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## Health and Welfare; communicable diseases

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ring or tab.<sup>2</sup> Chapter 121 provides an exemption for a beverage container sealed with a soft material that detaches.<sup>3</sup>

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2. 1989 Nev. Stat. ch. 121, sec. 1, at \_\_\_ (enacting NEV. REV. STAT. § 585.\_\_\_\_). See generally *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456 (1981) (upholding the constitutionality of a statute prohibiting the sale of milk in a specific type of container). The Court held that while such statutes may impose a burden on interstate commerce, the burden is relatively minor when compared to the benefits. *Id.* at 472; *Lewis v. BT Investment Managers*, 447 U.S. 27, 35-36 (1980) (under the Commerce Clause of the United States Constitution, the states retain the power to regulate matters of local concern even if interstate commerce is affected); *American Can Co. v. Oregon Liquor Control Comm'n*, 15 Or. App. 618, 627-644, 517 P.2d 691, 696-703 (1973) (holding constitutional a beverage container statute under the Commerce Clause since: (1) there was no conflict with federal legislation; (2) the state has power to enact legislation for environmental protection; and (3) interstate commerce was not impeded).

3. 1989 Nev. Stat. ch. 121, sec. 1, at \_\_\_ (enacting NEV. REV. STAT. § 585.\_\_\_\_). Soft materials include laminated tape or foil. *Id.* Milk, soy-based, or similar products requiring heat and pressure in the canning process are also excepted. *Id.*

## Health and Welfare; communicable diseases

NEV. REV. STAT. §§ 202.140, 202.150, 202.160, 439.210, 439.215, 439.220, 439.500, 439.510, 439.530, 441.010, 441.020, 441.030, 441.035, 441.040, 441.050, 441.060, 441.070, 441.080, 441.090, 441.100, 441.110, 441.120, 441.130, 441.140, 441.150, 441.160, 441.170, 441.175, 441.180, 441.190, 441.200, 441.210, 441.220, 441.230, 441.240, 441.250, 441.260, 441.280, 441.290, 441.300, 441.320, 443.015, 443.025, 443.037, 443.055, 443.057, 443.065, 443.075, 443.095, 443.105, 443.115, 443.125, 443.135, 443.170, 443.180, 443.190, 443.200, 443.210, 443.220, 443.230, 443.240, 443.250, 443.260 (repealed); § \_\_\_\_ (new); §§ 49.245, 129.060, 244.358, 268.427, 269.227, 460.020 (amended).

SB 73 (Committee on Human Resources); 1989 STAT. Ch. 138

Existing law requires the State Board of Health<sup>1</sup> (Board) to adopt regulations designed to define and control dangerous communicable

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1. See NEV. REV. STAT. § 439.030 (1987) (describing creation of Board and qualifications of members).

diseases.<sup>2</sup> Chapter 138 defines "communicable disease,"<sup>3</sup> and additionally specifies that the control and treatment of sexually transmitted diseases and tuberculosis is the responsibility of the Health Division of the Department of Human Resources.<sup>4</sup>

Chapter 138 further requires the Board to adopt regulations specifically relating to the control and prevention of diseases in medical,<sup>5</sup> educational,<sup>6</sup> and correctional facilities, and requires the principal, director, or other person in charge of a school, child care, medical, or correctional facility to report known or suspected cases of communicable disease to a health authority.<sup>7</sup> Under Chapter 138, procedures for investigating and reporting communicable diseases incorporate provisions of prior law which dealt with investigating and reporting venereal diseases and tuberculosis.<sup>8</sup>

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2. *Id.* § 439.200 (1987) (requiring the Board to adopt by affirmative vote reasonable regulations consistent with the law). Prior law defined dangerous, contagious, or infectious diseases as any disease so designated by the Board. 1919 Nev. Laws Rev. sec. 31, at 2892 (repealed by 1989 Nev. Stat. ch. 138, sec. 55, at 302).

3. 1989 Nev. Stat. ch. 138, sec. 5, at 294 (enacting NEV. REV. STAT. § \_\_\_\_). By adopting the definition of a communicable disease as "a disease which is caused by a specific infectious agent or its toxic products, and which can be transmitted, either directly or indirectly, from a reservoir of infectious agents to a susceptible host organism," the legislature appears to be consolidating the control and prevention of diseases identified under prior law as being either contagious, infectious, communicable, or a type of venereal disease or tuberculosis. *Compare id.* sec. 5, at 294 (definition of communicable disease) *and* sec. 30, at \_\_\_\_ (requiring the Health Division to control, prevent, and treat sexually transmitted diseases and tuberculosis) *with* 1919 Nev. Laws Rev. sec. 31, at 2892 (repealed by 1989 Nev. Stat. ch. 138, sec. 55, at 302) (definition of contagious, infectious, or communicable disease) *and* 1977 Nev. Stat. ch. 473, sec. 89, at 960 (repealed by 1989 Nev. Stat. ch. 138, sec. 55, at 302) (imposing upon the Health Division of the Department of Human Resources the duty to control, prevent, and cure venereal diseases).

4. 1989 Nev. Stat. ch. 138, secs. 13, at 294 (enacting NEV. REV. STAT. § \_\_\_\_ ) (requiring the Board to specify which communicable diseases are known to be sexually transmitted); 19, 30, at 296-97 (enacting NEV. REV. STAT. §§ \_\_\_\_ ) (requiring the Health Division to control, prevent, and treat sexually transmitted diseases and tuberculosis).

5. *See* NEV. REV. STAT. § 449.0151 (1987) (defining medical facility).

6. *Compare* 1989 Nev. Stat. ch. 138, sec. 18, at 296 (enacting NEV. REV. STAT. § \_\_\_\_ ) (requiring a health authority to investigate the presence of a communicable disease within a school) *and id.* sec. 26, at 297 (enacting NEV. REV. STAT. § \_\_\_\_ ) (allowing a state or district health authority to require a minor to submit to testing or treatment without the consent of either the minor or the minor's parents) *with* 1919 Nev. Laws Rev. sec. 32 at 2893 (repealed by 1989 Nev. Stat. ch. 138, sec. 55, at 302) (setting forth procedures for the control and prevention of contagious diseases in schools) *and* 1971 Nev. Stat. ch. 59, sec. 1, at 121 (repealed by 1989 Nev. Stat. ch. 138, sec. 55, at 302) (permitting the testing of a minor without parental consent).

7. 1989 Nev. Stat. ch. 138, secs. 13, at 294 (enacting NEV. REV. STAT. § \_\_\_\_ ); 18 at 296 (enacting NEV. REV. STAT. § \_\_\_\_ ). *See id.* ch. 138, sec. 6, at 295 (enacting NEV. REV. STAT. § \_\_\_\_ ) (defining health authority).

8. *Compare* 1989 Nev. Stat. ch. 138, secs. 15, at 295 (enacting NEV. REV. STAT. § \_\_\_\_ ) (requiring providers of health care to report known or suspected cases of communicable disease to a health authority), *and* 16, at 295 (enacting NEV. REV. STAT. § \_\_\_\_ ) (enabling a state or district health authority to enter private property during reasonable hours to

Chapter 138 extends to a district or state health officer the power to order the treatment, isolation, or quarantine<sup>9</sup> of a person based upon a belief that confinement or treatment is necessary to protect the public health.<sup>10</sup> Chapter 138 also provides for the court ordered confinement<sup>11</sup> of a person with acquired immunodeficiency syndrome (AIDS) who fails to comply with the written order of a health authority.<sup>12</sup> Chapter 138 further provides penalties for the violation of regulations governing communicable diseases which incorporate those penalties which, under prior law, related to venereal diseases and tuberculosis.<sup>13</sup>

Prior law also authorized, but did not require, a town board or board of county supervisors to enact an ordinance for the control of rabies.<sup>14</sup> Chapter 138 makes the enactment of such an ordinance mandatory.<sup>15</sup>

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investigate any case of a communicable disease, to order the quarantine of a person, or to order the examination of a person who is reasonably suspected of having a communicable disease) with 1963 Nev. Stat. ch. 393, sec. 263, at 944 (repealed by 1989 Nev. Stat. ch. 138, sec. 55, at 302) (requiring health care providers to report cases of venereal disease and tuberculosis) and 1919 Nev. Laws Rev. sec. 31, at 2892 (repealed by 1989 Nev. Stat. ch. 138, sec. 55, at 302) (describing the duties and powers of a health authority).

9. Quarantine regulations have historically been viewed as a constitutional exercise of the state's police powers for the protection of the public health. *E.g.* *Haverty v. Bass*, 66 Me. 71, 73-74 (1875). See 196 Op. Att'y Gen. 25, 28 (stating that the forcible detention of persons with communicable diseases is valid).

10. 1989 Nev. Stat. ch. 138, sec. 16, at 295 (enacting NEV. REV. STAT. § \_\_\_\_\_).

11. See Parmet, *Aids and Quarantine: the Revival of an Archaic Doctrine*, 14 HOFSTRA L. REV. 53 (1985). Permitting the quarantine of only those persons who refuse to act in accordance with medical guidelines bears a close relationship to criminal law, and that criminal sanctions rather than quarantine regulations may be a more appropriate method of deterring behavior likely to spread disease. *Id.* at 85.

12. 1989 Nev. Stat. ch. 138, sec. 25 at 297 (enacting NEV. REV. STAT. § \_\_\_\_\_).

13. *Id.* secs. 17, at 296 (enacting NEV. REV. STAT. § \_\_\_\_\_) (violation of an order prohibiting behavior likely to expose others to disease is a misdemeanor); 43 at \_\_\_\_ (enacting NEV. REV. STAT. § \_\_\_\_\_) (a person who refuses to comply with a regulation relating to the control of a communicable disease may be enjoined by a court of competent jurisdiction); 46 at \_\_\_\_ (enacting NEV. REV. STAT. § \_\_\_\_\_) (a provider of health care who neglects or refuses to comply with regulations of the Board is guilty of a misdemeanor and subject to a \$1,000.00 fine). Compare 1989 Nev. Stat. ch. 138, sec. 43, at 299 (enacting NEV. REV. STAT. § \_\_\_\_\_) (a person who refuses to comply with a regulation relating to the control of a communicable disease may be enjoined by a court of competent jurisdiction) with 1967 Nev. Stat. ch. 211, sec. 416, at \_\_\_\_ (repealed by 1989 Nev. Stat. ch. 138, sec. 55, at 302) (a person who fails to comply with regulations regarding venereal disease may be enjoined by a court of competent jurisdiction).

14. 1965 Nev. Stat. ch. 408, sec. 2, at 1073 (amended by 1989 Nev. Stat. ch. 138, secs. 51, 52, 53 at 301-302).

15. 1989 Nev. Stat. ch. 138, secs. 51, 52, 53 at 301-302 (amending NEV. REV. STAT. §§ 244.358, 268.427, 269.227).