

Research

MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON JUDICIARY

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
March 5, 1981

The Senate Committee on Judiciary was called to order by Chairman Melvin D. Close at 8:35 a.m., Thursday, March 5, 1981, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Melvin D. Close, Chairman
Senator Keith Ashworth, Vice Chairman
Senator Don W. Ashworth
Senator Jean E. Ford
Senator William J. Raggio
Senator William H. Hernstadt
Senator Sue Wagner

STAFF MEMBERS PRESENT:

Shirley LaBadie, Committee Secretary

SENATE BILL NO. 270--Permits persons to register their willingness to serve as resident agents of foreign corporations with secretary of state. (Exhibit C)

Chairman Close advised the committee he introduced the bill, it came to him from the publisher of the Nevada Legal News in Las Vegas, Nevada. He said the bill states that if anyone specifically wants to serve as a resident agent, he can advise the Secretary of the State, pay \$500 and go on a list. This list would be available through the Secretary of State for anyone wanting the services of a resident agent. There is no requirement that each resident agent put his name on the list, it is optional. Chairman Close stated Delaware uses this procedure. He felt it would be a good way to raise money for the state. Mr. Bill Swackhamer stated he came to testify on S. B. No. 270. He said he had no feelings either way on the bill, he was concerned it might impact the budget. He said they have had calls from out of the state but they do not recommend anyone, we suggest they check the telephone book. He felt if this became a major thing,

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the budget is very tight and additional duties in the department are not needed. The money received would go to the state. Mr. Swackhamer explained the duties of a resident agent. The Secretary of State sends an annual list of officers to a resident agent, he has the people fill it out and return to the department. A resident agent is a legal agent but not required to be an attorney. Chairman Close stated a substantial amount of money has been raised in Delaware and the cost to the state is minimal, just the cost of preparing a list.

SENATE BILL NO. 264--Provides right of visitation for grandparents after divorce or death of a parent.

Senator Neal stated he was the sponsor of the bill because of a conversation with a person in Las Vegas who asked that a bill be passed to provide weekend visits of grandchildren when there is a divorce. He said a similar bill was passed in the 1979 session. Senator Hernstadt stated under the existing law, visitation rights for grandparents are available, however a petition must be filed. S. B. No. 264 would make this automatic.

SENATE BILL NO. 248--Establishes definite duration for civil commitment in certain criminal cases and provides for review and renewal by court.

Chairman Close read to the committee parts of NRS 433.A and NRS 178.455. The committee debated the bill. Chairman Close proposed changes such as: before he goes to court, he has to go before the Sanity Commission, and they have to agree that he can get out, then they go to court and the court makes that decision. The committee agreed with the changes and it was decided to get the amendments and bring the bill back into the committee.

Mr. Joe Midmore, Nevada Consumer Finance Association offered remarks on S. B. No. 101 which had been requested by someone on the committee. The question was which states now have or are in the process of moving towards no limit on interest rates. He informed the committee, Arizona did this two years ago, Delaware, New York, and New Jersey have passed legislation in the past 90 days removing interest rate restrictions and New Mexico is almost there and the governor stated he would support the legislation. Pennsylvania has introduced a bill. California also has this legislation but it does not apply to regulated lenders or corporate loans.

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SENATE BILL NO. 264

Senator Don Ashworth moved to indefinitely postpone
S. B. No. 264.

Senator Hernstadt seconded the motion.

The motion carried. (Senators Raggio and Ford were absent
for the vote.)

SENATE BILL NO. 270

Senator Wagner moved to Do Pass S. B. No. 270.

Senator Don Ashworth seconded the motion.

The motion carried. (Senators Raggio and Ford were absent
for the vote.)

SENATE BILL NO. 255--Revises certain provisions concerning viola-
tion of parole and probation. (Exhibit D)

The committee discussed possible amendments to S. B. No. 255. Chairman Close stated two credits on a sentence should not be given when a person is picked up on a second offense, is on parole and is put in jail. He suggested the language read: eligible for credit on the second offense for the time he has spent in confinement.

SENATE BILL NO. 255

Senator Wagner moved to amend and Do Pass S. B. No. 255.

Senator Hernstadt seconded the motion.

The motion carried. (Senators Raggio and Ford were absent
for the vote.)

SENATE BILL NO. 256--Makes various changes in provisions regard-
ing presentence reports. (Exhibit E)

Chairman Close advised the committee the first amendment states there is no limitation to the information which is put in the report. The second amendment on page 2, lines 10 and 11 was requested by Judge Mendoza. The language is not very well written. Discussion of the proposed amendments resulted in the following action.

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SENATE BILL NO. 256

Senator Don Ashworth moved to amend and Do Pass with the first proposed amendment, S. B. No. 256.

Senator Wagner seconded the motion.

The motion carried. (Senator Raggio was absent for the vote.)

SENATE BILL NO. 250--Repeals provision regarding change of judge. (Exhibit F)

Chairman Close stated NRS 1.235 is a way to change a judge, and NRS 1.240 is what the legislature passed several years ago. The Supreme Court declared it unconstitutional. NRS 1.235 was put back in the statutes, even though the legislature had eliminated it. Chairman Close suggested the following language in an amendment to S. B. No. 250: if a new judge is appointed for a trial, within ten days prior to going to trial, then either party has the right to object. He asked for a motion to pass the bill and the amendment would be brought back into the committee for review.

SENATE BILL NO. 250

Senator Keith Ashworth moved to amend and Do Pass S. B. No. 250.

Senator Don Ashworth seconded the motion.

The motion carried. (Senator Raggio was absent for the vote.)

SENATE BILL NO. 249--Permits admonishment of jury by officer of court other than judge. (Exhibit G)

Senator Wagner moved to Do Pass S. B. No. 249.

Senator Don Ashworth seconded the motion.

The motion carried. (Senator Raggio was absent for the vote.)

SENATE BILL NO. 247--Limits length of probation and use of presentence reports and provides for disposal of certain confiscated property. (Exhibit H)

Chairman Close stated if a judge feels a presentence report is not necessary, there is no reason to provide one. He can request one if he wants it. Senator Hernstadt suggested the language on line 7, be changed from may to shall, or must. Line 7, special cases, will be deleted. Chairman Close said the language on lines

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21 and 22, page 1 and lines 4, 5 and 6, page 2, were confusing and need to be rewritten. In Section 3, it was decided the time period would be changed to 3 years.

Chairman Close suggested he get a Bill Drafting Request to get a resolution which will state there is no parole or probation, once a person is sentenced, he will serve his time and be released from jail without any subsequent supervision. This resolution is to study that possibility. Senator Wagner stated it would be a good idea to have judges and other interested people as well as legislators serve on this committee.

The committee discussed Section 4, regarding weapons, abandoned property and the selling of confiscated guns with the proceeds going to the purchase of ammunition. Chairman Close read from NRS 179.125 which deals with the disposal of stolen or embezzled property. Senator Don Ashworth suggested the bill be amended to strike out section 4, and section 5 if not applicable. Senator Raggio suggested that if the bill is amended to conform, provision should be included that they do notify other law enforcement agencies within the county. The committee agreed an amendment would be added to turn over to the state general fund, any proceeds from the sale of confiscated property.

SENATE BILL NO. 247

Senator Don Ashworth moved to amend and Do Pass S. B. No. 247.

Senator Wagner seconded the motion.

The motion carried unanimously.

SENATE BILL NO. 101--Removes limitations on interest rates for loans. (Exhibit I)

Chairman Close stated he did not feel interest rates should be removed entirely, there should be a cap. Senator Don Ashworth stated it should be taken off entirely. Chairman Close stated in regards to the amendment of Senator Hernstadt, if the usury rate is removed, it should be taken off everyone, with no exceptions. He felt a limit of 30% should be put on. Senator Raggio stated the legislature would be meeting again in two years and if they abuse the use of interest rates, the legislators can do something about it. Chairman Close stated this would affect everyone and potential violations may be forthcoming. Senator Keith Ashworth

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stated that state money was being taken out of the state and sources dried up. Chairman Close asked the committee members to declare their position on S. B. No. 101.

Senator Don Ashworth stated he felt the interest rate should be removed entirely. Senator Hernstadt agreed with Senator Don Ashworth, it was his original bill. Senator Wagner indicated she had no feelings one way or the other. Senator Keith Ashworth stated he felt the rate should be removed entirely for everyone. Senator Close opposed making certain exceptions and there should be a cap of 30% generally on usury. Senator Raggio stated, no cap on most lenders. There should be some cap on pawnbrokers or any other area which would cover a necessitous borrower, that could apply to a private lender. Senator Ford supported Senator Close and Senator Raggio in some form.

Senator Hernstadt suggested the bill pass out of committee with amend and do pass. The amendment would delete the finance companies from his proposed amendment. It also included correcting the credit card item which had not been covered.

SENATE BILL NO. 101

Senator Keith Ashworth moved to amend and Do Pass S. B. No. 101 with no ceiling and with the pawnbrokers at 60% or 5% a month.

Senator Don Ashworth seconded the motion.

The motion carried. (Senator Close voted no. Senator Wagner did not vote.)

SENATE BILL NO. 188--Makes various changes concerning custody of children in cases of parents' separation or divorce. (Exhibit J)

Chairman Close advised the committee there is a proposed compromise to S. B. No. 188 by the proponents of the bill. He stated a change on line 19, should read to both parents jointly or either parent. If the judge decides against joint custody for whatever reason, he must state that reason. Chairman Close said he would change the amendments being drafted to conform with this language.

Senator Raggio moved to reconsider the previous action on S. B. No. 188 on March 2, 1981.

Senator Hernstadt seconded the motion.

The motion carried unanimously.

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SENATE BILL NO. 188

Senator Hernstadt moved to amend and Do Pass S. B. No. 188.

Senator Don Ashworth seconded the motion.

The motion carried unanimously.

The committee asked Chairman Close to explain S. B. No. 188 on the floor of the Senate.

SENATE BILL NO. 224--Limits deficiency judgments against guarantors and sureties. (Exhibit K)

Chairman Close asked Mr. Frank Daykin, Legislative Counsel to explain the language on lines 12 through 15, page 1. Mr. Daykin explained what this would do, would extend protection against a deficiency judgment to the guarantor or surety as well as the maker of the note which underlay the mortgage or deed of trust. For example, he borrowed \$25,000 on a house, giving a deed of trust to secure the loan. Being such a poor credit risk, the lender will not take it, even with a deed of trust unless a solvent, responsible citizen guarantees the payment of the note, or sign on the note as a surety. The effect of this would be that, when the lender's expectations are fulfilled, he did not pay the note and the property did not sell for the \$25,000 owed on the house, under this statute, there are certain limits on the way a deficiency judgment can be recovered. The effect of this bill would say that the person cannot be individually sued on the contract of guarantee, unless those same formalities had been complied with, such as notice of sale and independent bidding. The way the law reads now, is that the maker of the note is protected by the anti-deficiencies statutes, but the independent contract of guarantee is not.

Mr. Daykin stated further, the reason for the present law is that the guarantors contract is viewed in law as separate from the original, the sureties contract is viewed in law as the same contract as the principals and so under present law, the surety is covered, but it is spelled out very plainly in this bill. The bill was requested from the Nevada Trial Lawyers Association, Commercial Law Section and was introduced by Senator Wilson.

Chairman Close asked for a motion from the committee on S. B. No. 224.

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SENATE BILL NO. 224

Senator Don Ashworth moved to Do Pass S. B. No. 224.

Senator Raggio seconded the motion.

The motion carried unanimously.

The committee further discussed S. B. No. 101. Chairman Close asked Senator Hernstadt about the delinquency charge. Senator Hernstadt said it was an additional delinquency charge on top of whatever the contract interest is. Senator Hernstadt stated if the free market is interfered with, current business in the state is eliminated. The committee agreed to leave in the delinquency charge.

In Section 2, the committee agreed with the proposed amendment of Senator Hernstadt. Senator Raggio asked Senator Hernstadt if people with credit cards would be paying higher interest rates than in other states. Senator Hernstadt said he did not think so. Chairman Close stated that fortunes are made in the business of lending money on fractions of a percent, a fraction on a multi-million dollar loan is a tremendous amount of money. On a home, 1% on a home mortgage would probably increase the cost over a period of years over 20% of its cost.

Senator Don Ashworth stated, in regards to credit card interest rates, an individual delinquent in payments, could borrow money elsewhere at a lower rate and pay off the credit card account which may charge 21%. This would prevent the credit card interest rates from rising out of proportion. Free enterprise system will keep it in that range. The committee agreed to take out lines 18 through 20, which is in the proposed amendment from Senator Hernstadt.

Chairman Close said Section 5 has been changed, pawnbrokers will be left in at 5% a month, plus a \$3.00 service charge. Senator Hernstadt stated the bill should be passed with the language, upon passage and approval. The repealer is NRS 675.320.

Chairman Close told the committee when the interest rates were changed two years ago, it did not affect existing contracts. That was the committee's decision last session. Senator Raggio said existing contracts are governed by what the present law is on interest rates. Chairman Close stated there are many loans which do not float on prime, the highest legal rate. Senator Don Ashworth suggested 18% be put on. Senator Hernstadt said he would like it

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read, that any preexisting contracts that would be relieved by passage of this law cannot exceed 18%. A cap of 18% should be put on existing loans that have a float clause, if no float clause, it would be set at whatever the original rate was. Chairman Close asked for a motion to reconsider S. B. No. 101. He said the language should be amended to read, any loan that was drafted to float, can float as high as 18%, loans that were not floating would be locked in, would not be affected by this bill unless the loan was made under the federal law, then the loan could float as high as 21½%.

SENATE BILL NO. 101

Senator Raggio moved to reconsider the previous action on S. B. No. 101.

Senator Hernstadt seconded the motion.

The motion carried. (Senator Keith Ashworth was absent for the vote.)

SENATE BILL NO. 101

Senator Raggio moved to amend and Do Pass S. B. No. 101, that it be effective upon passage and approval.

Senator Hernstadt seconded the motion.

The motion carried. (Chairman Close voted no. Senator Keith Ashworth was absent for the vote.)

The following Bill Drafting Request was presented and received for committee introduction:

BDR 16-1229 (Senator Ford) (S.B. 376)

Broadens prohibition against sexual assault by spouse.

There being no further business, the committee adjourned at 11:00 a.m.

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Respectfully submitted:

Shirley LaBadie
Shirley LaBadie, Secretary

APPROVED:

Melvin D. Close Jr.
Senator Melvin D. Close, Chairman

DATE: March 9 1981

SENATE AGENDA

COMMITTEE MEETINGS

EXHIBIT A

Committee on JUDICIARY, Room 213
Day Thursday, Date March 5, Time 8:30 a.m.

AMENDED MEETING SCHEDULE

S. B. NO. 264--Provides right of visitation for grandparents after divorce or death of a parent.

S. B. NO. 270--Permits persons to register their willingness to serve as resident agents of foreign corporations with secretary of state.

SENATE COMMITTEE ON JUDICIARY

DATE: March 5, 1981

EXHIBIT B

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME

ORGANIZATION & ADDRESS

TELEPHONE

Joe Midmore *Nev. Consumer Finance Assn* *res B101*

William Swackhamer *S.S. STATE*

S. B. 270

SENATE BILL NO. 270—COMMITTEE ON JUDICIARY

FEBRUARY 19, 1981

Referred to Committee on Judiciary

SUMMARY—Permits persons to register their willingness to serve as resident agents of foreign corporations with secretary of state. (BDR 7-693)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.



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

AN ACT relating to foreign corporations; permitting certain persons to register their willingness to serve as resident agents of foreign corporations with the secretary of state; and providing other matters properly relating thereto.

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

- 1 SECTION 1. Chapter 80 of NRS is hereby amended by adding thereto
2 a new section which shall read as follows:
3 1. *Any natural person or domestic corporation, except a member of*
4 *the State Bar of Nevada and banks or trust companies licensed in*
5 *Nevada, may annually register his willingness to serve as resident agent*
6 *of foreign corporations with the secretary of state. The registration must*
7 *be accompanied by a fee of \$500.*
8 2. *The secretary of state shall maintain a list of persons willing to*
9 *serve as resident agents of foreign corporations and make it available to*
10 *foreign corporations seeking to do business in Nevada.*

S. B. 255

SENATE BILL NO. 255—COMMITTEE ON JUDICIARY

FEBRUARY 18, 1981

Referred to Committee on Judiciary

SUMMARY—Revises certain provisions concerning violation of parole and probation. (BDR 14-781)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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

AN ACT relating to parole and probation; revising provisions on the time of the inquiry on violation of probation and the consideration on violation of parole; making an exception to the allowance of credit for time spent in confinement before conviction; and providing other matters properly relating thereto.

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

1 SECTION 1. NRS 176.055 is hereby amended to read as follows:
2 176.055 [Whenever] 1. *Except as otherwise provided in subsec-*
3 *tion 2, whenever* a sentence of imprisonment in the county jail or state
4 prison is imposed, the court may [in its discretion] order that credit be
5 allowed against the duration of [such] the sentence, including any mini-
6 mum term thereof [which may be] prescribed by law, for the amount of
7 time *which the defendant has* actually spent [by the defendant] in con-
8 finement [prior to] *before* conviction, unless [such] *his* confinement
9 was pursuant to a judgment of conviction for another offense. Credit
10 allowed pursuant to this [section] *subsection* does not alter the date
11 from which the term of imprisonment is computed.

12 2. *A person who is convicted of an offense while on parole is not*
13 *eligible for any credit pursuant to this section for time he has spent in*
14 *confinement.*

15 SEC. 2. NRS 176.216 is hereby amended to read as follows:
16 176.216 1. Before a probationer may be returned to the court for
17 violation of a condition of his probation, an inquiry [shall] *must* be con-
18 ducted to determine whether there is probable cause to believe that he
19 has committed any act that would constitute such a violation.

20 2. The inquiry [shall] *must* be conducted before an inquiring officer
21 who:

22 (a) Is not directly involved in the case;

1 (b) Has not made the report of violation of the probation; and

2 (c) Has not recommended revocation of the probation,
3 but he need not be a judicial officer.

4 3. Except in a case where the probationer is a fugitive [,] or is under
5 supervision in another state, the inquiry [shall] must be held [promptly]
6 at or reasonably near the place of the alleged violation or the arrest [,
7 and not later than 15 days after the arrest if the arrested person is on
8 probation from a Nevada court or 30 days after the arrest if he] and
9 must be held:

10 (a) If the probationer is on probation from another state and under
11 supervision in this state [.] , not later than 30 days after his arrest.

12 (b) If he is on probation from a Nevada court, promptly and not later
13 than 15 days after his arrest and confinement on the charge that he has
14 violated a condition of his probation or after an order has been filed to
15 hold him on that charge if he is already confined on another charge. The
16 time for the inquiry may be extended if, within the 15-day period, the
17 probationer is released from confinement or the order that he be held is
18 withdrawn.

19 4. For the purposes of this section, the inquiring officer may admin-
20 ister oaths and issue subpoenas to compel the attendance of witnesses and
21 the production of books and papers.

22 SEC. 3. NRS 213.1517 is hereby amended to read as follows:

23 213.1517 1. Where the inquiring officer has determined that there is
24 probable cause for a hearing by the board, [hearing,] the chief parole
25 and probation officer may, after consideration of the case and pending
26 the next meeting of the board:

27 (a) Release the arrested parolee again upon parole; or

28 (b) Suspend his parole and return him to confinement.

29 2. The chief parole and probation officer shall take whichever action
30 under subsection 1 he deems appropriate within:

31 (a) Fifteen days if [such] the prisoner was paroled by the board.

32 (b) Thirty days if [such] the prisoner was paroled by the authority
33 of another state and is under supervision in this state pursuant to NRS
34 213.180 to 213.210, inclusive. This paragraph does not apply to a
35 parolee who is retaken by an officer of the sending state.

36 3. [The board shall consider at its next meeting the case of each
37 paroled prisoner as to whom] If a determination has been made that
38 probable cause exists for revocation of the parole [.] of a paroled pris-
39 oner, the board shall consider the prisoner's case within 60 days after his
40 return to the custody of the department of prisons.

S. B. 256

SENATE BILL NO. 256—COMMITTEE ON JUDICIARY

FEBRUARY 18, 1981

Referred to Committee on Judiciary

SUMMARY—Makes various changes in provisions regarding presentence reports. (BDR 14-783)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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

AN ACT relating to procedure in criminal cases; adding to the scope of presentence reports and providing for their confidentiality; permitting certain use of juvenile records without a court order; and providing other matters properly relating thereto.

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

- 1 SECTION 1. NRS 176.145 is hereby amended to read as follows:
2 176.145 The report of the presentence investigation [shall] must
3 contain:
4 1. Any prior criminal record of the defendant;
5 2. Such information about his characteristics, his financial condition,
6 [and] the circumstances affecting his behavior and the circumstances of
7 the offense as may be helpful in imposing sentence, [or] in granting
8 probation or in the correctional treatment of the defendant;
9 3. A recommendation of a definite term of confinement [.] or an
10 amount of fine or both; and
11 4. Such other information as may be required by the court.
12 SEC. 2. NRS 176.156 is hereby amended to read as follows:
13 176.156 1. The court shall disclose to the district attorney, [to] the
14 counsel for the defendant and [to] the defendant [.] the factual content
15 of the report of the presentence investigation and the recommendations
16 of the probation service and afford an opportunity to each party to com-
17 ment thereon.
18 2. [The sources of confidential information shall not be disclosed.]
19 Except for the disclosures required by subsection 1, the report and its
20 sources of information are confidential and must not be made a part of
21 any public record.
22 SEC. 3. NRS 62.270 is hereby amended to read as follows:
23 62.270 1. The court shall make and keep records of all cases

1 brought before it. [Except for records of traffic violations forwarded to
2 the department of motor vehicles, the records shall be open]

3 2. *The records may be opened to inspection only by order of the*
4 *court to persons having a legitimate interest therein [.] except that a*
5 *release without a court order may be made of any:*

6 (a) *Records of traffic violations which are being forwarded to the*
7 *department of motor vehicles; and*

8 (b) *Records which have not been sealed and are required by the*
9 *department of parole and probation for preparation of presentence*
10 *reports pursuant to NRS 176.135.*

11 3. The clerk of the court shall prepare and cause to be printed forms
12 for social and legal records and other papers as may be required.

13 [2.] 4. Whenever the conduct of a juvenile with respect to whom
14 the jurisdiction of the juvenile court has been invoked may be the basis
15 of a civil action, any party to [such] the civil action may petition the
16 court for release of the [name of the child,] *child's name*, and upon sat-
17 isfactory showing to the court that the purpose in obtaining [such] the
18 information is for use in a civil action brought or to be brought in good
19 faith, the court shall order the release of the *child's name* [of such child]
20 and authorize its use in [such] the civil action.

S. B. 250

SENATE BILL NO. 250—COMMITTEE ON JUDICIARY

FEBRUARY 18, 1981

Referred to Committee on Judiciary

SUMMARY—Repeals provision regarding change of judge. (BDR 1-704)

**FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.**

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

AN ACT relating to judges; repealing one provision which specifies a procedure for a change of judge; and providing other matters properly relating thereto.

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

1 SECTION 1. NRS 1.235 is hereby amended to read as follows:

2 1.235 1. [Except to the extent otherwise permitted in a civil action
3 by this chapter, any] Any party to an action or proceeding pending in
4 any court other than the supreme court, who seeks to disqualify a judge
5 for actual or implied bias or prejudice shall file an affidavit specifying the
6 facts upon which the disqualification is sought. The affidavit of a party
7 represented by an attorney must be accompanied by a certificate of the
8 attorney of record that the affidavit is filed in good faith and not inter-
9 posed for delay. Except as provided in subsection 2, the affidavit must
10 be filed:

11 (a) Not less than 20 days before the date set for trial or hearing of
12 the case; or

13 (b) Not less than 3 days before the date set for the hearing of any
14 pretrial matter.

15 2. Except as provided in this subsection, if a case is not assigned to
16 a judge before the time required under subsection 1 for filing the affidavit,
17 the affidavit must be filed:

18 (a) Within 3 days after the party or his attorney is notified that the
19 case has been assigned to a judge;

20 (b) Before the hearing of any pretrial matter; or

21 (c) Before the jury is empaneled, evidence taken or any ruling made
22 in the trial or hearing,

23 whichever occurs first. If the facts upon which disqualification of the
24 judge is sought are not known to the party before he is notified of the
25 assignment of the judge or before any pretrial hearing is held, the affidavit

1 may be filed not later than the commencement of the trial or hearing of
2 the case.

3 3. At the time the affidavit is filed, a copy must be served upon the
4 judge sought to be disqualified. Service must be made by delivering the
5 copy to the judge personally or by leaving it at his chambers with some
6 person of suitable age and discretion employed therein.

7 4. The judge against whom an affidavit alleging bias or prejudice is
8 filed shall proceed no further with the matter and shall:

9 (a) Immediately transfer the case to another department of the court,
10 if there is more than one department of the court in the district, or
11 request the judge of another district court to preside at the trial or hear-
12 ing of the matter; or

13 (b) File a written answer with the clerk of the court within 2 days
14 after the affidavit is filed, admitting or denying any or all of the allega-
15 tions contained in the affidavit and setting forth any additional facts
16 which bear on the question of his disqualification. The question of the
17 judge's disqualification must thereupon be heard and determined by
18 another judge agreed upon by the parties or, if they are unable to agree,
19 by a judge appointed:

20 (1) By the chief judge in judicial districts having more than one
21 judge, or if the chief judge is sought to be disqualified, by the judge hav-
22 ing the greatest number of years of service.

23 (2) By the supreme court in judicial districts having only one judge.

24 SEC. 2. NRS 1.240 is hereby repealed.

S. B. 249

SENATE BILL NO. 249—COMMITTEE ON JUDICIARY

FEBRUARY 18, 1981

Referred to Committee on Judiciary

SUMMARY—Permits admonishment of jury by officer of court other than judge. (BDR 2-701)

**FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.**

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

AN ACT relating to juries; permitting an officer of the court other than the judge to admonish a jury; and providing other matters properly relating thereto.

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

- 1 SECTION 1. NRS 16.120 is hereby amended to read as follows:
2 16.120 1. After hearing the charge, the jury shall retire for delibera-
3 tion until they agree upon their verdict or are discharged by the court and
4 [shall] *must* be kept together in a room provided for them, under charge
5 of one or more officers, unless at the discretion of the court they are per-
6 mitted to depart for home overnight. When the jury is kept together, the
7 officer in charge shall keep the jury separate from other persons. He shall
8 not permit any communication to them, or make any himself, unless by
9 order of the court, except to ask them if they have agreed upon their
10 verdict. The officer shall not, before the verdict is rendered, communicate
11 to any person the state of their deliberations or the verdict agreed upon.
12 2. Each party to the action may appoint one or more persons, one
13 of whom on each side is entitled to remain with the officer in charge of
14 the jury, and to be present at all times when any communication is had
15 with any member of the jury except when they are permitted to depart
16 for home overnight, and no communication, either oral or written. [shall]
17 *may* be made to or received from any of the jurors while they are kept
18 together, except in the presence of and hearing of persons selected by
19 the parties; and in case of a written communication, it [shall] *must* not
20 be delivered until read by them.
21 3. At each adjournment of the court, whether the jurors are per-
22 mitted to depart for home overnight or are kept in charge of officers, they
23 [shall] *must* be admonished by the *judge or another officer of the court*
24 that it is their duty not to:

1 (a) Communicate among themselves or with any other person con-
2 cerning their deliberations or any other subject connected with the trial;
3 or

4 (b) Read, watch or listen to any report of or commentary on the trial
5 or any person connected with the trial by any medium of information,
6 including without limitation newspapers, television and radio.

7 SEC. 2. NRS 175.401 is hereby amended to read as follows:

8 175.401 At each adjournment of the court, whether the jurors are
9 permitted to separate or depart for home overnight, or are kept in charge
10 of officers, they [shall] *must* be admonished by the *judge or another*
11 *officer of the court* that it is their duty not to:

12 1. Converse among themselves or with anyone else on any subject
13 connected with the trial;

14 2. Read, watch or listen to any report of or commentary on the trial
15 or any person connected with the trial by any medium of information,
16 including without limitation newspapers, television and radio; or

17 3. If they have not been charged, form or express any opinion on
18 any subject connected with the trial until the cause is finally submitted to
19 them.

S. B. 247

SENATE BILL NO. 247—COMMITTEE ON JUDICIARY

FEBRUARY 18, 1981

Referred to Committee on Judiciary

SUMMARY—Limits length of probation and use of presentence reports and provides for disposal of certain confiscated property. (BDR 14-778)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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

AN ACT relating to procedure in criminal cases; limiting the cases where presentence investigation is mandatory; prescribing maximum periods for probation; providing for disposal of weapons of probationers and certain confiscated and unclaimed property; and providing other matters properly relating thereto.

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

- 1 SECTION 1. NRS 176.135 is hereby amended to read as follows:
2 176.135 1. The probation service of the district court shall make a
3 presentence investigation and report to the court [upon] on each defend-
4 ant who pleads guilty or nolo contendere to or is found guilty of a felony.
5 *The report must be made before the imposition of sentence or the grant-*
6 *ing of probation.*
7 2. *Upon request of the court in special cases, the service may make*
8 *presentence investigations and reports on defendants who plead guilty or*
9 *nolo contendere to or are found guilty of gross misdemeanors.*
10 SEC. 2. NRS 176.185 is hereby amended to read as follows:
11 176.185 1. Whenever any person has been found guilty in a district
12 court of a crime upon verdict or plea, the court, except in cases of murder
13 of the first or second degree, kidnapping in the first degree, sexual assault,
14 or an offense for which the suspension of sentence or the granting of pro-
15 bation is expressly forbidden, may by its order suspend the execution of
16 the sentence imposed and grant probation to the convicted person as the
17 judge thereof deems advisable. The court may grant probation to a person
18 convicted of indecent or obscene exposure or of lewdness only if a cer-
19 tificate of a psychiatrist, as required by NRS 201.210 to 210.230, inclu-
20 sive, is received by the court.
21 2. The district judge shall not, *except as provided in the next sen-*
22 *tence, grant probation [until] to a convicted felon until the judge receives*

1 a written report [is received by him] from the chief parole and proba-
2 tion officer. The chief parole and probation officer shall submit a written
3 report not later than 30 days following a request for a probation investi-
4 gation from the county clerk, [and] but if no report is submitted by the
5 chief parole and probation officer within 30 days the district judge may
6 grant probation without the written report.

7 3. In issuing the order granting probation, the court may fix the
8 terms and conditions thereof, including a requirement for restitution [as
9 provided in NRS 176.189, except that the] or an order that the proba-
10 tioner dispose of all the weapons he possesses.

11 4. The court shall not suspend the execution of a sentence of imprison-
12 ment after the defendant has begun to serve it.

13 [4.] 5. In placing any defendant on probation or in granting any
14 defendant a suspended sentence, the court shall direct that he be placed
15 under the supervision of the chief parole and probation officer.

16 [5.] 6. The court shall also, upon the entering of the order of pro-
17 bation or suspension of sentence, as provided for in NRS 176.175 to
18 176.245, inclusive, direct the clerk of the court to certify a copy of the
19 records in the case and deliver the copy to the chief parole and probation
20 officer.

21 SEC. 3. NRS 176.215 is hereby amended to read as follows:

22 176.215 1. The period of probation or suspension of sentence may
23 be indeterminate or may be fixed by the court and may at any time be
24 extended or terminated by the court [Such period with], but such a
25 period, including any extensions thereof [shall not exceed 5 years.] ,
26 must not be more than:

27 (a) Two years for a:

28 (1) Gross misdemeanor; or

29 (2) Deferred judgment pursuant to subsection 6 of NRS 453.336; or

30 (b) Five years for a felony.

31 2. At any time during probation or suspension of sentence, the court
32 may issue a warrant for violating any of the conditions of probation or
33 suspension of sentence and cause the defendant to be arrested. Any
34 parole and probation officer or any peace officer with power to arrest
35 may arrest a probationer without a warrant, or may deputize any other
36 officer with the power to arrest to do so by giving him a written statement
37 setting forth that the probationer has, in the judgment of the parole
38 and probation officer, violated the conditions of probation. Except as
39 provided in subsection 3, the parole and probation officer, or the peace
40 officer, after making an arrest shall present to the detaining authorities a
41 statement of the charges against the probationer. The parole and proba-
42 tion officer shall at once notify the court which granted probation of the
43 arrest and detention of the probationer and shall submit a report in writ-
44 ing showing in what manner the probationer has violated the conditions
45 of probation.

46 3. A parole and probation officer or a peace officer may immediately
47 release from custody without any further proceedings any person he
48 arrests without a warrant for violating a condition of probation if the
49 parole and probation officer or peace officer determines that there is no

1 probable cause to believe that the person violated the condition of pro-
2 bation.

3 SEC. 4. Chapter 213 of NRS is hereby amended by adding thereto a
4 new section which shall read as follows:

5 1. A parole or probation officer shall immediately deliver to the
6 department any property, including any firearm or other dangerous
7 weapon in his possession which:

8 (a) He has confiscated from a person who held it in violation of the
9 terms of his probation or parole; or

10 (b) Has been abandoned or is unclaimed.

11 2. If the department is not required to retain the property as evi-
12 dence, pursuant to a court order or a direction of the district attorney or
13 attorney general, the department shall:

14 (a) Destroy the property if it is a weapon or instrument which the
15 department determines to be dangerous to the public.

16 (b) If the property is not such a weapon or instrument, keep it for
17 return to the owner and return it to him if he submits a claim to the
18 department and establishes his ownership within 1 year after the depart-
19 ment comes into possession of the property.

20 3. The department shall not return any property to a parolee or pro-
21 bationer if his possession of the property would constitute a violation of
22 the terms of his parole or probation or any federal or state law.

23 4. If the department is not able to determine the owner of the prop-
24 erty within the 1-year period, the department acquires title to the prop-
25 erty and may:

26 (a) Give it to another state agency or a local agency for its use;

27 (b) Give it to a state or local agency in exchange for property needed
28 by the department;

29 (c) Trade the property to a licensed merchant in exchange for prop-
30 erty needed by the department; or

31 (d) Retain the property for the official use of the department.

32 5. The department shall keep an accurate record of all actions taken
33 pursuant to this section.

34 SEC. 5. NRS 213.107 is hereby amended to read as follows:

35 213.107 As used in NRS 213.107 to 213.160, inclusive [:], and
36 section 4 of this act:

37 1. "Board" means the state board of parole commissioners.

38 2. "Department" means the department of parole and probation.

39 3. "Executive officer" means the chief parole and probation officer.

40 SEC. 6. This act shall become effective upon passage and approval.

S. B. 101

SENATE BILL NO. 101—COMMITTEE ON JUDICIARY

JANUARY 27, 1981

Referred to Committee on Judiciary

SUMMARY—Removes limitations on interest rates for loans. (BDR 8-415)

**FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.**

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

AN ACT relating to interest on money; removing limitations on interest rates for consumer and other loans; and providing other matters properly relating thereto.

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

1 SECTION 1. NRS 97.195 is hereby amended to read as follows:

2 97.195 The amount of the time price differential in any retail install-
3 ment contract [shall not exceed 1 percent of the initial balance multi-
4 plied by the number of months, including any excess fraction of a month
5 as 1 month, elapsing between the date of such contract and the due date
6 of the last installment, or \$25, whichever is greater. In addition, such]
7 *may be any amount agreed upon by the parties. Such a contract may*
8 provide for:

9 1. A delinquency charge on any installment delinquent 10 days or
10 more in the amount of 5 percent of [such] the installment or \$2, which-
11 ever is greater, but not [to exceed the sum of] *more than \$5.*

12 2. Reasonable collection costs and attorney's fee in the event of
13 delinquency.

14 SEC. 2. NRS 97.245 is hereby amended to read as follows:

15 97.245 1. *The rate of a time price differential on any deferred*
16 *balance is a matter for negotiation between a seller and buyer. At or*
17 *[prior to] before the time a retail charge agreement is made, the seller*
18 *shall advise the buyer in writing, on the application form or otherwise, or*
19 *orally, that a time price differential will be computed on the outstanding*
20 *balance for each month (which need not be a calendar month) or other*
21 *regular period agreed upon, the schedule or rate by which the time price*
22 *differential will be computed, and that the buyer may at any time pay his*
23 *total unpaid balance. If such information is given orally, the seller shall,*
24 *upon approval of the buyer's credit, deliver to the buyer or mail to him*
25 *at his address a memorandum setting forth such information.*

1 2. The seller or holder of a retail charge agreement shall promptly
2 supply the buyer with a statement as of the end of each monthly period
3 (which need not be a calendar month) or other regular period agreed
4 upon, in which there is any unpaid balance thereunder. [, which] The
5 statement [shall] *must* set forth the following:

6 (a) The unpaid balance under the retail charge agreement at the
7 beginning and [at the] end of the period;

8 (b) Unless otherwise furnished by the seller to the buyer by sales slip,
9 memorandum or otherwise, a description or identification of the goods
10 or services purchased during the period, the cash sale price and the date
11 of each purchase;

12 (c) The payments made by the buyer to the seller and any other
13 credits to the buyer during the period;

14 (d) The amount, if any, of any time price differential for [such] *the*
15 period; and

16 (e) A legend to the effect that the buyer may at any time pay his
17 total unpaid balance.

18 3. A retail charge agreement may provide for a time price differ-
19 ential not to exceed a rate of 1.8 percent per month on the deferred
20 balance.

21 SEC. 3. NRS 97.285 is hereby amended to read as follows:

22 97.285 The limitation imposed upon time price differentials by this
23 chapter is exclusive, and [neither] the provisions of NRS 99.050 [nor
24 any other law limiting rates of interest applies] *do not apply* to con-
25 tracts or agreements governed by this chapter.

26 SEC. 4. NRS 99.050 is hereby amended to read as follows:

27 99.050 Parties may agree for the payment of any rate of interest
28 on money due or to become due on any contract. [which does not exceed
29 the rate of 18 percent per annum.] In computing the rate of interest,
30 any payment made or amount included in the obligation, as considera-
31 tion for the extension of credit, which is computed as a percentage of the
32 amount of the credit extended must be prorated over the period from the
33 extension of credit to the date when the final payment is due. [Any
34 agreement for a greater rate of interest than specified in this section is
35 void as to all interest.]

36 SEC. 5. NRS 645B.195 is hereby amended to read as follows:

37 645B.195 1. For an extension of credit which is secured by a deed
38 of trust or mortgage of real property and which is made by or through
39 a mortgage company, the rate of interest [must not exceed the greater of:

40 (a) Twelve percent per annum; or

41 (b) If the lowest daily prime rate at the three largest United States
42 banking institutions is 9 percent or more, that lowest daily prime rate
43 plus 3.5 percent.] *may be any rate agreed upon by the parties.*

44 2. If the rate of interest exceeds 12 percent:

45 (a) [The lender shall certify on the loan document, under penalty
46 of perjury, what the lowest prime rate is on the date of execution of the
47 final loan document.

48 (b)] The lender shall not impose any charge or penalty for prepay-
49 ment of all or any part of the loan.

50 [(c)] (b) The lender shall not require any compensating balance or

1 use any other device to increase the cost to the borrower of borrowing
2 the net amount of the loan.

3 3. For the purposes of this section, "interest" does not include any
4 payment made to a third party, or amount included in the obligation
5 for payment to a third party, as consideration for the extension of credit,
6 which is computed as a percentage of the amount of the credit extended.

7 SEC. 6. NRS 646.050 is hereby amended to read as follows:

8 646.050 1. [All pawnbrokers are authorized to] *A pawnbroker*
9 *may charge and receive interest at [the rate of 4 percent a month for*
10 *money loaned on the security of] any rate agreed upon by himself and*
11 *a person securing a loan on personal property actually received in*
12 *pledge. [and a person shall not ask or receive a higher rate of interest*
13 *or discount on any such loan, or on any actual or pretended sale or*
14 *redemption of personal property.] For any loan made, a pawnbroker*
15 *may make an initial charge of \$3 in addition to interest. [at the author-*
16 *ized rate.]*

17 2. All personal property [shall] *must* be held for redemption for
18 [a period of not less than] *at least 150 days [from] after* the date of
19 pledge with any pawnbroker.

20 3. [All pawnbrokers] *A pawnbroker* shall give to the person secur-
21 ing the loan a printed receipt clearly showing the amount loaned *and*
22 *rate of interest, together* with a description of the pledged property. The
23 reverse side of the receipt [shall] *must* be marked in such a manner
24 that the amounts of principal and interest paid by the person securing
25 the loan can be clearly designated. Each payment [shall] *must*
26 be entered upon the reverse side of the receipt and each entry [shall] *must*
27 designate how much of the payment is being credited to principal and
28 how much to interest, with dates of payments shown thereon.

29 SEC. 7. NRS 675.060 is hereby amended to read as follows:

30 675.060 1. [No] *A person shall not engage in the business of*
31 *lending in amounts of \$10,000 or less and contract for, exact or receive,*
32 *directly or indirectly, on or in connection with any such loan, any*
33 *charges, whether for interest, compensation, consideration or expense,*
34 *[which in the aggregate are greater than the interest that the lender*
35 *would be permitted by law to charge for a loan of money if he were not*
36 *a licensee under this chapter,] except as provided in and authorized by*
37 *this chapter, and without first having obtained a license from the super-*
38 *intendent.*

39 2. For the purpose of this section a loan shall be deemed to be in
40 the amount of \$10,000 or less if the net amount or value advanced to
41 or on behalf of the borrower, after deducting all payments for interest,
42 principal, expenses and charges of any nature taken substantially con-
43 temporaneously with the making of the loan, does not exceed \$10,000.

44 SEC. 8. NRS 675.290 is hereby amended to read as follows:

45 675.290 1. For the purposes of this section, a loan or refinancing
46 is "precomputed" if the debt is expressed as a sum comprising the
47 principal and the interest charge computed in advance.

48 2. [Except as provided in paragraph (c) of this subsection, every]
49 *Every licensee may make loans of any amount with cash advance not*
50 *exceeding \$10,000, repayable except as otherwise provided in subsection*

1 4, in substantially equal consecutive monthly installments of principal
2 and interest combined, and may charge, contract for, collect and receive
3 **[charges not in excess of]** the following **[:]** charges:

4 (a) A charge for interest at a rate **[not exceeding the equivalent of**
5 **the greater of the following:**

6 (1) The total of:

7 (I) Thirty-six percent per year on that part of the unpaid balance
8 of the amount of cash advanced which is \$300 or less;

9 (II) Twenty-one percent per year on that part of the unpaid
10 balance of the amount of cash advance which exceeds \$300 but does
11 not exceed \$1,000; and

12 (III) Fifteen percent per year on that part of the unpaid balance
13 of the amount of cash advanced which exceeds \$1,000.

14 (2) Eighteen percent per year on the unpaid balance of the amount
15 of cash advanced.

16 (b) **] agreed upon by the licensee and borrower.** The charge for
17 interest must be calculated according to the actuarial method, which is
18 the method of allocating payments between principal and interest pur-
19 suant to which a payment is applied first to the accumulated interest and
20 the balance, if any, is applied to the unpaid principal. A licensee may, at
21 the time the loan is made, precompute the charge for interest at the
22 agreed-upon rate on the scheduled unpaid principal balances according to
23 the terms of the contract and add that interest to the principal of the
24 loan. Where the charge for interest is precomputed the face amount of
25 any note or contract may exceed \$10,000 by the amount of charges
26 authorized by this chapter added to principal. If the charge for interest is
27 precomputed, payments on account may be applied to the combined
28 total of principal and precomputed interest until the contract is fully
29 paid. All payments on account, except those applied to default or defer-
30 ment charges, must be applied to the installments in the order in which
31 they fall due. The effect of prepayment of a precomputed loan is
32 governed by the provisions relating to refund upon prepayment in full.

33 **[(c) On loans secured by mobile homes or factory-built housing**
34 **which constitute real estate on real property as defined by NRS 361.035**
35 **the charge for interest may not exceed 18 percent on the unpaid balance**
36 **of the amount of cash advanced.**

37 (d) **] (b) In the event of a default of more than 7 days in the pay-**
38 **ment of one-half or more of any scheduled installment on a precomputed**
39 **loan contract, the licensee may charge and collect a default charge not**
40 **exceeding an amount equal to the refund that would be required if the**
41 **loan were prepaid in full 1 month [prior to] before maturity. The charge**
42 **may not be collected more than once for the same default and may be**
43 **collected at the time of [such] the default or at any time thereafter. If**
44 **[such] the default charge is deducted from any payment received after**
45 **default occurs and [such] the deduction results in the default of a sub-**
46 **sequent installment, no charge may be made for the resulting default.**

47 **[(e) (c) If, as of an installment due date, the payment dates of all**
48 **wholly unpaid installments on a precomputed loan contract, on which**
49 **no default charge has been collected, are deferred one or more full**

1 months and the maturity of the contract is extended for a corresponding
2 period, the licensee may charge and collect a deferment charge which
3 [shall] *must* not exceed the difference between the refund that would
4 be required for prepayment in full as of the scheduled due date of the
5 first deferred installment and the amount which would be required for
6 prepayment in full as of 1 month [prior to such] *before that date* multi-
7 plied by the number of months in the deferment period. The deferment
8 period is [that] *the* period of time in which no payment is made or
9 required by reason of the deferment. No installment on which a default
10 charge has been collected or on account of which any partial payment
11 has been made may be deferred or included in the computation of the
12 deferment charge unless [such] *the* default charge or partial payment is
13 refunded or credited to the deferment charge. The deferment charge may
14 be collected at the time of the deferment or at any time thereafter and
15 any payment received at the time of the deferment may be applied first
16 to the deferment charge and the remainder, if any, applied to the unpaid
17 balance of the contract. If such a payment is sufficient also to pay in full
18 an installment which is in default and the applicable default charge, it
19 must be first so applied and [such] *the* installment [shall] *must* not be
20 deferred [nor subject] *or subjected* to the default charge.
21 If a refund is required during a deferment period, the borrower must
22 also receive a refund of that portion of the deferment charge attributable
23 to the unexpired full months of the deferment period.

24 3. If a precomputed loan contract is prepaid in full before the final
25 installment date, the borrower [shall] *must* receive a refund of an
26 amount which [shall be] *is* at least as great a proportion of the com-
27 bined total of interest and service charge, excluding any adjustment made
28 for a first period of more than 1 month, as the sum of the periodic time
29 balances following the date determined by the following sentence bears
30 to the sum of all the periodic time balances under the schedule of pay-
31 ments in the original contract. In computing any required refund, any
32 prepayment in full made on or before the 15th day following an install-
33 ment date shall be deemed to have been made on the installment due
34 date preceding such prepayment in full and if made on or after the 16th
35 day shall be deemed to have been made on the installment due date
36 following such prepayment in full. No refund may be required for partial
37 prepayments and no refund of less than \$1 need be made. The tender
38 by the borrower, or at his request, of an amount equal to the unpaid
39 balance less the required refund must be accepted by the licensee in full
40 payment of the contract. If the maturity of the contract is accelerated for
41 any reason, the licensee shall make the same refund as would be required
42 for prepayment in full.

43 4. When a loan contract is for more or less than 1 year, the interest
44 must be computed at one-twelfth the annual rate for each month. For
45 the purpose of computing charges, [whether at the maximum rate or
46 less.] a month [shall be] *is* that period of time from any date in a
47 calendar month to the corresponding date in the following calendar
48 month, but if there is not such corresponding date, then to the last day
49 of [such] *the* following month. A day is one-thirtieth of a month when
50 computation is made for a fraction of a month.

1 5. A borrower and licensee may agree that the first installment due
2 date may be not more than 15 days more than 1 month [from] after
3 the date of the loan and the amount of [such] the first installment may
4 be increased by one-thirtieth of the portion of the interest authorized
5 by paragraph (a) of subsection 2 which would be attributable to a first
6 installment of 1 month for each extra day.

7 6. [No licensee may induce or permit any person or husband and
8 wife to be obligated, directly or indirectly, under more than one contract
9 of loan at the same time for the purpose of or with the effect of obtaining
10 a higher rate of charge than would otherwise be permitted by this section.

11 7.] In addition to the charges [herein] provided for [] in this sec-
12 tion, no further or other amount [whatsoever shall] may be directly or
13 indirectly charged, contracted for or received from the borrower in con-
14 nection with a loan made under this chapter except:

15 (a) Court costs.

16 (b) Reasonable attorneys' fees fixed and assessed by the court.

17 (c) Lawful fees for the filing, recording or releasing in any public
18 office of any instrument securing a loan.

19 (d) The identifiable charge or premium for insurance provided for
20 in NRS 675.300 if:

21 (1) With respect to insurance on tangible personal property offered
22 as security for the loan, a clear, conspicuous, and specific statement in
23 writing is furnished by the lender to the borrower setting forth the cost
24 of the insurance if obtained from or through the lender and stating that
25 the borrower may choose the person through whom the insurance is to
26 be obtained; or

27 (2) With respect to insurance on the life, health or disability of a
28 party obligated on a loan which is taken as security for the loan:

29 (I) The insurance is not required by the lender and this fact is
30 clearly and conspicuously disclosed in writing to the borrower; and

31 (II) Any borrower desiring the insurance coverage gives specifically
32 dated and separately signed affirmative written indication of this desire
33 after receiving written disclosure to him of the cost of the insurance.

34 (e) Fees for noting a lien on or transferring a certificate of title to
35 any motor vehicle offered as security for a loan made under this chapter.

36 (f) Reasonable fees of a trustee for preparing and recording a recon-
37 veyance of any real property securing the loan.

38 (g) The following fees on any loan which is secured in whole or in
39 part by real property:

40 (1) Reasonable amounts actually applied in payment of the expense
41 of inspecting or appraising the property offered in connection with the
42 loan, investigating the responsibility of the applicant or procuring or
43 extending any abstract of title or certificate of title insurance covering
44 the property;

45 (2) The amount actually paid for the examination of any such
46 abstract or title insurance certificate;

47 (3) An escrow fee of a reasonable amount when paid to an inde-
48 pendent person in connection with the loan; and

49 (4) Attorney's fees for the preparation of deeds, deeds of trust

1 and other documents in connection with the loan if the attorney is not
2 a salaried employee of the licensee.

3 (h) Reasonable expenses, including compensation of the trustee and
4 his attorney's fees:

5 (1) Upon the proper exercise of a power of sale contained in a
6 mortgage or deed of trust given to secure the loan; or

7 (2) Upon judicial foreclosure of any secured interest contained in
8 a mortgage or deed of trust given to secure the loan.

9 **[8.]** 7. If any amount in excess of the amount authorized by this
10 chapter is charged, contracted for or received, except as the result of an
11 accidental or bona fide error, the licensee **[shall have]** *has* no right to
12 collect or receive any interest.

13 SEC. 9. NRS 677.340 is hereby amended to read as follows:

14 677.340 1. No person doing business under the authority of any
15 law of this state or of the United States relating to banks, savings banks,
16 trust companies, savings or building and loan associations, credit unions
17 or persons licensed under chapter 675 of NRS is eligible to become a
18 licensee under this chapter, nor does this chapter apply to any business
19 transacted by any such person under the authority of and as permitted by
20 any such law. A subsidiary of a parent corporation one or more of whose
21 other subsidiaries is engaged in any of the activities listed in this subsection
22 is not eligible to be licensed under this chapter. This chapter does
23 not apply to any bona fide pawnbroking business transacted under a
24 pawnbroker's license.

25 2. Except to the extent that persons enumerated in subsection 1 are
26 expressly so permitted by law, a person shall not engage in the business
27 of lending in gross amounts of \$3,500 or more, and contract for, exact
28 or receive, directly or indirectly, on or in connection with any such loan,
29 any charges, whether for interest, compensation, consideration or
30 expense, **[which in the aggregate are greater than the interest that the**
31 **lender would be]** *in any manner other than that* permitted by NRS
32 99.050 **[to charge for a loan of money if he were not a licensee under**
33 **this chapter, except as provided in and authorized by]** *or this chapter,*
34 *and without first having obtained a license from the director.*

35 3. For the purpose of this section a loan shall be deemed to be in the
36 gross amount of \$3,500 or more if the total amount or value advanced to
37 or on behalf of the borrower, after including all payments for interest,
38 principal, expenses and charges of any nature taken substantially con-
39 temporaneously with the making of the loan is in a gross amount of
40 \$3,500 or more.

41 SEC. 10. NRS 677.670 is hereby amended to read as follows:

42 677.670 1. A licensee may only make loans in gross amounts of
43 \$3,500 or more, but less than a gross amount of \$5,000, which are
44 repayable, except as otherwise provided in subsections 3 and 4, in sub-
45 stantially equal, consecutive periodic installments of principal and inter-
46 est combined. **[** and may charge, contract for, collect and receive interest
47 and charges computed by either of the following methods:

48 (a) A charge for interest in an amount not exceeding \$10 per annum,
49 add-on per \$100 of the cash advance; or

1 (b) A charge for interest in an amount not exceeding 1.5 percent per
2 month on the unpaid principal balance.]

3 2. [The] Any charge for interest [under paragraph (b) of subsection
4 1 shall] must be calculated according to the actuarial method, which
5 is the method of allocating payments between principal and interest pur-
6 suant to which a payment is applied first to the accumulated interest and
7 the balance, if any, is applied to the unpaid principal. A licensee may,
8 at the time the loan is made, precompute the charge for interest at the
9 agreed-upon rate on the scheduled unpaid principal balances according
10 to the terms of the contract and add such interest to the principal of the
11 loan. If the charge for interest is precomputed, payments on account may
12 be applied to the combined total of principal and precomputed interest
13 until the contract is fully paid. All payments on account, except those
14 applied to default or deferment charges, [shall] must be applied to the
15 installments in the order in which they fall due. The effect of prepayment
16 of a precomputed loan is governed by the provisions relating to refund
17 upon prepayment in full.

18 3. A borrower and licensee may agree that the first installment due
19 date may be not more than 15 days more than 1 month [from] after
20 the date of the loan, and the amount of [such] the first installment may
21 be increased by one-thirtieth of the portion of the interest [authorized
22 by paragraphs (a) and (b) of subsection 1] which would be attributable
23 to a first installment of 1 month for each extra day.

24 4. A licensee may make loans which are repayable at maturity by a
25 single payment including principal, interest and charges, if:

26 (a) The duration of the loan is 1 year or less; and

27 (b) The borrower's income is substantially greater at or soon before
28 the maturity date than at other times.

29 5. When a loan contract is for more or less than 1 year, the interest
30 [shall] must be computed at one-twelfth the annual rate for each month.
31 For the purpose of computing charges, [whether at the maximum rate
32 or less,] a month is that period of time from any date in a calendar
33 month to the corresponding date in the following calendar month, but
34 if there is no such corresponding date, then to the last day of [such]
35 the following month. A day is one-thirtieth of a month when computa-
36 tion is made for a fraction of a month.

37 [6. A licensee shall not induce or permit any person or husband
38 and wife to be obligated, directly or indirectly, under more than one
39 contract of loan at the same time for the purpose of or with the effect
40 of obtaining a higher rate of charge than would otherwise be permitted
41 by this section.]

42 SEC. 11. NRS 678.710 is hereby amended to read as follows:

43 678.710 1. A credit union may make loans to members in accord-
44 ance with the provisions of the bylaws upon receipt of approval by the
45 credit committee or loan officer at a rate of interest [not exceeding 1
46 percent per month on the unpaid monthly balance unless a higher rate
47 is approved by the commissioner.] agreed upon by the credit union and
48 member.

49 2. Every application for a loan [shall] must be made in writing
50 upon a form furnished by the credit union which has been approved

1 by the board. The application [shall] *must* include the purpose for
2 which the loan is desired and the security, if any, offered.

3 3. A loan [shall] *must* not be made to any member in an aggregate
4 amount in excess of 10 percent of the credit union's unimpaired capital
5 and surplus.

6 4. A credit union may participate with other credit unions, corpora-
7 tions or financial institutions in making loans to credit union members.

8 5. A member may receive a loan in installments or in one sum and
9 may pay the whole or any part of his loan on any day on which the
10 office of the credit union is open for business.

11 SEC. 12. NRS 675.320 is hereby repealed.

S. B. 188

SENATE BILL NO. 188—COMMITTEE ON JUDICIARY

FEBRUARY 4, 1981

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning custody of children in cases of parents' separation or divorce. (BDR 11-500)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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

AN ACT relating to the custody of children; revising provisions on determination of custody after parents' separation or dissolution of marriage; enlarging provisions for joint custody; providing for access to records concerning a minor child by a noncustodial parent; and providing other matters properly relating thereto.

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

- 1 SECTION 1. Chapter 125 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 6, inclusive, of this act.
3 SEC. 2. *The legislature declares that it is the policy of this state:*
4 1. *To ensure that minor children have frequent associations and a*
5 *continuing relationship with both parents after the parents have become*
6 *separated or have dissolved their marriage; and*
7 2. *To encourage such parents to share the rights and responsibilities*
8 *of child rearing.*
9 SEC. 3. 1. *In determining custody of a minor child in an action*
10 *brought under this chapter, the sole consideration of the court is the best*
11 *interest of the child. If it appears to the court that joint custody would be*
12 *in the best interest of the child, the court may grant custody to the parties*
13 *jointly.*
14 2. *No preference may be given to either parent for the sole reason*
15 *that the parent is the mother or the father of the child.*
16 3. *The court shall award custody in the following order of prefer-*
17 *ence unless in a particular case the best interest of the child requires*
18 *otherwise:*
19 (a) *To both parents jointly.*
20 (b) *To either parent. When awarding custody to either parent, the*
21 *court shall consider, among other factors, which parent is more likely to*
22 *allow the child to have frequent associations and a continuing relation-*
23 *ship with the noncustodial parent.*

1 (c) To a person or persons in whose home the child has been living
2 and where the child has had a wholesome and stable environment.

3 (d) To any other person or persons whom the court finds suitable and
4 able to provide proper care and guidance for the child.

5 4. In determining the best interest of the child, the court shall con-
6 sider, among other things:

7 (a) The wishes of the child if the child is of sufficient age and capacity
8 to form an intelligent preference as to his custody; and

9 (b) Any nomination by a parent of a guardian for the child.

10 SEC. 4. 1. There is a presumption, affecting the burden of proof, that
11 joint custody would be in the best interest of a minor child if the parents
12 have agreed to an award of joint custody or so agree in open court at a
13 hearing for the purpose of determining the custody of the minor child or
14 children of the marriage.

15 2. The court may award joint legal custody without awarding joint
16 physical custody in a case where the parents have agreed to joint legal
17 custody.

18 3. For assistance in making a determination whether an award of
19 joint custody is appropriate, the court may direct that an investigation be
20 conducted.

21 4. If the court does not enter an order awarding joint custody of a
22 child after either parent has applied for joint custody, the court shall state
23 in its decision the reason for its denial of the parents application.

24 SEC. 5. 1. Before the court makes an order awarding custody to any
25 person other than a parent, without the consent of the parents, it shall
26 make a finding that an award of custody to a parent would be detrimental
27 to the child and the award to a nonparent is required to serve the best
28 interest of the child.

29 2. No allegation that parental custody would be detrimental to the
30 child, other than a statement of that ultimate fact, may appear in the
31 pleadings.

32 3. The court may exclude the public from any hearing on this issue.

33 SEC. 6. 1. The court may, when appropriate, require the parents to
34 submit to the court a plan for carrying out the court's order concerning
35 custody.

36 2. Access to records and other information pertaining to a minor
37 child, for example, medical, dental and school records, must not be
38 denied to a parent for the reason that the parent is not the child's cus-
39 todial parent.

40 SEC. 7. NRS 125.140 is hereby amended to read as follows:

41 125.140 1. In determining custody of a minor child in an action
42 brought under this chapter, the [sole consideration of the court is the
43 best interest of the child, and no preference may be given to either parent
44 for the sole reason that the parent is the mother or the father of the child.
45 If it appears to the court that joint custody would be in the best interest
46 of the child, the court may grant custody to the parties jointly.

47 2. In actions for divorce the] court may:

48 (a) During the pendency of the action, or at the final hearing or at
49 any time thereafter during the minority of any of the children of the

1 marriage, make such *an* order for the custody, care, education, mainte-
2 nance and support of [such] *the* minor children as appears in their best
3 interest; and

4 (b) At any time modify or vacate its order, even if the divorce was
5 obtained by default without an appearance in the action by one of the
6 parties.

7 The party seeking such an order shall submit to the jurisdiction of the
8 court for the purposes of this subsection. The court may make such an
9 order upon the application of one of the parties or the legal guardian of
10 the minor.

11 [3.] 2. *Any order for joint custody may be modified or terminated*
12 *by the court upon the petition of one or both parents or on the court's*
13 *own motion if it is shown that the best interest of the child requires the*
14 *modification or termination. The court shall state in its decision the rea-*
15 *sons for the order of modification or termination if either parent opposes*
16 *it.*

17 3. *Any order for custody of a minor child or children of a marriage*
18 *entered by a court of another state may, subject to the jurisdictional*
19 *requirements in chapter 125A of NRS, be modified at any time to an*
20 *order of joint custody.*

21 4. All orders authorized by [subsection 2 shall] *this section must be*
22 *made in accordance with the provisions of chapter 125A of NRS.*

23 [4.] 5. Except where a contract providing otherwise has been exe-
24 cuted pursuant to NRS 123.080, the obligation for care, education, main-
25 tenance and support of any minor child created by any order entered
26 under this section ceases upon the death of the person to whom [such]
27 *the order was directed.*

28 SEC. 8. NRS 146.010 is hereby amended to read as follows:

29 146.010 Except as [provided in NRS 125.140,] *may be provided*
30 *otherwise pursuant to section 3 of this act, when any person dies leaving*
31 *a surviving spouse or a minor child or children, the surviving spouse,*
32 *child or children are entitled to remain in possession of the homestead*
33 *and of all the wearing apparel and provisions on hand of the family, and*
34 *all of the household furniture, and are also entitled to a reasonable pro-*
35 *vision for their support, to be allowed by the court.*

S. B. 224

SENATE BILL NO. 224—COMMITTEE ON JUDICIARY

FEBRUARY 12, 1981

—○—
Referred to Committee on Judiciary

SUMMARY—Limits deficiency judgments against guarantors and sureties.
(BDR 3-367)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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

AN ACT relating to civil actions; including guarantors and sureties in the law regulating deficiency judgments; and providing other matters properly relating thereto.

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

- 1 SECTION 1. NRS 40.453 is hereby amended to read as follows:
2 40.453 1. It is hereby declared by the legislature to be against pub-
3 lic policy for any document relating to the sale of real property to con-
4 tain any provision **[whereby a mortgagor or trustor waives any right]**
5 *waiving the rights of any party which are secured to him by the laws of*
6 *this state.*
7 2. **[No court shall]** *A court shall not enforce any such provision.*
8 SEC. 2. NRS 40.455 is hereby amended to read as follows:
9 40.455 Upon application of the judgment creditor or the beneficiary
10 of the deed of trust within 3 months **[from]** *after* the date of the fore-
11 closure sale or the trustee's sale held pursuant to NRS 107.080, respec-
12 tively, and after the hearing conducted under NRS 40.457, the court may
13 award a deficiency judgment to the judgment creditor or the beneficiary
14 of the deed of trust *against the maker, guarantor or surety of the note*
15 *if it appears from the sheriff's return or the recital of consideration in the*
16 *trustee's deed that there is a deficiency of sale proceeds and a balance*
17 *remaining due to the judgment creditor or the beneficiary of the deed of*
18 *trust, respectively.*