, deposits or fees, including rent, paid by the tenant and received by the landlord. ~~Any payment by the tenant in any manner is conditioned upon delivery of the requested receipt.~~

"The tenant may refuse to make any payment until the landlord tenders to him the requested receipt for that payment."

~~SEC. 29. 1. [illegible] premises under the exclusive custody and control of the tenant. Unless the landlord and the tenant agree in a separate writing to waive the requirements of this section, a written record containing the inventory and detailing the condition of the premises shall be prepared and signed by both parties. The written inventory record shall clearly state that the tenant is responsible for the premises in the condition described in the record and the landlord shall deliver a signed copy to the tenant.~~

~~2. If the landlord does not sign and deliver a written inventory record signed and delivered to him by the tenant, acceptance of rent without reservation by the landlord gives the inventory record the same effect as if it had been signed and delivered by the landlord.~~

~~3. If the tenant does not sign and deliver a written inventory record signed and delivered to him by the landlord, payment of rent thereafter without reservation gives the inventory record the same effect as if it had been signed and delivered by the tenant.~~

~~4. Damages to and other faulty conditions in the premises shall be presumed to have existed at the commencement of the tenancy unless otherwise stated in the written inventory record.~~

SEC. 30. 1. The landlord, or any person authorized to enter into a rental agreement on his behalf, shall disclose to the tenant in writing at or before the commencement of the tenancy:

(a) The name and address of:

(1) The persons authorized to manage the premises;

(2) An owner of the premises or person authorized to act for and on behalf of the landlord for the purpose of service of process and receiving notices and demands; and

~~(3) The principal or corporate owner, unless the name and address~~

"(3) The principal or corporate owner, or alternatively, if the name and address"

are a matter of public record available in the county where the premises are located, ~~in which case~~ the landlord shall inform the tenant in writing of this fact and of the address and phone number of the governmental office or agency where the information may be obtained.

(b) A telephone number at which the owner or landlord will accept calls in case of emergency.

2. The information required to be furnished by this section shall be kept current and this section is enforcible against any successor landlord or manager of the premises.

3. A party who enters into a rental agreement on behalf of the landlord and fails to comply with this section is an agent of the landlord for purposes of:

7

(a) Service of process and receiving notices and demands; and

(b) Performing the obligations of the landlord under law and under the rental agreement.

4. This section does not limit or remove the liability of an undisclosed landlord or manager of the premises.

SEC. 31. Instead of the manner of disclosure provided in section 30 of this act, the landlord may:

1. In each dwelling structure containing an elevator, place a printed or typewritten notice containing the information required by that section in every elevator and in one other conspicuous place; or

2. In each dwelling structure not containing an elevator, place a printed or typewritten notice containing that information in at least two conspicuous places.

The notices shall be kept current and reasonable efforts shall be made to maintain them in a visible position and legible condition.

SEC. 32. At the commencement of the rental term the landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and ~~to maintain the premises and dwelling units~~ the provisions of section 33.

~~SEC. 33. 1. The landlord shall at all times during the tenancy maintain the dwelling unit in a habitable condition. A dwelling unit is habitable if it provides adequate, healthy, safe and sanitary housing.~~

~~2. The landlord and tenant may agree that the tenant is to perform specified repairs, maintenance tasks and minor remodeling only if:~~

~~(a) The agreement of the parties is entered into in good faith and the work to be performed is not necessary to cure noncompliance with the provisions of subsection 1;~~

~~(b) The agreement does not diminish the obligations of the landlord to other tenants in the premises; and~~

~~(c) The terms and conditions of the agreement are clearly and fairly disclosed in a separate writing signed by the parties and supported by adequate consideration.~~

~~3. The landlord may not treat performance of the agreement described in subsection 2 as a condition to any obligation or performance of any rental agreement.~~

~~4. The landlord is not relieved of the duties imposed by subsections 1 and 2 by any transfer of rents or payments of rent to another or any assignment, conveyance, trust deed or security agreement.~~

3 (a)

"Sec. 33 1. A landlord shall at all times during the tenancy maintain the dwelling unit in a habitable condition. For purposes of this section, a dwelling unit shall be considered uninhabitable if it substantially lacks:

(a) Effective waterproofing and weather protection of roof and exterior walls, including windows and doors;
(b) Plumbing facilities which conform to applicable law in effect at the time of installation, and maintained in good working order;
(c) A water supply approved under applicable law, which is:

(1) under the control of the tenant or landlord and is capable of producing hot and cold running water;
(2) furnished to appropriate fixtures; and
(3) connected to a sewage disposal system approved under applicable law and maintained in good working order to the extent that the system can be controlled by the landlord;

(d) Adequate heating facilities which conform to applicable law at the time of installation and maintained in good working order;
(e) Electrical lighting with wiring and electrical equipment which conform to applicable law at the time of installation and maintained in good working order;
(f) Building, grounds and appurtenances at the time of the commencement of the rental agreement in every part clean, sanitary and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin, and all areas under control of the landlord kept in every part clean, sanitary and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin;
(g) An adequate number of appropriate receptacles for garbage and rubbish in clean condition and good repair at the time of the commencement of the lease or rental agreement, and the landlord shall provide and maintain appropriate serviceable receptacles thereafter and arrange for their removal unless the parties by agreement provide otherwise;
(h) Floors, walls, ceilings, stairways and railings maintained in good repair;
(i) Ventilating, air conditioning and other facilities and appliances, including elevators, maintained in good repair if supplied or required to be supplied by the landlord; or
(j) Safety from the hazards of fire.

2. The landlord and tenant may agree that the tenant is to perform specified repairs, maintenance tasks and minor remodeling only if:

(a) The agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord;
(b) The agreement does not diminish the obligations of the landlord to other tenants in the premises; and
(c) The terms and conditions of the agreement are clearly and fairly disclosed and adequate consideration for the agreement is specifically stated.

3. The landlord may not condition his performance of any obligation under the rental agreement or this chapter on performance by the tenant of the separate agreement described in subsection 2."

8 (b)

SEC. 34. The landlord may not increase the rent payable by a tenant unless it serves the tenant with a written notice, 30 days in advance of the first rental payment to be increased, advising him of the increase.

~~SEC. 35. The landlord shall, upon request, state the reason for any rent increase or other change of terms of the tenancy or any notice of termination.~~

SEC. 36. Unless otherwise agreed, the landlord is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant that:

1. The landlord has conveyed the property including the dwelling unit subject to the rental agreement, ~~in good faith to the purchaser.~~

2. The landlord has ceased to own, manage or otherwise act as agent

8(c)

for the owner with regard to the dwelling unit subject to the rental agreement.

SEC. 37. A tenant shall, as to his obligations under this chapter:

1. Keep that part of the premises which is occupied and used as clean and safe as the condition of the premises permit;

2. Dispose of all ashes, garbage, rubbish and other waste from the dwelling unit in a clean and safe manner;

3. Keep all plumbing fixtures in the dwelling unit as clean as their condition permits;

4. Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators, in the premises;

5. Not deliberately or negligently render the premises uninhabitable or destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so; and

6. Conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb a neighbor's peaceful enjoyment of the premises.

SEC. 38. The landlord, from time to time, may adopt rules or regulations concerning the tenant's use and occupancy of the premises. Such a rule or regulation is enforcible against the tenant only if:

1. Its purpose is to promote the convenience, safety or welfare of the tenants in the premises, preserve the landlord's property from abusive use or make a fair distribution of services and facilities held out for the tenants generally;

2. It is reasonably related to the purpose for which it is adopted;

3. It applies to all tenants in the premises in a fair manner;

4. It is sufficiently explicit in its prohibition, direction or limitation of the tenant's conduct fairly to inform the tenant of what must or must not be done to comply;

5. It is in good faith and not for the purpose of evading an obligation of the landlord; and

6. The tenant has notice of the rule or regulation at the time he enters into the rental agreement or ~~a rule is thereafter made~~ after it is adopted in accordance with this section.

A rule or regulation adopted after the tenant enters into the rental agreement which works a material modification of the bargain is not enforcible against a tenant who does not expressly consent to it in writing or who is not given 60 days' advance written notice of it in the case of a year to year tenancy, or 30 days in the case of a tenancy for a shorter period.

SEC. 39. 1. A tenant shall not unreasonably withhold consent for the landlord peaceably to enter into the dwelling unit to:

(a) Inspect the premises;

(b) Make necessary or agreed repairs, decorating, alterations or improvements;

(c) Supply necessary or agreed services; or

(d) Exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, contractors or other persons with a bona fide interest in inspecting the premises.

2. The landlord may enter the dwelling unit without consent of the tenant in case of emergency.

3. The landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency, the landlord shall give the tenant at least 24 hours' notice of intent to enter and may enter only at reasonable times during normal business hours unless the tenant expressly consents to shorter notice or to entry during nonbusiness hours with respect to the particular entry.

4. The landlord has no other right of access except:

(a) Pursuant to court order;

(b) Where the tenant has abandoned or surrendered the premises; or

(c) Where otherwise permitted under this chapter.

SEC. 40. 1. Every lease of a dwelling executed after July 1, 1977, by spouses either of whom is 60 years of age or older at the time of execution, shall, upon the death of either, terminate 30 days after written notice to the landlord of the surviving spouse's intention to terminate, notwithstanding any contrary provisions in the lease, but a notice of intention to terminate pursuant to this section may not be submitted later than 6 months after the date of such death.

2. The provisions of this section apply only to spouses whose combined income does not exceed $10,000 for the calendar year preceding the death.

3. As used in this section, "income" means all income, from whatever source derived, including but not limited to salaries, wages, bonuses, commissions, income from self-employment, alimony, cash, public assistance and relief, the gross amount of any pensions or annuities including railroad retirement benefits, benefits received under the Federal Social Security Act, unemployment compensation benefits received under the law, realized capital gains, rentals, the gross amount of loss of time insurance benefits, life insurance benefits and proceeds, and gifts of cash or property. The word "income" does not include surplus food or other relief in kind supplied by any governmental agency or property tax assistance received by any claimant under the law or gifts of cash or property from one spouse to another.

4. This section does not give a landlord the right to terminate a lease solely because of the death of one of the tenants.

SEC. 41. 1. Except as otherwise provided in this chapter, if the landlord fails to comply with the rental agreement or fails to maintain the dwelling unit in a habitable condition as required by ~~the provisions of~~ section 33 of this act, ~~subsection 1 of section 33,~~ the tenant shall deliver a written notice to the landlord specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate as provided in this section. If the breach is remediable by repairs, the payment of damages or otherwise and the landlord adequately remedies the breach or uses his best efforts to remedy the breach within 14 days after receipt of the notice, the rental agreement does not terminate by reason of the breach. If the landlord fails to remedy the breach or make a reasonable effort to do so within the prescribed time, the tenant may:

(a) Terminate the rental agreement immediately.

(b) Recover actual damages and reasonable attorney's fees and obtain injunctive relief for the breach.

(c) Apply to the court for such other relief as the court deems proper under the circumstances.

2. The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of his household or other person on the premises with his consent.

3. If the rental agreement is terminated, the landlord shall return all prepaid rent, unused fees and security recoverable by the tenant under this chapter.

4. In any proceeding brought pursuant to this section or in any proceeding brought for possession of a dwelling unit, the court may request an appropriate governmental agency to inspect the premises to discover whether there are present conditions which constitute a threat to health or safety. ~~[illegible]~~.

5. Rights of the tenant under this section do not arise until he has given notice to the landlord as required under subsection 1."

SEC. 42. 1. If the landlord fails to comply with the rental agreement or his obligation under this chapter to maintain the dwelling unit in a ~~habitable condition, or fails to repair [illegible] defects in heating, hot and cold water supply, plumbing, weather protection, electrical equipment, structural and sanitary conditions and cooling, cooking and refrigeration devices, where provided, and the reasonable cost of compliance or repair~~

"habitable condition as required by section 33 of this act, and the reasonable cost of compliance or repair"

is less than $100 or an amount equal to the periodic rent, whichever amount is greater, the tenant may recover damages for the breach or notify the landlord of the tenant's intention to correct the condition at the landlord's expense. If the landlord fails to use his best efforts to comply within ~~[illegible]~~ days after being notified by the tenant in writing or more promptly if conditions require in case of emergency, the tenant may cause the work to be done in a workmanlike manner and after submitting to the landlord an itemized statement, the tenant may deduct from his rent the actual and reasonable cost or the fair or reasonable value of the work, not exceeding the amount specified in this subsection.

2. The landlord may specify in the rental agreement or otherwise that work done under this section and section 44 of this act must be performed ~~by a named person or firm or class of persons or firms, who is reasonably qualified to do the work, and the tenant shall make reasonable efforts to comply with the specification.~~

"by a named person or firm or class of persons or firms qualified to do the work, and the tenant must comply with the specification unless the named person or firm is unavailable or unable to perform the repairs, in which case, the tenant must use another qualified repairman."

3. A tenant may not repair at the landlord's expense if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of his household or other person on the premises with his consent.

4. The landlord's liability under this section is limited to $100 or an amount equal to one month's periodic rent, whichever amount is greater, within any 12-month period.

"5. Rights of the tenant under this section do not arise until he has given notice to the landlord as required under subsection 1."

SEC. 43. If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in this chapter, rent abates until possession is delivered as required, and the tenant may:

1. Terminate the rental agreement upon at least 5 days' written notice to the landlord and upon termination the landlord shall return all

prepaid rent, security recoverable under this chapter, and any payment, deposit, fee or charge to secure the execution of the rental agreement; or

2. Demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the dwelling unit against the landlord or any person wrongfully in possession and recover the actual damages sustained plus reasonable attorney's fees. If the landlord ~~can prove that within 5 days after the new tenant has moved in~~ has exercised due diligence to evict the holdover tenant or remedy the condition keeping the new tenant from taking possession, the landlord is not liable for damages; or

3. Pursue any other remedies to which the tenant is entitled, including the right to recover any actual damages suffered, as well as reasonable attorney's fees.

willfully or negligently

SEC. 44. 1. If the landlord fails to supply heat, running water, hot water, electric, gas, or other essential services as required by the rental agreement or this chapter, causing the premises to become unfit for habitation, the tenant ~~may~~ shall give written notice to the landlord specifying the breach and if the landlord does not adequately remedy the breach, or use his best efforts to remedy the breach within 1 day, except a Saturday, Sunday or legal holiday, after it is received by the landlord, the tenant may, in addition to any other remedies to which he is entitled:

(a) Procure reasonable amounts of such essential services during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent; or

(b) Recover actual damages, including damages based upon the lack of use of the premises or the diminution of the fair rental value of the dwelling unit; or

(c) Procure comparable substitute housing during the period of the landlord's noncompliance, and the rent for the original premises fully abates during this period. The tenant may recover the actual and reasonable cost ~~or fair rental value of this~~ of substitute housing ~~during the period of his noncompliance~~ in excess of the rent abated. comparable

In any action under this subsection, the tenant may recover reasonable attorney's fees.

2. If the tenant proceeds under this section, the tenant may not proceed under section 42 of this act as to that breach.

3. Rights of the tenant under this section do not arise until the tenant has given written notice to the landlord. If the condition was caused by the deliberate or negligent act or omission of the tenant, a member of his household or other person on the premises with his consent, the tenant has no rights under this section.

SEC. 45. If the landlord unlawfully removes the tenant from the premises or excludes the tenant by blocking or attempting to block his entry upon the premises or willfully interrupts or causes or permits the interruption of any essential service required by the rental agreement or this chapter, the tenant may recover possession, proceed under section 44 ~~of this act or terminate the rental agreement and, in each case, in addition to any other remedy to which he is entitled, recover damages in an amount no greater than three~~ actual damages, punitive damages in an amount no greater than 525

Disagree

"of this act or terminate the rental agreement and in each case, in addition to any other remedy to which he is entitled, recover damages in an amount equal to three times the actual damages sustained by him,"

plus reasonable attorney's fees. If the rental agreement is terminated the

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landlord shall return all prepaid rent, unused fees and security recoverable under this chapter.

SEC. 46. 1. 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 tenant may, in addition to any other remedy to which he is entitled:

(a) Immediately vacate the premises and notify the landlord within 7 [illegible] days thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating.

(b) If continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant'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.

[illegible]

2. If the rental agreement is terminated, the landlord shall return all prepaid rent, any unused fees and security recoverable under this chapter. Accounting for rent in the event of termination or such continued occupancy shall be made as of the date [illegible] the premises are vacated.

3. This section does not apply if it is determined that the fire or casualty were caused by deliberate or negligent acts of the tenant, a member of his household or other person on the premises with his consent.

#25 SEC. 47. If a landlord fails to disclose as provided in section 30 or 31 of this act, each tenant may recover actual damages plus reasonable attorney's fees, or [illegible], whichever is greater.

SEC. 48. Except as otherwise provided in this chapter, the landlord may recover damages and obtain injunctive relief for failure of the tenant to comply with the rental agreement or perform his basic obligations under this chapter. The prevailing party may recover reasonable attorney's fees.

SEC. 49. 1. Except as otherwise provided in this chapter, if the tenant fails to comply with the rental agreement or fails to perform his basic obligations under this chapter so that health or safety is affected, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate as provided in this section. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant does not adequately remedy the breach or use his best efforts to remedy the breach within 5 days after receipt of the notice, the landlord may terminate the rental agreement.

2. If the tenant is not reasonably able to remedy the breach because of absence from the premises or otherwise, the tenant may avoid termination of the rental agreement by authorizing the landlord to enter and remedy the breach and by agreeing to pay any reasonable expenses or damages resulting from the breach or the remedy thereof.

SEC. 50. If the tenant's failure to perform basic obligations under this chapter affecting health or safety can be remedied by repair, replacement of a damaged item or cleaning, and the tenant fails to use his best efforts to comply within [illegible],

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~~[illegible]~~ 14 days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time or more promptly if conditions require in case of emergency, the landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and submit the itemized bill for the actual and reasonable cost, or the fair and reasonable value of the work. The itemized bill shall be paid as rent on the next date periodic rent is due, or if the rental agreement has terminated, may be submitted to the tenant for immediate payment.

SEC. 51. If the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it at a fair rental. If the landlord rents the dwelling unit for a term beginning before the expiration of the rental agreement, the agreement terminates as of the date of the new tenancy. If the landlord fails to make reasonable efforts to rent the dwelling unit at a fair rental or if the landlord accepts the abandonment as a surrender of the tenant's interest in the premises, the rental agreement is deemed to be terminated by the landlord as of the date the landlord 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.

SEC. 52. For purposes of this chapter, in the absence of ~~actual knowledge to the contrary~~ notice of the fact of abandonment as defined by section 22, it is presumed that the tenant has abandoned a dwelling unit if he is absent from the premises for a period of time equal to one-half the time for periodic rental payments, unless the rent is current or the tenant has in writing notified the landlord of an intended absence.

SEC. 53. The landlord may dispose of personal property abandoned on the premises by a former tenant without incurring civil or criminal liability in the following manner:

1. The landlord must provide for the safe storage of the property for a period of 30 days following the termination of the rental agreement or the end of the rental period and may charge and collect reasonable storage costs before releasing the property to the tenant or his authorized representative rightfully claiming the property within that period. and actual inventorying, moving and

2. After the expiration of the 30-day period, the landlord may dispose of the property and recover his reasonable storage costs out of the property or the value thereof if he has made reasonable efforts to locate the tenant, has notified the tenant in writing of his intention to dispose of the property and 14 days have elapsed since the notice was given to the tenant. The notice shall be mailed to the tenant at the tenant's present address, and if that address is unknown and not reasonably ascertainable, then at the tenant's last-known address.

~~3. Property may be disposed of in the manner provided by law for abandoned vehicles.~~

"3. Vehicles, as defined in chapter 482 of NRS, shall be disposed of pursuant to the provisions of NRS 487.210 to 487.270, inclusive, adapted to the purposes of abandonment on private property."

SEC. 54. If a tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession and, if the tenant's holding over is willful and not in good faith, the landlord may also recover his actual damages plus reasonable attorney's fees. If the landlord consents to the tenant's continued occupancy, the tenancy is from and for rent

week to week in the case of a tenant who pays weekly rent, and in all other cases the tenancy is from month to month. Such occupancy is otherwise on the same terms and conditions as were contained in the rental agreement unless specifically agreed otherwise.

~~SEC. 55. Acceptance of rent by the landlord with knowledge of a default by the tenant, or acceptance of the tenant's performance that varies from the terms of the rental agreement, constitutes a waiver of the landlord's rights to enforce the rental agreement for that breach unless otherwise agreed by the landlord and tenant.~~

SEC. 56. The landlord shall not recover or take possession of the dwelling unit by action or otherwise, including willful diminution or interruption or causing or permitting the diminution or interruption of any essential service required by the rental agreement or this chapter, except:

1. By an action for possession ~~under section 57 of this act~~ or other civil action or summary proceeding in which the issue of right of possession is determined;

2. When the tenant has surrendered possession of the dwelling unit to the landlord; or

3. When the tenant has abandoned the dwelling unit.

~~SEC. 57. 1. In any action for possession of a dwelling unit permitted under the provisions of this chapter, the party applying for possession shall file a verified complaint in the court describing the dwelling unit and the facts that authorize its recovery or taking under such provisions. The plaintiff has the affirmative duty of pleading compliance with the provisions of this chapter. The defendant has the burden of proving the plaintiff's noncompliance. The procedures provided in NRS 40.290 to 40.420, inclusive, apply in all such actions insofar as they are consistent with the provisions of this chapter.~~

~~2. The landlord is entitled to the summary procedure provided in NRS 40.253.~~

~~3. At any time after the filing of the complaint and issuance of the summons, the plaintiff may apply to the court for immediate possession of the premises by a temporary writ of restitution. The court may issue the writ only after a hearing where it appears to the court's satisfaction from the complaint and any affidavits filed or oral testimony taken that the defendant is a tenant unlawfully remaining in possession without the landlord's consent and the landlord is obligated under this chapter to deliver possession to a new tenant and the current rent is due and unpaid. A hearing on the motion for the writ only shall occur within 3 business days after the motion and supporting affidavits are filed.~~

~~4. Where a writ of restitution has issued pursuant to this section, the court may direct that the personal property left on the premises by the former tenant be disposed of in the manner provided in this chapter.~~

~~SEC. 58. 1. The abatement or withholding of rent or the nonpayment of rent with lawful excuse as provided in this chapter does not constitute a default in payment of rent for purposes of any action based on nonpayment of rent.~~

~~2. In an action for possession based upon nonpayment or rent or in an action for rent where the tenant is in possession, the tenant may~~

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[redacted]

"Sec. 58. 1. In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may defend and counterclaim for any amount he may recover under the rental agreement or this Act. In that event the court from time to time may order the tenant to pay into court all or part of the rent accrued and thereafter accruing, and shall determine the amount due to each party. 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 tenant in the action for possession. If the defense or counterclaim by the tenant is without merit and is not raised in good faith, the landlord may recover reasonable attorney's fees.

2. In an action for rent when the tenant is not in possession, he may counterclaim as provided in subsection 1 but is not required to pay any rent into court.

[redacted]

SEC. 60. 1. If the tenant refuses to allow lawful access as required by this chapter, the landlord may obtain injunctive relief to compel access or terminate the rental agreement. In either case the landlord may recover actual damages plus reasonable attorney's fees.

2. If the landlord 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 tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case the tenant may recover actual damages plus reasonable attorney's fees.

"(New) Sec. 60.5. 1. It is unlawful for a landlord to exclude or attempt to exclude a tenant from a dwelling unit in any manner other than that provided in this chapter or in NRS 40.215 to 40.420, inclusive, when applicable.

2. Whoever violates the provisions of subsection 1 is guilty of a misdemeanor."

16 (a)

SEC. 61. 1. Except as provided in subsection 4, the landlord may not terminate a tenancy, refuse to renew a tenancy, increase rent or decrease essential services required by the rental agreement or this chapter, or bring or threaten to bring an action for possession as retaliation where:

(a) The tenant has complained in good faith to a governmental agency charged with responsibility for enforcement of a building, housing or health code of a violation applicable to the premises affecting health or safety.

(b) The tenant has complained in good faith to the landlord of a violation under this chapter.

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

(d) A citation has been issued resulting from a complaint described in paragraph (a).

(e) The tenant has instituted or defended against a judicial or administrative proceeding or arbitration in which he raised an issue of compliance with the requirements of this chapter respecting the habitability of dwelling units.

(f) The tenant has failed or refused to give written consent to a rule or regulation adopted by the landlord after the tenant enters into the [redacted].

"rental agreement thereby requiring the landlord to wait until the time period provided under section 38 has elapsed for the rule or regulation to become enforceable against the tenant."

2. If the landlord violates subsection 1, the tenant is entitled to the remedies provided in section 41 of this act and has a defense in any retaliatory action by the landlord for possession.

3. Termination of a tenancy, except with cause, within 6 months after any event enumerated in subsection 1 is presumed to be a retaliation in violation of this section.

4. A landlord who acts under the circumstances described in subsection 1 does not violate that subsection if:

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(a) The violation of the applicable building, housing or health code of which the tenant complained was caused primarily by lack of reasonable care by the tenant, a member of his household or other person on the premises with his consent;

(b) The tenant ~~[illegible]~~ has provided cause, as defined in section 6 of this act, for the landlord's action; or

(c) A citation has been issued and compliance with the applicable building, housing or health code requires alteration, remodeling or demolition and cannot be accomplished unless the tenant's dwelling unit is vacant.

The maintenance of an action under this subsection does not prevent the tenant from seeking damages or injunctive relief for the landlord's failure to comply with the rental agreement or maintain the dwelling unit in a habitable condition as required by this chapter.

SEC. 62. 1. Any lien or security interest in the tenant's household goods created in favor of the landlord to assure payment of rent is unenforcible, unless created pursuant to a lawful court order after notice and the opportunity for a hearing.

2. Distraint for rent is abolished.

SEC. 63. Rental agreements entered into before July 1, 1977, and not extended or renewed after that date, and the rights, duties and interests flowing from them remain valid and may be terminated or enforced as required or permitted by any statute or other law amended or repealed in conjunction with the enactment of this chapter as though the repeal or amendment had not occurred. For purposes of this section, tenancies from month to month shall be considered to be renewed each month.

SEC. 64. NRS 40.250 is hereby amended to read as follows:

40.250 1. A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer:

(a) Possession after expiration of term. Where he continues in possession, in person or by subtenant, of the property or mobile home or any part thereof, after the expiration of the term for which it is let to him. In all cases where real property is leased for a specified term or period, or by express or implied contract, whether written or parol, the tenancy shall be terminated without notice at the expiration of such specified term or period.

(b) Possession after notice. When, having leased: [real]

(1) Real property, *except as provided in subparagraph (2),* or a mobile home for an indefinite time, with monthly or other periodic rent reserved, he continues in possession thereof, in person or by subtenant, after the end of any such month or period, in cases where the landlord, 15 days or more prior to the end of such month or period, shall have served notice requiring him to quit the premises at the expiration of such month or period; or, in cases of tenancy at will, where he remains in possession of such premises after the expiration of a notice of not less than 5 days [.]*; or*

(2) A dwelling unit subject to the provisions of sections 2 to 63, inclusive, of this act he continues in possession, in person or by subtenant, without the landlord's consent after expiration of:

(I) The term of the rental agreement or its termination; and

(II) Except as otherwise provided in sub-subparagraph III, a notice ~~[illegible]~~

"of at least 30 days, except for a notice of at least 7 days in cases of tenancies from week to week, and 60 days in cases of tenancies from year to year."

[illegible] days in cases of tenancies [illegible]

(III) A notice of 5 days where the tenant has failed to perform his basic obligations under sections 2 to 63, inclusive, of this act.

(c) Possession after default in rent. When he continues in possession, in person or by subtenant, after default in the payment of any rent and after a notice in writing, requiring in the alternative the payment of the rent or the surrender of the detained premises, shall have remained uncomplied with for a period of 5 days after service thereof. Such notice may be served at any time after the rent becomes due.

(d) Assignment, sublease contrary to covenants of lease; waste; nuisance. When he assigns or sublets the leased premises contrary to the covenants of the lease, or commits or permits waste thereon, or when he sets up or carries on therein or thereon any unlawful business, or when he suffers, permits or maintains on or about the premises any nuisance, and remains in possession after service upon him of 3 days' notice to quit.

(e) Possession after failure to perform conditions of lease. When he continues in possession, in person or by subtenant, after a neglect or failure to perform any condition or covenant of the lease or agreement under which the property or mobile home is held, other than those hereinbefore mentioned, and after notice in writing, requiring in the alternative the performance of such condition or covenant or the surrender of the property, served upon him, and, if there be a subtenant in actual occupation of the premises, also upon such subtenant, shall remain uncomplied with for 5 days after the service thereof. Within 3 days after the service, the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person, interested in its continuance, may perform such condition or covenant and thereby save the lease from forfeiture; but if the covenants and conditions of the lease, violated by the lessee, cannot afterwards be performed, then no notice as last prescribed herein need be given.

2. The periods of time contained in subsection 1 are minimal, and any attempt by the landlord to shorten such periods by contract or otherwise is void and unlawful.

3. In addition to the remedy provided by paragraph (b) of subsection 1 and by NRS 40.290 to 40.420, inclusive, when the tenant of a dwelling unit subject to the provisions of sections 2 to 63, inclusive, of this act is guilty of an unlawful detainer, the landlord is entitled to the summary procedures provided in NRS 40.253 except that:

(a) Written notice to surrender the premises shall:

(1) Be given to the tenant in good faith and in accordance with the provisions of sections 2 to 63, inclusive, of this act; and

(2) Advise the tenant of his right to contest the notice by filing within 5 days an affidavit with the justice of the peace that he is not guilty of an unlawful detainer.

(b) The affidavit of the landlord or his agent submitted to the justice [illegible]

"of the peace shall contain:

(1) The date the tenancy or the rental agreement was allegedly terminated."

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~~(1) The date the tenancy or the rental agreement commenced.~~

(2) A statement that the notice to surrender the premises was given to the tenant in good faith and was authorized by law.

(3) The date the tenancy commenced.
(4) The term of the tenancy, whether week to week, month to month, year to year, or otherwise.
(5) The date the tenant became guilty of an unlawful detainer.
(6) The facts establishing that the tenant's conduct constituted an unlawful detainer.
(7) The date of service of any written notice required under this section.
(8) A statement that the written notice was served on the tenant in accordance with NRS 40.280.
(9) A copy of the written notice served on the tenant.
(10) A copy of the signed written rental agreement, if any.

(c) No action may be taken under NRS 40.253 if within 5 days after service of the notice, the tenant files an affidavit as provided in paragraph (a) of this subsection.

SEC. 65. NRS 40.253 is hereby amended to read as follows:

40.253 1. In addition to the remedy provided by paragraph (c) of subsection 1 of NRS 40.250 and by NRS 40.290 to 40.420, inclusive, when the tenant of a dwelling, apartment or mobile home with periodic rent reserved by the month or any shorter period, is in default in payment of such rent, the landlord or his agent, unless otherwise agreed in writing, may serve or have served a notice in writing, requiring in the alternative the payment of the rent or the surrender of the premises at or before noon of the fifth full day following the day of service. Such notice shall advise the tenant of his right to contest such notice by filing, within 5 days, an affidavit with the justice of the peace that he is not in default in the payment of such rent.

2. Upon noncompliance with such notice [:

(a) The] *the* landlord or his agent may apply by affidavit to the justice of the peace of the township wherein the dwelling, apartment or mobile home is located. Such justice of the peace may thereupon issue an order *permitting the landlord or his agent to provide, in a peaceable manner, for the nonadmittance of the tenant to the premises by locking or otherwise, or an order* directing the sheriff or constable of the county to remove the tenant within 24 hours after receipt of the order. The affidavit provided for in this paragraph shall contain:

[(1)] *(a)* The date the tenancy commenced.

[(2)] *(b)* The amount of periodic rent reserved.

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

[(4)] *(d)* The date the rental payments became delinquent.

[(5)] *(e)* The length of time the tenant has remained in possession without paying rent.

[(6)] *(f)* The amount of rent claimed due and delinquent.

[(7)] *(g)* A statement that the written notice was served on the tenant in accordance with NRS 40.280.

[(8)] *(h)* A copy of the written notice served on the tenant.

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

[(b) The landlord or his agent may, in a peaceable manner, provide for the nonadmittance of the tenant to the premises by locking or otherwise.]

3. No action may be taken under subsection 2 if, within 5 days after service of the notice, the tenant files an affidavit as provided in subsection 1. Further proceedings for the removal of the tenant shall be governed by NRS 40.290 to 40.420, inclusive.

4. The justice of the peace shall hold a hearing, after service of notice of the hearing upon the parties, to determine the truthfulness and sufficiency of any affidavit or notice provided for in this section. Based upon such determination, the justice of the peace may issue or refuse to issue a summary order of removal. A refusal to issue such an order

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[precludes the landlord from providing for the nonadmittance of the tenant but] does not preclude an action by the landlord pursuant to NRS 40.290 to 40.420, inclusive. The issuance of such an order does not preclude an action by the tenant for any damages *or other relief* to which he may be entitled.

~~Sec. 66. NRS 111.205 is hereby amended to read as follows:~~

~~111.205 1. No estate or interest in lands, other than for leases for a term not exceeding 1 year, [,] and agreements subject to section 24 of this act, 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 his last will and testament, nor to prevent any trust from arising or being extinguished by implication or construction of law.~~

~~Sec. 67. NRS 111.210 is hereby amended to read as follows:~~

~~111.210 1. Every contract, except an agreement subject to section 24 of this act, for the leasing for a longer period than 1 year, or for the 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 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.~~

SEC. 68. Chapter 118 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. A landlord may not refuse to rent a dwelling subject to the provisions of sections 2 to 63, inclusive, of this act solely because a guide dog will be residing with the prospective tenant in the dwelling.

2. A landlord may require proof that a dog is a guide dog. This requirement may be satisfied, by way of example and not of limitation, by exhibition of the identification card normally presented to a visually handicapped person upon his graduation from a guide dog school.

3. As used in this section:

(a) "Guide dog" means a dog which has been specially trained by a guide dog school to serve as an aid to mobility to a particular visually handicapped person.

(b) "Guide dog school" means a school which trains guide dogs.

SEC. 69. NRS 118.010 is hereby amended to read as follows:

118.010 The provisions of NRS 118.010 to 118.130, inclusive, *and section 68 of this act* may be cited as the Nevada Fair Housing Law.

~~Sec. 70. NRS 118.020 is hereby amended to read as follows:~~

~~118.020 It is hereby declared to be the public policy of the State of Nevada that all people in the state [shall have equal opportunity to inherit,~~

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~~purchase, lease, [illegible] and convey real property [illegible] discrimination, [illegible] religious creed, color, national origin [illegible]~~

SEC. 71. NRS 481.048 is hereby amended to read as follows:

481.048 1. There is hereby created, within the registration division of the department, a section known as the vehicle compliance and enforcement section.

2. The director shall appoint within the limits of legislative appropriations, pursuant to the provisions of chapter 284 of NRS, field dealer inspectors in the vehicle compliance and enforcement section of the registration division of the department.

3. The duties of field dealer inspectors shall be to travel the state and:

(a) Act as field agents and inspectors in the enforcement of the provisions of chapters 482, 487 and 489 of NRS, NRS 108.267 to 108.360, inclusive, and NRS 108.440 to [108.530,] *108.500,* inclusive, as such sections pertain to motor vehicles, trailers, motorcycles, mobile homes, recreational vehicles and semitrailers, as defined in chapter 482 of NRS.

(b) Act as adviser to dealers in connection with any problems arising under the provisions of such chapter.

(c) Cooperate with personnel of the Nevada highway patrol in the enforcement of the motor vehicle laws as they pertain to dealers.

(d) Perform such other duties as may be imposed by the director.

4. Field dealer inspectors have the powers of peace officers to enforce any law of the State of Nevada in carrying out their duties under this section and are not entitled to retire under the early retirement provisions of chapter 286 of NRS applicable to police officers and firemen.

SEC. 72. NRS 108.510, 108.520, 108.530 and 118.140 to 118.220, inclusive, are hereby repealed.

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