

CHAPTER.....

AN ACT relating to witnesses; providing judicial discretion as to the disclosure of a writing used to refresh a witness's memory before testifying; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law entitles an adverse party to obtain and inspect a writing that a witness uses to refresh his or her memory, either before or while testifying. Existing law also entitles the adverse party to use such a writing to cross-examine the witness, as well as introduce in evidence portions of the writing that may affect the witness's credibility. (NRS 50.125) This bill requires a judge to determine that the interests of justice so require before allowing an adverse party to obtain, inspect, use for cross-examination or otherwise introduce in evidence a writing that a witness uses to refresh his or her memory before testifying.

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

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

Section 1. NRS 50.125 is hereby amended to read as follows:

50.125 1. If a witness uses a writing to refresh his or her memory ~~;~~ ~~either before or while~~ :

(a) While testifying, an adverse party is entitled:

~~(a)~~ (1) To have it produced at the hearing;

~~(b)~~ (2) To inspect it;

~~(c)~~ (3) To cross-examine the witness thereon; and

~~(d)~~ (4) To introduce in evidence those portions which relate to the testimony of the witness for the purpose of affecting the witness's credibility.

(b) Before testifying, if the judge in his or her discretion determines that the interests of justice so require, an adverse party is entitled:

(1) To have it produced at the hearing;

(2) To inspect it;

(3) To cross-examine the witness thereon; and

(4) To introduce in evidence those portions which relate to the testimony of the witness for the purpose of affecting the witness's credibility.

2. If it is claimed that the writing contains matters not related to the subject matter of the testimony, the judge shall examine the writing in chambers, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion



withheld over objections shall be preserved and made available to the appellate court in the event of an appeal.

3. If a writing is not produced or delivered pursuant to order under this section, the judge shall make any order which justice requires, except that in criminal cases when the State elects not to comply, the order shall be one:

(a) Striking the testimony; or

(b) If the judge in his or her discretion determines that the interests of justice so require, declaring a mistrial.

