Senate Bill No. 97–Committee on Judiciary

CHAPTER.....

AN ACT relating to crimes; prohibiting the use in a criminal case of certain defenses based on the sexual orientation or gender identity or expression of the victim; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that if a person commits certain crimes because of the actual or perceived sexual orientation or gender identity or expression of a victim: (1) the person who committed the crime is subject to an additional penalty; (2) unless a greater penalty is provided by law, the person who committed the crime is guilty of a gross misdemeanor; and (3) a person injured by the crime may bring a civil action against the person who committed the crime. (NRS 41.690, 193.1675, 207.185) Existing law also requires the Director of the Department of Public Safety to establish a program for reporting crimes that is designed to collect, compile and analyze statistical data about crimes that manifest evidence of prejudice based on sexual orientation or gender identity or expression. (NRS 179A.175)

This bill provides that: (1) for the purpose of determining the existence of an alleged state of passion in a defendant or the alleged provocation of a defendant by a victim, the alleged state of passion or provocation shall be deemed not to be objectively reasonable if it resulted from the discovery of, knowledge about or potential disclosure of the actual or perceived sexual orientation or gender identity or expression of the victim; and (2) a person is not justified in using force against another person based on the discovery of, knowledge about or potential disclosure of the actual or perceived sexual orientation or gender identity or expression of the victim.

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets **[**~~omitted material~~**]** is material to be omitted.

WHEREAS, The American Bar Association has urged legislative action to curtail the availability and effectiveness of the "gay panic" and "trans panic" defenses, which seek to partially or completely excuse a defendant from full accountability for the commission of a violent crime on the grounds that the sexual orientation or gender identity or expression of the victim is sufficient to arouse a state of passion in the defendant or serve as valid provocation or justification for the violent reaction of the defendant; and

WHEREAS, "Gay panic" and "trans panic" legal defenses, which continue to be raised in criminal cases in courts across the United States, are surprisingly long-lived, historical artifacts and remnants of a time when widespread public antipathy was the norm for lesbian, gay, bisexual and transgender persons; and

WHEREAS, "Gay panic" and "trans panic" defenses characterize sexual orientation or gender identity or expression as objectively reasonable excuses for loss of self-control and thereby illegitimately

mitigate the responsibility of a defendant for harm done to lesbian, gay, bisexual and transgender persons; and

WHEREAS, "Gay panic" and "trans panic" defenses appeal to irrational fears and hatred of lesbian, gay, bisexual and transgender persons, thereby undermining the legitimacy of criminal prosecutions and resulting in unjustifiable acquittals or sentencing reductions; and

WHEREAS, The use of "gay panic" and "trans panic" defenses is entirely incompatible with the express intent of Nevada law to provide increased protection to victims of bias-motivated crimes, including crimes committed against lesbian, gay, bisexual and transgender persons; and

WHEREAS, Continued use of these anachronistic defenses reinforces and institutionalizes prejudice at the expense of norms of self-control, tolerance and compassion, which the law should encourage, and marks an egregious lapse in the march toward a more just criminal justice system; and

WHEREAS, To end the antiquated notion that the lives of lesbian, gay, bisexual and transgender persons are worth less than the lives of other persons and to reflect a modern understanding of lesbian, gay, bisexual and transgender persons as equal to other persons under the law, the use of "gay panic" and "trans panic" defenses must end; now, therefore,

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

Section 1. Chapter 193 of NRS is hereby amended by adding thereto a new section to read as follows:

1. For the purpose of determining the existence of an alleged state of passion in a defendant or the alleged provocation of a defendant by a victim, the alleged state of passion or provocation shall be deemed not to be objectively reasonable if it resulted from the discovery of, knowledge about or potential disclosure of the actual or perceived sexual orientation or gender identity or expression of the victim, including, without limitation, under circumstances in which the victim made an unwanted nonforcible romantic or sexual advance towards the defendant, or if the defendant and victim dated or had a romantic or sexual relationship.

2. A person is not justified in using force against another person based on the discovery of, knowledge about or potential disclosure of the actual or perceived sexual orientation or gender identity or expression of the victim, including, without limitation,

under circumstances in which the victim made an unwanted nonforcible romantic or sexual advance towards the defendant, or if the defendant and victim dated or had a romantic or sexual relationship.

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