

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Third Session
May 5, 2005**

The Committee on Judiciary was called to order at 8:20 a.m., on Thursday, May 5, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. William Horne, Vice Chairman
Ms. Francis Allen
Mrs. Sharron Angle
Ms. Barbara Buckley
Mr. John C. Carpenter
Mr. Marcus Conklin
Ms. Susan Gerhardt
Mr. Brooks Holcomb
Mr. Garn Mabey
Mr. Mark Manendo
Mr. Harry Mortenson
Mr. John Ocegüera
Ms. Genie Ohrenschall

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Valerie Wiener, Clark County Senatorial District No. 3

STAFF MEMBERS PRESENT:

Risa Lang, Committee Counsel

Allison Combs, Committee Policy Analyst
Carole Snider, Committee Attaché

OTHERS PRESENT:

Robert C. Kim, Chairman, Executive Committee, Business Law Section,
State Bar of Nevada
Pat Cashill, Legislative Advocate, representing the Nevada Trial Lawyers
Association
Renee Parker, Chief Deputy, Office of the Secretary of State, State of
Nevada
Scott Anderson, Deputy, Commercial Records, Office of the Secretary of
State, State of Nevada
Misty Grimmer, Legislative Advocate, representing the Nevada Resident
Agent Association
Derek Rowley, President, Nevada Resident Agent Association
Bill Bradley, Legislative Advocate, representing the Nevada Trial Lawyers
Association
Erin Breen, Director, Safe Community Partnership, Las Vegas, Nevada

Chairman Anderson:

[Meeting called to order and roll taken.] An amendment has just come over from the Senate relative to A.B. 91. This bill dealt with the fee for court reporters, and it returns the cost of getting copies back to their original place. They went from 55 cents to \$1, as that is where the majority of their costs were. There are a few other technical changes, but they are not a substantial change overall. It is my intention to concur with the recommendation unless somebody has a disagreement with it. Therefore, we will avoid a conference committee.

Let us turn our attention to S.B. 338.

Senate Bill 338 (1st Reprint): Makes various changes concerning business associations. (BDR 7-728)

Robert C. Kim, Chairman, Executive Committee, Business Law Section, State Bar of Nevada:

Senate Bill 338 is a bill sponsored by the State Bar and is a product of various suggestions from the business lawyer group in Nevada. It is an attempt to add new features, refine, correct, and modify things that we see in practice that we realize may need some fine tuning. What I have provided and am submitting

today is a brief memo that tracks each section of S.B. 338 as amended through the reprint ([Exhibit B](#)). This is for reference purposes and describes why the changes were made. This provides a section-by-section breakdown as to the purpose and background for each proposed revision that is contained within S.B. 338.

[Robert Kim, continued.] Some of the changes are just modifying existing statutes. Some are introducing new concepts. Section 1 provides the board of directors the ability to amend, adopt an appeal, and repeal the bylaws exclusively, as long as that power is contained within the articles of incorporation. Sections 2, 4, 10, 11, and 27 are modifications introduced by the Legislative Counsel Bureau to change the way they reference the ability to state an effective date for certain filings made with them.

Sections 3, 46, and 48 of S.B. 338 clarify dissenters' rights in the context of certain transactions that create fractional shares. Sections 5 and 6 acknowledge the ability to form real estate investment trusts under Chapter 78. This just clarifies what action can be taken.

Section 7 deals with treasury shares. It expands the board of directors' ability to assign certain rights to treasury shares. Section 8 is a cleanup change. It just makes sure certain actions that are provided for in NRS [*Nevada Revised Statutes*] 92A are acknowledged in Chapter 78. Section 10 clarified proxies. Sections 12 through 17, Section 31, and Sections 33 through 40 allow the ability to have stated effective dates no more than 90 days after the date of filing with the Secretary of State. This is limited to post-formation filings and does include formative filings made with the Secretary of State.

Sections 18, 19, 21, 22, 25, 26, 28, 29, 30, and 32 permit the ability of a limited liability company (LLC) to create series, which is the ability to assign certain specific rights, assets, and liabilities to a specific designated series of membership-interested units. Section 23 is a cleanup change and limits reform. Section 28 clarifies distribution rights and what distributions can be attacked after the fact. Sections 41, 42, and 43 clarify what effects mergers, exchanges, and conversions can have on constituent interests. Section 44 deals with the clarification that the board of directors must recommend a plan of merger exchange for it to be submitted to stockholders.

Sections 49 and 50 deal with service of process. Sections 51, 57, and 58 relate to fictitious firm names. Sections 52, 53, 54, 55, and 56 provide a framework for clarification of securitization transactions, to give the parties involved a greater certainty as to what impact a transaction has on the confiscation of their assets.

Assemblyman Carpenter:

My question is on number 9 (page 3 of [Exhibit B](#)). It states that this concept is currently only in Delaware. Would these changes make us the same as Delaware?

Robert Kim:

Are you referring to the limited liability company?

Chairman Anderson:

Mr. Carpenter is referring to Sections 22 through 29 of the bill, which is relative to the Delaware organizational abilities.

Robert Kim:

These groups of sections relate to a limited liability company, to designate certain interested series. The distinction there is the ability to assign certain assets and liabilities to a particular series, called Series A, Series B, or Series C, so you can segregate your assets and liabilities amongst different series. This is only permitted if you say so in your articles, so that the public is on notice that this limited liability company is authorizing this way to assign its assets and liabilities.

Assemblyman Carpenter:

So, this would put us on a par with Delaware?

Robert Kim:

It is a feature we found, on a brief survey, only in Delaware, so we thought we would introduce it here as well just to give people more flexibility. Right now people use limited liability companies in many ways, and they classify the interest in many different ways. We thought, why not provide this specific ability to assigned assets and liabilities to a certain series of interest units?

Pat Cashill, Legislative Advocate, representing the Nevada Trial Lawyers Association (NTLA):

The bill, as introduced on the Senate side, had a provision allowing for the delayed filing of articles. We raised a concern from the trial lawyers' point of view that any delay might be used by someone with a nefarious intent for illegitimate purposes. With the cooperation of Mr. Kim, the State Bar, and the chairman of the Senate Judiciary Committee, that delayed filing provision was stricken from the bill. We are satisfied from our standpoint that the bill, as presently before this Committee, suits the State's purposes.

Assemblywoman Buckley:

I have an issue I would like to bring up that does not have anything to do with the bill, but it involves the same area of law. The topic is limited liability companies. I am having copies distributed ([Exhibit C](#)) of an article that was in the *Las Vegas Sun*. It has to do with the Clark County airport land deals. There was an investigation into those questionable land deals, and they ran into a problem trying to identify all of the folks involved because of the veil of secrecy written into state law.

Under state law, LLC owners who were known as members do not have to be disclosed on the company registers with the Nevada Secretary of State's Office. So, when they tried to figure out who might have been involved in some of the unbelievable flipping of property and profits made, it was very difficult to figure out who these folks were.

The article also noted one county commissioner, who is now under indictment and who became a State witness, received an unbelievable amount of her campaign contributions from LLCs. They are trying to figure out who, what, where, when, and what they had to do with public corruption as well. So my question is whether we could go ahead and require anyone who owns a 1 percent interest or whatever amount in an LLC have their names disclosed with the Secretary of State.

Robert Kim:

I also read the article and am familiar with this. My take on that is they have taken a result and tried to find a reason for it, instead of looking at what is common with all entities. I think the LLC form is replacing the limited partnership form, which used to be very common in real estate-type transactions. It is also replacing the corporate form as well, because of the flexibility it provides in signing the economics of the transaction to the appropriate parties. A corporation in this state is only required to disclose its directors and officers. That could be one person, for that matter.

In Nevada, you have the option of assigning managers or assigning member-managers. If you opt to assign managers, that person is not necessarily the owner of the LLC but is more akin to a director or an officer and is assigned with management of the LLC. So, much like a corporation, one does not know who the members/stockholders are. In that situation, it may have been prevented, or information could have been collected as a requirement of bidding for this land. The county could have had a 5 percent threshold instead of a 1 percent threshold. They can do that if they want to. If someone wants to bid on it, they should find out who it is.

[Robert Kim, continued.] I think that to somehow identify LLCs as being at fault does not acknowledge the fact that corporations are not required to disclose their stockholders. They are only required to disclose their directors and officers, as well as members of their partnership. Lack of disclosure is not unique to an LLC. I think it is common amongst most limited-liability entities.

Fortunately, some people are comfortable with some forms, and they replicate it on a grand scale. They use it in a situation when, from a post-mortem perspective, people are wondering who those people were. I think what can be learned is that when you are dealing with a public transaction, it should be disclosed with respect to that transaction. That is so the county, city, or other government agency knows who they are dealing with.

So for me, I do not think the LLC is at fault, per se, because it is structured like any other limited-liability entity. I think there was a concern that there are other ways it could be done more thoughtfully.

Assemblywoman Buckley:

What would that be? Perhaps it is in situations where there is bidding on public property. Perhaps it is in situations where there are campaign contributions. One of the issues in the article was zoning changes, and what is the connection between getting something from government and campaign contributions. Could you give me, for example, a list of what you think would surgically bring sunshine to this area?

Robert Kim:

I think if it is in the context of a land-bidding process, then why not require, as part of your bid, that you disclose who the owners are? If we require LLCs in Nevada to disclose who the owners are, then someone is just going to form an LLC somewhere else, then submit it. Then that information will be lost once again. So, I think it is more important to identify the sensitive areas in which we would like to know who these people are. Then we can prevent possible inappropriate relationships that may exist between those that have the ability to sign these contracts and those receiving the benefits. It should be done at the initial process. People should open their doors and disclose who is involved. Instead of creating one rule that would adversely impact all uses of entities, we would just drive them away and have them form somewhere else.

Chairman Anderson:

Even if there were land holdings in the state that the limited liability corporation may hold, it does not necessitate the LLC having a filing with the Secretary of State's Office?

Robert Kim:

An LLC, a corporation, or a limited partnership is required to file an annual list with the Secretary of State, which discloses who their management is—directors and officers of a corporation.

Chairman Anderson:

Supposing it was an LLC in another state and they have, as part of their holdings, property in Nevada—even though their corporation is in another state—would only the director have to be revealed, but not the actual corporate members?

Robert Kim:

That is correct. My recollection of the form qualification process as it relates to corporations or LLCs is that actual ownership of land, in and of itself, does not require an entity to qualify to do business here in Nevada. We really know nothing about these people unless their state had a database that was public and available online.

Pat Cashill:

From a public disclosure standpoint, it seems to be good public policy for there to be transparency in a transaction involving a private entity, such as an LLC or a corporation, which seeks a public benefit from a public agency. What harm can come from the people knowing who the players are? I see no constitutional impediment to this Body. State legislatures enact legislation that would create that transparency. There may be other issues, such as the burden that transparency might place on business transactions, from the standpoint of the business seeking the benefit. I do not think the people would be disserved by transparency.

Chairman Anderson:

In your point number 17, dealing with Section 44, could you explain this? The clarifying NRS 92A.120 that planned to merge the board of directors cannot be controlled. Also, how we contrast with Delaware, who we seem to want to be compared to? How does this hurt or harm both the board and the public who may be holders in such corporations? I would like to hear the contrasting view.

Robert Kim:

This relates to Section 44 of S.B. 338 and Section 92A.120. The revision is meant to clarify the existing statute. It is not meant to change the standard that exists. A lot of times, as practitioners of Nevada corporate law come across out-of-state attorneys who do not want to read the statute and want to apply the standard of Delaware to here, their standard is the ability of a board of directors to submit to stockholders contractually, which is within the four

corners of the agreement and plan of merger. That is something that is not permitted in Nevada. The board must continue its recommendation of that agreement and plan of merger for it still to be submitted to the stockholders.

[Robert Kim, continued.] In contrast to Delaware, a board can contractually negotiate away its ability to withdraw that plan by saying it will submit a plan to the stockholders, regardless of whether they still recommend it or not. It is a clarification we wanted to make sure was understood. This is a difference in Nevada law, and we need to put an exclamation mark on it. We as petitioners continuously have to argue with an out-of-state attorney on what Nevada law says.

Chairman Anderson:

Do you think this is a red flag large enough for them to identify by moving it to a bolder statement? Is that what your hope is?

Robert Kim:

It is meant to make sure that people do not misunderstand there is a recommendation requirement. The board is charged with the future use to look out for the corporation and stockholders. As part of that, it cannot submit to the stockholders the plan that is no longer recommended.

Chairman Anderson:

The board of directors is going to recommend a merger. In the nature of the recommendation of the merger, the board of directors' changes, possibly due to election, now no longer supports the merger. The corporate members, not members of the board, are not anticipating the merger. They no longer have the merger offered, even though many of them feel it will take place because of the change of the position of the board.

Robert Kim:

A typical example would be where the board approves a plan with a merger with another corporation. Prior to noticing the stockholders' meeting, a second corporation offers a better deal with overall better economic benefits. The board would not be serving the stockholders very well if the offer was ignored. It is in that context that the board would no longer recommend the original merger and would then pursue the better offer.

Chairman Anderson:

The stockholders then would not have knowledge of the better offer that had been made.

Robert Kim:

They would. Clearly, this comes up more in the public context. The public context there is a whole paradigm of disclosure rules that would create a lot of transparency as to what has been approved by the board. That aspect of it would be disclosable and obvious to all public shareholders. All the interactions and the solicitations and disclosures will be made public via the SEC [U.S. Securities and Exchange Commission] disclosure rules.

Chairman Anderson:

Ms. Buckley, do you feel there is a solution that we can accomplish here? Do we need further exploration of the bill?

Assemblywoman Buckley:

I am going to present an amendment. I would be happy to run it by Mr. Cashill and Mr. Kim. I think that we need to take action, and I will also work with Ms. [Renee] Parker from the Secretary of State's Office and present something that would be agreeable.

Pat Cashill:

On behalf of the NTLA, we pledge our assistance and cooperation.

Chairman Anderson:

Mr. Kim, if you could make yourself available to Ms. Buckley to review the legislation that she is intending and how it might fit in, it would be most helpful.

Assemblyman Carpenter:

This is not only a problem in the Las Vegas airport, but we are also running into it in Elko. An outfit came in and bought a piece of land. They were an LLC, and you only could find out the person who filed it was a lawyer in Utah. Now they are trying to sell part of this land to use money from the Southern Nevada Public Lands Act and use money for other covenants. I do think that when they deal with a public entity and there is public money involved, there should be some disclosure of who they are. I really support Ms. Buckley's amendment when she brings it forth. It is a problem in other areas of the state also.

Chairman Anderson:

I think we're walking a tight line here, relative to trying to make ourselves as business-friendly as we possibly can. At the same time, we want this state to be a good place to invest and a good place to put your corporation, but we expect you to play by the strict rules of the game. We have that kind of mentality that used to work well on a handshake, but we would like the law to reflect the realities of life.

Assemblywoman Buckley:

I think I will try to work along the lines of the public entity interaction, whether it is grants or zoning auctions. If you are setting up an LLC here and you are not involved in one of these situations, you do not have the extra burden of disclosure. We will try to do a balancing act. I think you said it quite well. We want to keep our business-friendly environment, but on the other hand, we don't want to allow it to be used to defraud and participate in public corruption.

Chairman Anderson:

The hearing on S.B. 338 is closed. Let's turn our attention to S.B. 453.

Senate Bill 453 (2nd Reprint): Makes various changes concerning business entities. (BDR 7-576)

Renee Parker, Chief Deputy, Office of the Secretary of State, State of Nevada:

We have a proposed amendment to the bill to salvage some of the non-controversial provisions of my notary bill that was defeated.

Scott Anderson, Deputy, Commercial Recordings, Office of the Secretary of State, State of Nevada:

You have before you testimony submitted for S.B. 453 ([Exhibit D](#)). Senate Bill 453 proposes numerous changes that will further standardize the filings process by our office. Some of the provisions are housekeeping provisions, cleaning up many of the provisions that are not standard, or they help our customers to know what to do when filing with our office and help streamline the processes in our office. There is also some streamlining in the electronic filing and advancement of our business practices.

There are numerous sections that are standard throughout Title 7, and a number of sections will be affected by this bill. Sections 1 and 37 through 40 are provisions regarding charging orders that were presented by the Nevada Resident Agents Association.

Sections 2, 6, 20, 21, 24, 25, 29, 31, 33, and 34 clarify the address requirements on the annual list of officers and gives us an additional 30 days to get the annual list of officers out to our customers. This will give them additional time to submit to our office.

Section 3 requires that the number of shares per designation when a corporation files a certificate of designation be submitted. That will help us properly identify the certificate of designation when it is withdrawn.

[Scott Anderson, continued.] Section 4 removes an antiquated fee. Sections 5, 22, 26, and 30 remove the provisions that the customer provide us with a copy of a document to be filed, stamped, and returned to them. This has caused a number of problems, in that it is difficult for us to actually verify that the document they are presenting is an exact duplicate of what is on file with our office. We are also scanning these documents into our system now. For us to scan additional documents that are virtually the same is inefficient. This removes that requirement and allows us to provide an exact copy from what we have scanned into the system.

Sections 7 through 14 add provisions for homeowners' and unit owners' associations that were added last session. The Legislative Counsel Bureau felt that it was necessary to add these to other sections, as those entities could be formed for purposes of homeowners' or unit owners' associations.

Section 23 decreases a fee. We took out the fee increases that were in our original bill that standardized the fees. As you stated earlier, at risk of having our bill vetoed, we pulled those provisions except for the fee decrease.

Sections 15, 19, and 27 standardize provisions for restated or amended and restated articles. Section 16 standardizes the renewal provisions in Chapter 82 to those of other corporations.

Section 17 allows for limited liability companies (LLCs) to be organized for insurance purposes with approval of the Insurance Commissioner, as there are certain LLCs that can be formed for insurance purposes.

Section 18 is a word cleanup. Section 28 is a Bar Association change, which we support. Section 32 standardizes the wording in NRS [*Nevada Revised Statutes*] 88A.210 to reflect similar changes from the 2003 Session. Sections 35 and 36 are changes proposed by the Legislative Counsel Bureau, and we are amendable to those.

Section 41 adds provisions to Chapter 225 of NRS for filing of forged or fraudulent documents or knowingly filing false documents in the Office of the Secretary of State. The International Association of Commercial Administrators and the National Association of Secretaries of State has a bogus filing task force that was set up to minimize the number of harassment or bogus liens filed against public officials. We added the provisions to our bill draft, and the Legislative Counsel Bureau expanded that to include, basically, all filings within the Office of the Secretary of State. If someone knowingly files a false or fraudulent document, there is some sort of penalty and a process that we can go through, other than submitting these to the District Attorney's Office.

Currently, we submit these to them, and they sit in a file to be looked at later, and we never hear anything back on those.

[Scott Anderson, continued.] On the Senate side, there was some concern in regard to certain filings, mainly election filings. So there was an amendment to our bill that limited these provisions to Uniform Commercial Code filings and commercial recording filings under Title 7. This would impose civil penalties of \$10,000 or actual damages, whichever is greater, for violations. It gives us the authority to refer complaints to the Attorney General for investigation.

Section 42 adds a 1-hour expedite service. Currently, we have two 24-hour expedited services. Our customers have stated that they would like a "while you wait" or a 1-hour service. Delaware offers this, and they say this is a great service that allows them to specifically time certain filings. We propose that we have this 1-hour service available in our office. This would be within 1 hour, or "while you wait," and the service is provided for a fee of an additional \$1,000.

Additionally, Section 42 adds the ability for our office to charge a reasonable fee for searching and for canceling or removing documents that have been submitted to our office but not yet processed. We have thousands of documents in our office every day in different stages of processing. It is extremely difficult when a customer calls or sends some sort of request to remove their filing from this process. To do that, we feel it was necessary for us to go ahead and charge them a fee for this service. We felt this would be based on a current fee structure within our office. We have our special services fund that currently supports half of our salaries. This is a fund that is created by our expedite fees. Currently, this fund supports half our salaries, and the original purpose of this fund was to enhance our technology in the office. It was not to enhance the staff, so to speak.

Right now, we have a new system that has gone in place, and likely, our expedite fee will go down. The current \$62.50 we collect on each expedite fee will probably not support the salaries that we have coming out of there. We have asked that this be put back up to the half of the fee to go to the special services fund.

Lastly, Section 43 adds some provisions for the filing of a specimen of a trademark. We are just adding that the specimen is on 8 1/2 by 11 white paper for scanning and storage purposes, rather than cups, hats, and Frisbees.

Chairman Anderson:

In Section 23, you mentioned decreasing the fee for forms from limited liability companies. How much is your office going to lose from decreasing this fee?

Scott Anderson:

Currently, the fee is \$175.00. We are reducing it to \$75.00 to match the other organizational filing fees. We get 100 to 150 filings every year at the most, so we are looking at \$10,000 to \$15,000 decrease in revenue, as compared to the \$60 million we bring in.

Chairman Anderson:

So, the loss of the \$10,000 is not equal to the need for additional dollars in Section 42 that keeps alive this other fund. You cannot do a transfer within the Secretary of State's Office with those fee dollars?

Scott Anderson:

Those are separate and strictly General Fund dollars.

Chairman Anderson:

So, it is a \$10,000 loss to the General Fund?

Renee Parker:

The Fiscal Analysis Division is aware of this change. They did not pull it on the Senate side. I don't think they are worried about it, because if the \$1,000 expedite fee goes through, even with our office putting half in the special services fund, the other half of the expedite fees collected go directly to the General Fund. That should generate more than enough revenue to cover the loss.

Chairman Anderson:

In Sections 5, 22, 26, and 30, it removes the provision for a customer to provide a copy of the documents. Then we see on Section 43, you are adding requirements for dollars like this expedite service fee. Your expedite service fee is a pretty simple bill, as you will be charging more money. If we are trying to be business friendly, then we should do it quickly, if we can. I thought that was what the Secretary of State was all about.

Scott Anderson:

Yes, that is what we are all about. We have thousands of documents that come in on a daily basis, and to put a filing that comes in on a normal basis ahead of the thousands of others without this special service fee would be unfair. We felt, since other states have been offering this expedited service, that we would be able to do that as well.

Chairman Anderson:

Whose copy is considered to be the legal document—the one that is on file in the Secretary of State's Office, or the one in the hands of the corporation?

Scott Anderson:

The official record is the record that is on file with the Secretary of State. We do certify the records and send them out.

Chairman Anderson:

That is not going to lessen in any way, in Sections 5, 22, 26, and 30, the integrity of that document?

Renee Parker:

Actually, it will probably increase the integrity of the document. The problem is when they furnish their copy now; in certain circumstances, it does not match the original copy on file. They made a change, and they forgot to file the changed document. We were certifying copies that customers were submitting. We had to match the copy that is on file with the copy they submit. This way, we would take the official record in our office and create the copy from what is on file.

Pat Cashill, Legislative Advocate, representing the Nevada Trial Lawyers Association:

Section 41, in our view, falls in the category of "put your faith in the Lord, but keep your powder dry." In a sense, it creates a remedy for a person who has been the victim of false filing or who has been defrauded or otherwise injured because of a document filed with the Secretary of State, such as articles of incorporation. On the Senate side, we had a technical but essential modification of the bill, and that was in Section 41, subsection 1(c), which reads, "...is being filed in bad faith or for the purpose of harassing or defrauding any person." The originally-written bill used the conjunctive "and," as opposed to the "or" that we urged that committee to support, which it did.

To Ms. Parker's credit and Mr. Anderson's credit, each brought to my attention this morning the fact that the bill, in its second reprint, is different than the bill we agreed to on the Senate side. Subsection 6(b) of the bill is now limited to records filed pursuant to Title 7 of NRS or Article 9 of the Uniform Commercial Code. I have questioned Mr. Anderson, and he informs me that the intent of that limitation is not in any way to restrict the right of action created for a person who has been defrauded as a result of document that is filed with a false intent. I would appreciate the Chairman or some other member of the Committee ascertaining that is the case. I have no reason to doubt the good faith of the Secretary of State in this respect and appreciate their candor. It is the trial lawyers' objective to see to it that the right of action created by Section 41 is as broad as possible.

Chairman Anderson:

You want the reassurance that Section 41 does not limit the question to the right of action and that you would like us to do a short, independent investigation relative to that question, reassuring that it is limiting to the Uniform Commercial Code. We made some extensive changes to the Uniform Commercial Code and Title 7. We have not acted on those Senate bills. Also, the third part and the nature of the new amendment from the Senate side was to exclude the documents. We are familiar with these documents as a result of being elected to public office, because we are frequently in contact with the Secretary of State's Office for clarification. So, we know that when one of us does not do our addition correctly, they won't get upset with us. Is that what you want to make sure we are doing?

Pat Cashill:

That is a tough question to answer. I think so.

Chairman Anderson:

No?

Pat Cashill:

Correct.

Renee Parker:

Section 41, subsection 5 provides that the remedies and penalties in rates are cumulative and don't abrogate any other rights, remedies, or penalties in the statutes. That was put in there to address Mr. Cashill's concerns about it affecting other remedies.

Chairman Anderson:

The next work session is scheduled for Wednesday of next week, so we would anticipate that we would have the question answered specifically. We will ask Ms. [Allison] Combs to reassert a limited investigation. We will also have Legal take a look at it.

Renee Parker:

I would like to add some of the provisions from our notary bill—not the controversial education provisions, but just the provisions that go to some of the problems we had with enforcement and some of the issues that were raised during the interim. You have the amendment ([Exhibit E](#)).

Section 1 of the amendment provides for a gross misdemeanor for a notary public or a person who aids and abets a notary public to notarize a signature of an individual who is not in the presence of a notary. It only makes that provision

if they willfully notarize that document. We do have many notaries, and the original reason for the education was they think that they are notaries and all we do is notarize signatures. They are technically required to do more than that. They are supposed to identify the person whose signature they are notarizing.

[Renee Parker, continued.] We have had several problems, and we get a couple hundred complaints a year. We do have provisions where we hold hearings, and we do fine notaries. Many of them are just a simple mistake. They didn't realize they needed to identify the person, so they notarize the document, and it wasn't the same person who signed it. In other instances, it is fraudulent and they willfully notarize a document, knowing that the person in front of them is not necessarily the person who signed it. Most of those instances relate to quitclaim deeds of property. The person who is harmed has to retain an attorney. There are fraud provisions in this statute, but in consulting with the Attorney General's Office and some of the district attorneys, they felt if we put this provision in a notary statute and we do voluntary notary education, that would allow us to point it out and address some of these issues. It would also provide a more severe penalty for willfully engaging in that conduct.

Sections 2 and 6 relate to authentications of notary signatures generally called "apostilles." Under the Hague Treaty, we do the apostille when we authenticate a notary signature for documents used out of the country, and many times they relate to adoptions. Section 6 was the Legislature Counsel Bureau's determination of how we fit it in the statute. This was to delete the current provisions that you see being deleted in Section 6. We put them into Section 2 to address and distinguish between an apostille, which is an authentication of a notary signature to be used out of the country, and the certification of the notary signature, which is another type of apostille that is used within the United States. The banks and other entities want a certification, and there is currently no specific provision for a certification in that distinction. The apostilles are a separate creature created under that treaty. This is just to distinguish that and, in addition, to allow us to refuse to issue an authentication if we have information that the document may be used for unlawful purposes.

We have received warnings from the Department of State for fraudulent authentications, but we do not have clear authority to reject them. These people say they want to get a passport. What they are doing is saying—under the common law courts—is that we are appointing ourselves notary, we want an authentication of this notarized document, and we don't have them in our office. This is another provision where you can go through other provisions in the statutes and get there. In addition, if we received a warning from the Department of State, we currently don't have the authority to reject it if it looks legitimate on its face. This would allow us to do that.

[Renee Parker, continued.] Sections 3 and 5 are just conforming to changes in the current statutes, to add some of these provisions and references to these provisions.

Section 4 would authorize us to request the Attorney General to take action to enjoin a person from impersonating a notary. A similar situation is where we have groups of people—oftentimes the same people that file some of these bogus filings—and they appoint themselves a notary under the common law courts and start notarizing documents. It is hard to get enforcement, the way the statutes are drafted. The Attorney General has recommended we allow them to go obtain a restraining order.

Chairman Anderson:

Since you have done away with the training classes in Section 2, the payment of the fee of \$20 is not a requirement that we are mandating, but a fee for persons that utilizes a notary, because many notaries do their work for nothing. I think in our building we must have 14 or 15 notaries who work in various departments. That is not unusual for banks and other trade organizations to have—among their staff—people who have notary responsibilities. In most cases, if you are known to them, they do not go through a big hassle. On the other hand, if you bring somebody with you who they do not know, then they usually ask for identification if they have been well trained.

Renee Parker:

The \$20 fee does not relate to notarizing signatures. It relates to us doing an authentication of the apostille documents. It is currently the same fee as provided in Section 6, which is being deleted. It is just being moved into Section 2, so it applies to an authentication or a certification. Those are the documents we prepare that authenticate the notary signatures, so they can use them out of the country for an adoption, marriage, or to transport a deceased family member. Those are the most common circumstances in which they are used. That is the fee to our office for the apostille. It is the current fee. It just is being moved from Section 6 to Section 2, because we now have this distinction of the certifications.

Chairman Anderson:

We need this, because the U.S. State Department is concerned about the methodology in which we are currently following, and our statutes are not clear enough in this area.

Renee Parker:

That is the purpose for another one of these sections, because it is under the Hague Convention where the apostilles originated. Now, there have been some

issues of fraudulent apostilles, and the U.S. State Department will issue warnings. The Attorney General, in consultation with them, has concerns that there is not enough meat in these statutes for us to refuse to authenticate some of those documents.

Assemblyman Carpenter:

Say a person wants to lease some property from my wife and me. They send a document on Friday afternoon by Federal Express. They want this document back by Wednesday of the next week so they can take it to their boss to have it approved. There is a person that has been notarizing my signature for 20 years and works in an attorney's office. We try to find him over the weekend, and he is not around. So I sign the document, and my wife takes it down to the notary. He notarizes it Monday morning, even though I'm in Carson City. Under this scenario, would the notary and myself be committing any gross misdemeanor?

Renee Parker:

No. Because we do have situations where you are known to the notary, they can notarize your signature if they have been notarizing it for years. Section 1 is a person who is not in the presence of the notary public or unknown to the notary public. So in the circumstance of the notary public who has never notarized your signature, they would be committing a gross misdemeanor. In circumstances of someone you are known to, they would not be.

Assemblywoman Ohrenschall:

Can you go over the apostille again?

Renee Parker:

I do not think the statutes actually say apostille, but that is the terminology used under the Hague Convention. It is an authentication of a document that is intended to be used in a foreign country. Most often, it is for adoptions. What happens is they need paperwork from someone who, in the United States, is intending to adopt somebody outside of the country. They will need their paperwork—for example, a birth certificate—to hand it to a judge or somebody overseeing the adoption outside of the country. They may not view that document as a legitimate document. Under the Hague Convention, many of the states and countries that are under the convention will accept the document if you get an authentication through the Office of the Secretary of State. We authenticate a notary's signature on the apostille on the birth certificate or document. Then they can use that outside of the country, and it is deemed to be a legitimate document.

Assemblywoman Ohrenschall:

In other words, what you are saying is that if it says "Mary Doe, notary," you are verifying that your records show that, in fact, there was a Mary Doe who was a notary on that date.

Renee Parker:

Correct.

Assemblywoman Buckley:

In Section 1, it says you have to either be not in the presence, or unknown, if the person does not provide documentary evidence. The statute allows for another person that can attest that it is the person they say it is. The reason I ask is because sometimes, we notarize legal documents for free for people who are low income. We oftentimes notarize for the homeless. Sometimes we have to really patch this together, so we will get a shelter worker who once saw their identification to notarize that yes, they swear this is the person.

I just want to make sure that gross misdemeanor in a situation like that is a lot different than someone pulling a scam on a quitclaim deed. If it only says documentary evidence, would that not allow—for example, in NRS 240.1655—an oath or affirmation of a credible witness? Would this still allow that type of identification method? Or instead, use documentary evidence not meeting the requirements of the existing statute, which does allow a little bit of leeway?

Renee Parker:

It was not our intent to prohibit a currently-allowed practice. I think in those situations, you have the homeless person there and you have somebody else attesting. This would prohibit the person not in the presence of the notary. I think the homeless person is there. The certification requirement in the statutes states you can have somebody else attest that they know this person, this is their signature, and they have seen their identification. I don't think this prohibits this, but if you want to have Legal look at it further and double-check, it was certainly not our intent, because that practice is allowed for those situations you described. We are not trying to affect that.

Assemblywoman Buckley:

I was just concerned, because it says "or."

Renee Parker:

If they willfully notarize the signature of a person who is not in the presence of the notary, I think in your situation they are in the presence, so you have already satisfied one part of this.

Assemblywoman Buckley:

Okay, as long as that was the intent. Maybe in redrafting, we can make sure it is clear.

Misty Grimmer, Legislative Advocate, representing the Nevada Resident Agent Association:

As Mr. Anderson mentioned, Section 1 of this bill is an amendment that we worked with the Secretary of State's Office on when it was on the Senate side. I think you have the handout that provides a good explanation of what Section 1 does ([Exhibit F](#)).

To start with, I would like to give you a little bit more information on the industry itself. As we have been talking about all morning, the corporate entity filing industry in Nevada is very healthy. There are in excess of 220,000 entities that are filed in Nevada. As little comparison to other states, in most states, it is a ratio of 1 entity to every 164 people. In Nevada, it is 1 in every 42 people. More than 80 percent of those entities are represented by resident agents. Most of them use no resources of the state aside from the Secretary of State's Office. The benefit to the state is 100 percent benefit and no burden.

Just to give you an idea of how much this has benefited the state of Nevada, in 2001 and in 2003, when the Legislature was looking for sources of revenue, this is the place they were able to come. The filing fees provided funding of education in 2001 to the tune of about \$27 million. Last session, when you were putting together the tax package, we were also able to work with you to come up with the scheme where certain fees were raised and other fees were decreased in a way that would not hurt the industry, but would generate the money the State was looking for. Over the biennium it is about \$75 million. The proposal we have today is essentially another way to keep the corporate filing industry in Nevada very healthy, so that it will always be here for the State.

Derek Rowley, President, Nevada Resident Agent Association:

I would like to walk you through Sections 1 and 37 through 40, pertaining to the charging order issue. You should have the handout before you that discusses these issues ([Exhibit F](#)).

This proposal originally came from a meeting of the Executive Committee of the Nevada Resident Agent Association. Last fall, we met and discussed issues that pertained to the trends in corporate filings. Prior testimony indicated the dramatic increase in all of the C [corporate] filings. Corporate filings during the same period have been relatively flat. That is of concern to us, because Nevada's reputation is primarily based on what is known as the incorporation

industry. We had a discussion about what we could do to reinvigorate corporate filings in the state of Nevada. This is the issue that came from that.

[Derek Rowley, continued.] What Section 1 does is create a charging order applicable to the stock of certain closely held corporations. Charging order, as we came before this Committee, makes changes in some of the charging order statutes pertaining to LLCs and limited partnerships. The charging order is the remedy that is available to the creditor of an individual who currently owns an ownership interest in limited partnerships and limited liability companies. What the charging order does is make the creditor an assignee of any income paid to that individual who owns that business interest.

The purpose behind the existing charging order limitation is that in a closely held business enterprise where individuals have relationships of partnerships—or small, family-owned business—the innocent partner has the potential to suffer economic consequences of loss. This loss would occur if a creditor to another partner is able to come in and seize that business interest. In the event of a corporation, for example, if the majority stockholder has a creditor who is able to attach and seize that stock, they can take the place of that stockholder, and they would have the ability to vote that stock in favor of liquidation of the corporation. That causes a lot of economic problems to the innocent and minority partners in LLCs and limited partnerships.

To our knowledge, the charging order has never been made available to stock of corporations. Corporate theory has traditionally been that shareholders or stockholders of corporations are considered to be blind to one another. That is certainly true with a publicly traded company. If a creditor of a stockholder of Microsoft were able to seize that stock in satisfaction of a judgment, it does not have any negative impact on any of the other shareholders, because there is a market for that. However, in a privately held company where there are a limited number of shareholders, the reality of the business world is that these small, closely held entities, of which Nevada has really specialized in developing that market, have great potential for loss.

What we have proposed to the Legislature is that the ability of a closely held corporation in Nevada to provide that same type of charging order protection for stockholders be added to the state law. Section 1, subsection 1 does that. It uses the same language that is currently in statutes—pertaining to LLC and limited partnership law—in creating the charging order interest with regard to the stock of a closely held company.

It is important to understand that this charging order does not apply to actions against the corporation itself. If the corporation itself had creditors or had legal

issues, this charging order would not provide any protection. This only applies to creditors' rights against individuals who own an ownership interest in that entity.

[Derek Rowley, continued.] Section 1, subsection 2 outlines some limitations on this right that we have carefully considered. One of the limitations is in subsection 2(a)(1). It states the corporation must have at least 2 stockholders and must have fewer than 75 stockholders in order to be eligible for this right. The reason for requiring more than 1 stockholder has to do with the fact with the innocent party rule. If there is not more than 1 stockholder present in a corporation, there is no innocent party to protect.

There have been some court decisions that have not allowed charging order interests to be upheld in bankruptcy cases in Colorado. I think there is a reference we have provided regarding that. So, we have written that into the statute, requiring that there be an innocent party. We want to make sure that the legal theory behind the charging order proposal is sound and applies only to relatively closely held companies. So, we put a cap on this of up to 75 stockholders. That cap is somewhat arbitrary, but it is defensible. The reason we have chosen that number is that historically, the 75 stockholder limitation has been what the IRS [U.S. Internal Revenue Service] recognizes as being eligible for subchapter selection, which is applicable to small businesses. We have chosen to use that as the proposed cap.

Number 2 of that subsection is that the corporation cannot be a subsidiary of a publicly traded company. In other words, it is not the intention of providing this charging order limitation so that publicly held companies, where stockholders were blind to one another, can assert this charging order limitation by virtue of creating a subsidiary that has only a couple of shareholders. It is not the intent of this, so it is not provided.

Number 3 in that subsection applies only to corporations that are not professional corporations as defined in *Nevada Revised Statutes* (NRS) 89.020. Typically, with professional corporations, there has always been a public policy issue that those professionals who are licensed in certain professions should have some liability in the area in which they are licensed. It would not be our intent to exempt if it would be in conflict with existing policy.

There were issues that were raised before the Business Law Committee, where they had some concerns about making sure this proposal did not override any existing agreements, since we have added that to the statutes as well. Sections 37 through 40 of the bill were added by bill drafting to bring other areas of law

that pertained to execution of judgments in compliance and harmony with our proposal in subsection 1.

Chairman Anderson:

You are proposing changes here within the purview of the Business Law Section in the Secretary of State's Office. Did they see any problems with any of the ideas that you are suggesting?

Derek Rowley:

We have met with the Secretary of State's Office. We have met with Mr. Kim of the Bar Association's business law section. We have discussed these proposals with the Trial Lawyers Association as well. We have addressed every issue that they have brought up. As far as I know, we have the support of all of them.

Chairman Anderson:

Is this a "hold-your-breath-and-wait-and-see" deal?

Derek Rowley:

We have actively communicated with all those parties that chose to testify. We have not been made aware of any concerns by any parties.

Robert Kim:

Yes, Mr. Rowley has had the State look at his language and added a few comments to it, which recognizes what third-party entities may enter into on their own in different secured transactions. We have no objection to the inclusion of this in the bill.

Chairman Anderson:

Because of the issue that was raised in Colorado and their loss of 2,100 corporations, as we can see in your report here, what we are trying to do is make it very clear that these kind of judicial actions are going to take place here in Nevada. These actions will occur unless there is some proven legal responsibility and protecting the assets of other corporate members.

Derek Rowley:

The legal ruling in Colorado applied to a specific LLC case in bankruptcy. There was a single-member LLC who was trying to rely on the charging order to protect creditors from foreclosing on the assets of the company. The court ruled that it could not be upheld because there were no innocent parties. The declining numbers in corporate filings that I have given you in my report does not directly correlate to that. The general purpose for us giving this proposal is that we are trying to make a preemptive strike to assure that Nevada's position

as a preferred corporate climate is primary in the minds of those who make those decisions.

[Derek Rowley, continued.] Adding the charging order to the stock of a closely held corporation would give Nevada a benefit that doesn't exist in any other state currently. It is our hope that by adding this provision, it will allow Nevada to retain its position as being a top corporate climate and will continue to attract filings. One comment that was made to me by an attorney that I have discussed this proposal with is this may be one of the most significant changes in corporate statutes in the last 50 years, in terms of attracting new filings. We certainly hope that will be the case.

Chairman Anderson:

I am sure the part of the market that you are dealing with would find that to be a true statement.

Pat Cashill:

We are communicating, as we speak, with Bob Crowell to ascertain what position he took on the bill. I cannot say anything about it at this point.

Renee Parker:

We did meet with the Nevada Resident Agent Association and with Mr. Kim. It really is more of a policy issue the way it was presented, and this would create a more business-friendly environment. We did ask that they contact the Nevada Trial Lawyers Association in an effort to determine what their concerns might be. There was no opposition in the Senate. We support it if it does create this business-friendly environment, and we have not heard any opposition to date. For us, that would change if there was some opposition. If it is going to encourage the formation of more businesses, keeping us on the business-friendly edge, we are for it. If there is some opposition that is brought forth that we have not considered, we would like to consider that, and we may change our position.

Assemblywoman Buckley:

I would like to run this by some bankruptcy lawyers. We all want to be business friendly, but what we are talking about is where another business is owed money and the right of that business to collect their money from someone being able to shield assets. We just cannot throw out "let's be business friendly" without really realizing what we are doing here. I would like to consult with a couple of bankruptcy attorneys to make sure we are being fair to those businesses who are owed money.

Chairman Anderson:

It is the Chair's intention that we will put this on work session for Wednesday. I would ask that those questions be closed by Tuesday morning at 9:00. I would suggest that Ms. Combs would like to have that information by Tuesday morning at 9:00 a.m. for preparation to move it into our work session document for next Wednesday.

Renee Parker:

We agree with Assemblywoman Buckley's comments. That is why we did ask for other input. We are fully in support in doing that type of investigation.

Pat Cashill:

We will comply and get word back to Ms. Combs by Tuesday at 9:00 a.m.

Chairman Anderson:

The hearing on S.B. 453 is closed. Let's turn our attention to S.B. 337.

Senate Bill 337 (1st Reprint): Makes changes pertaining to intoxicating substances. (BDR 3-784)

Senator Valerie Wiener, Clark County Senatorial District No. 3:

[Submitted [Exhibit G](#) and [Exhibit H](#).] Today I appear before you to urge your support for S.B. 337, which deals with what is commonly called "social hosting." Before I discuss this particular legislation, I would like to provide some background information on the bill.

In 2003, I sponsored S.C.R. 15 of the 72nd Legislative Session, which addressed the problem of alcohol and drug abuse by young adults while driving motor vehicles. During the hearing in the Assembly, Kathy Bartosz, a grants analyst in the Department of Human Resources, Division of Child and Family Services, came forward unexpectedly to testify with great enthusiasm. With the permission of her agency, she offered some dedicated dollars to conduct a study ([Exhibit G](#)), which was a massive study that was accomplished based on that resolution. In that study, I will refer to some different pieces of information, because they are pretty substantial in supporting why I am here before you today. It does provide a comprehensive look at underage alcohol consumption in our state.

As you will note, this was a cooperative effort between Human Resources, the Department of Public Safety, the Department of Transportation, and the Department of Education. In the report ([Exhibit G](#)), on pages 4 and 5, you will

see trending of three Nevada youth risk behavior surveys. You will see alarming trends. One of those is that more than one-third of underage drinkers usually got their alcoholic beverages from home, with or without the knowledge of their parents. That is an increase since 2001.

[Senator Wiener, continued.] Twelve percent of underage drinkers think that their parents or guardians would approve or not care if they have 5 or more drinks in a row within a couple of hours. This is an increase since 2001. Nearly 20 percent think their parents or guardians would approve or not care if they attended a party where alcoholic beverages were available. This is a very modest reduction since 2001. Even though we see some improvement in Nevada, this is only because of a substantial collaborative effort by many local agencies. The numbers, however, are still alarming.

On page 7 of the report, Table 2, entitled "Estimated Costs of Underage Drinking in Nevada," you will see that our state ranks fourth-highest among the 50 states for the cost per youth of underage drinking. The cost is \$522 million, and I presume that is an annual cost, but it does not make that distinction. There are several categories of behavior that are affected by underage drinking. These include youth violence, youth traffic crashes, high-risk sex, youth property crime, youth injury, poisonings and psychoses, fetal alcohol syndrome among young mothers, and youth alcohol treatment.

On page 11, you will see several recommendations to address our state's alarming problem involving underage drinkers. The Nevada Impaired Driving Assessment was conducted by the National Highway Traffic Safety Administration at the request of the Nevada Department of Public Safety. One of those recommendations is to enact "social-hosting" liability statutes. That was the genesis of S.B. 337.

Section 1, subsection 3 of this bill provides that a person who is 18 years or older and unlawfully serves, sells, or furnishes an alcoholic beverage to another person under 21, or provides or serves a controlled substance to a person of any age, is liable in a civil action for any damages that can be linked. This is the proximate cause component to underage drinkers' consumption of the alcoholic beverage or the controlled substance.

Subsection 4 provides that if a person 18 or older, who has control over any premises, is in a reasonable position to prevent the unlawful consumption on the premises of the alcoholic beverage or controlled substance, and knowingly or recklessly permits the unlawful consumption on the premises, he or she is liable in civil action for any damages. Again, this is if this results from behavior that is caused by the person who consumed that beverage or controlled substance.

[Senator Wiener, continued.] Subsections 5 and 6 state that these provisions do not apply to those who are licensed to provide alcohol on premises, such as restaurants or bars. I want to stress that this was a concern in the Senate because of the state's position on dram shop laws. The distinction here is pretty significant. These are underage drinkers who should not be in those places at any time on those premises, such as bars, restaurants, and other facilities consuming alcoholic beverages. So, these are social hosts who provide alcohol and controlled substances to underage persons.

Subsection 7 provides the injured person can prevail in a civil action and recover actual damages, attorney's fees, and punitive damages. You will note that Section 2 of the bill, which was not addressed because of the changes that were made in the first section, defines criminal sanctions. These sanctions are available for these behaviors and hold people 18 and older responsible for furnishing, making available, and knowingly permitting underage persons from drinking alcohol or participating in controlled substances. It is already illegal for someone under 21 to provide the controlled substance. It is already illegal for someone under 21 to have the alcoholic beverages. This would create a misdemeanor as well as a liability of up to \$5,000 for this behavior. In addition to the fine, the court has the latitude for first or subsequent offenses to require 48 to 96 hours of community service, as well as require the person who is found guilty of this cause of action to participate in a counseling program.

We have a substantial need for this. It is pointed out over and over again in this study that this is long overdue. We have a need, as we are number four in the country. There is no indication that we are getting better at this. We need to close a hole here where there are people who are responsible for violating these underage drinkers, and certainly, the controlled substance part goes without saying. It is for these reasons that I ask for your support for S.B. 337.

Chairman Anderson:

My parents are immigrants to this country, and I grew up in an immigrant neighborhood. It was not uncommon for them to make their own wine and would have been considered bad form not to have a glass of wine with dinner. It was from their heritage and part of the cultural group that was there. Would this bill apply in that kind of situation?

Senator Wiener:

Initially, there were some provisions to exempt religious consumption. This kicks in when there was damage that results from providing the alcohol to an underage drinker and damage results. This is so you can hold responsible the person who provided the alcohol to that person who caused damage. That

underage drinker should not be drinking anyway. This bill takes effect when damage results.

Chairman Anderson:

If I should ride my bicycle home, I'm okay as long as I don't fall off the bicycle because I drank too much and caused some damage. My father could sue the people whose home I was in.

Senator Wiener:

It is interesting that you bring that particular scenario into play, because in the Senate, I offered two options. I could not make up my mind and I needed the wisdom of the committee. I looked to other states as this is very new law, and certainly, states are addressing it in a vigorous way. Some states precluded the underage drinker from bringing a cause of action for whatever reason. It was only a damaged third party. Other states would allow the underage drinker to bring a cause of action. The committee decided that the underage drinker could be the victim of that drinking, such as what you just said. You fall off the bicycle and you're injured. You will notice that the committee opted to allow cause of action for the underage drinker. So, your parents could probably bring a cause of action if you are hurt, because you should not have been drinking and driving.

Chairman Anderson:

I think I really do see what the intent is. I have spent the last 34 years of my life dealing with teenagers in this particular age group, who occasionally have access to alcohol provided by adults. They say they would rather have their kid drinking under their supervision than drinking at somebody else's house, and then they would have to drive back. They are not mindful of the fact that somebody's kid is going to have to drive home. Isn't what this is really aimed at?

Senator Wiener:

That is why I gave the timeline on how I came forward with this bill. We had a very tragic example of what you are saying in southern Nevada. Although this may look like a response to what occurred in southern Nevada, it is not. This bill was processed long before, because of a study that was brought forward as a Senate Concurrent Resolution in the last session.

Again, there is a "knowingly" issue, but given your bicycle example, if your parents say that the likelihood of their child not having been injured had he not been impaired, it would give them the cause of action to the people who allowed you to drink, knowing it could cause damage. It is when the damage has occurred that this bill comes into play.

Assemblyman Carpenter:

On the third page of the bill, you have eliminated a parent or guardian. I am just wondering why the parents' responsibility was taken out.

Bill Bradley, Legislative Advocate, representing the Nevada Trial Lawyers Association:

Section 3 started off by defining a person. A person could include a parent, a guardian, or any other individual, for that matter. It was redundant to keep "parent or guardian" in subsection 2 of page 3. Of course, you still want to extend immunity to the physician, because the physician is prescribing a controlled substance.

The Nevada Trial Lawyers Association wants to commend Senator Wiener and the Senate for passing this bill. This is a bill that is long overdue. I realize there are time constraints here. If you would like to see how these circumstances apply to a real-life matter or if you feel there is enough understanding of the bill, I don't want to waste any of the Committee's time.

Assemblyman Ocegüera:

If the civil liability is removed—or added, in certain circumstances—I was wondering, in Section 2, subsection 1(c), if that civil liability is being imposed on those adults who give money to a minor, knowing it will be used for alcohol. Was it the intention to do that?

Bill Bradley:

It preserves that.

Assemblyman Ocegüera:

That civil liability would be imposed?

Risa Lang, Committee Counsel:

Section 2 is just dealing with criminal liability. It is making it a misdemeanor, which is what it is currently.

Assemblyman Ocegüera:

It is current law, but throughout the bill we are talking about when we would or would not have civil liability. So, I am wondering if they were trying to put civil liability on those who gave money to people to purchase alcohol.

Bill Bradley:

The answer would be no. The general principle of this bill is that if you are going to allow your children to consume alcohol in your home, it is still allowed. But

you better make darn sure that you have all the keys and they all understand they are staying home that evening.

Chairman Anderson:

There is a family dinner, which includes members less than 21 years of age, and alcohol is served. As long as all family members are staying within the house and on your property, you are okay.

Bill Bradley:

That is correct.

Chairman Anderson:

What happens if my child comes home from a party and with them is someone who I know who is under 21 years of age, and they are consuming alcohol that they brought with them and I have not provided? Do I have a responsibility as a property owner in control of the property to retain them and keep them on the property so that they do not harm others? Is there a new responsibility for me because I am in control of my property, theoretically, and he or she is underage and has alcohol?

Bill Bradley:

You have a responsibility under this bill to stop the consumption when you know that person who is accompanying your son is coming onto your property with alcoholic beverages that he or she plans on consuming. I would suggest, under this bill, that you must tell that young person that alcohol will be put in the garbage can or you will not come onto this property.

Chairman Anderson:

He had the alcohol in his control, so do I have a responsibility after he has left my property with alcohol I did not provide?

Bill Bradley:

No, as long as you do not allow him to consume alcohol on your property.

Chairman Anderson:

What if he takes a drink while he is on my property and I had not realized it was there?

Bill Bradley:

Now you are unknowing.

Chairman Anderson:

But now he comes on the property. I do not realize he has alcohol with him. He takes a drink while he is on my property, and I tell him not to drink on my property because you are underage. I tell him to throw the alcohol out, and he throws it out.

Senator Wiener:

The standard is knowingly or recklessly. If he did it without your knowledge, you are not held responsible.

Assemblyman Mabey:

Why were Sections 5 and 6 placed in this bill?

Bill Bradley:

Several sessions ago, there was actually a bill that was brought against the Mothers Against Drunk Driving to establish what is known as dram shop liability in this state. Before the end of the session, that Mothers Against Drunk Driving bill had been deleted, and the absolute abolition against bringing a cause of action had been inserted. The concern from sellers of alcohol is that they do not want to establish overall liability for providing alcohol, having someone leaving the business that is licensed to serve alcohol, and hurting someone. A law does exist in several states, but the feeling back then was that, because of the clear entertainment nature of our economy, it could not be tolerated.

Senator Wiener:

A major distinction is those people who would purchase on premises where it is licensed to provide those beverages; those people have to be of age to drink. The focus of this is social hosting, which is a situation where alcohol is provided to underage persons—and controlled substances to any age—where damage is caused. You have to be able to make the link. It is an automatic thing. That is a major distinction between the two, because they shouldn't be drinking anyway.

Assemblyman Carpenter:

I need further explanation of what subsections 5 and 6 really mean. In subsection 6 it says, "...licensed to serve or sell alcoholic beverages." What do they mean by those two sections? Who does that apply to or not apply to?

Senator Wiener:

It would be in a bar or a restaurant where they have a liquor license. In terms of subsections 5 and 6, it would be selling out of a liquor store or a convenience store. Again, they have to sell to people who are of age to drink, but they have a license to provide those beverages—versus the household, which is a social hosting environment.

Assemblyman Carpenter:

As an owner of a restaurant or convenience store, I still have an obligation. If somebody comes in and is obviously drunk, I should not sell him any liquor.

Bill Bradley:

That is because you are a responsible Nevada business owner. To answer your question legally, no, you can sell them liquor and not worry about it.

Assemblyman Carpenter:

I do not think that's what you should be doing. Does this just apply to off premises, to homes?

Bill Bradley:

It really applies to the social host situation. Yes, it does apply to those social settings where there is no professional or licensed person serving the alcohol. What is really intended to do here is deal with the irresponsible parents who allow parties to happen at their home, and kids are coming and going who are drinking and drag racing. I believe it is hard for this Committee to understand, because we are all responsible parents. I think we remember in high school that there were certain homes where parents condoned the drinking of alcohol, and you went there if you wanted to get drunk. Without this bill, those kids could go out and wreak havoc on the streets without any responsibility on the parents. It is strictly a social situation.

Assemblyman Carpenter:

I always understood that you were not supposed to sell liquor to somebody that was obviously drunk. You are saying it's okay, so that really surprises me.

Senator Wiener:

It is not okay. I wouldn't condone that, but it is not illegal.

Chairman Anderson:

I think that is the nature of the dram shop law that was originally passed. As I understand the dram shop question here in Nevada, it relates to a bill we have dealt with, forcing bar and tavern owners to raise their level of awareness of proper training for those people who are in the bar business, but we have not given them the legal responsibility. If a drunk comes in and you didn't know he was drunk, you could go ahead serve him a drink. If you serve him and he falls off the stool, you do not have the responsibility, even though you looked carefully and recognized he had difficulty in getting up on the stool in the first place.

Bill Bradley:

Despite the fact that no civil responsibility or liability is attached in Nevada, if a licensed liquor establishment sells to a drunk, it is clear that the major industry in this state has implemented programs with their bartenders to recognize drunks and stop them. I think that is just carrying out the moral and ethical obligation that you have always lived by, but there is no civil liability.

Chairman Anderson:

But we are not condoning irresponsible behavior of a bar or restaurant owner relative to the serving of alcohol beverage?

Bill Bradley:

That is correct.

Assemblywoman Ohrenschall:

I am just curious. Do we need any exception for religious consumption of alcoholic beverages, such as Catholic communion, Passover Seder wine, or something like that?

Senator Wiener:

In the one of the many original drafts, there was a reference to religious consumption. My concern is not what families do inside the walls of their home, to the extent that there is a religious experience, some part of a family tradition, or a cultural tradition. That is a decision that the families make. The concern is that you allow that person who may not have much tolerance to consume, and the consumption leads to behavior that leads to damage. It was my decision that if consumption was excessive—which I would sense, in many religious ceremonies, would not be excessive—it would be as if they allowed a controlled substance to be consumed, which is illegal anyway. If the underage consumer goes out and hurts somebody, there is the link between the consumption to the behavior to the damage, and there still has to be accountability for the damage by the person who provided it to the underage consumer.

Chairman Anderson:

The question of criminal liability still remains in part in the bill.

Assemblywoman Gerhardt:

I have a son who is now 21 years of age. He and his friends often come to my house. From time to time, my son has a beer. I am buying, so I monitor how much. I ask his friends who are with him if they are of age, and if they tell me they are, they might have a beer as well. Is asking sufficient, or do I have to card these kids? I am concerned about what I am going to have to do in my home.

Bill Bradley:

I think that is an excellent question. It goes to the definition of knowing. In tort law and the kind of law we are talking about, we always talk about what the reasonable person's obligations are. I think we could probably, through the legislative intent of this hearing, clarify that if your intent is to comply with the word "knowingly" by inquiring and getting an answer, then let's make sure that is part of the legislative intent. If your intent is that you feel the reasonable person should go further and say, "Let me see your driver's license," then you have to be a pretty good detective to spot the difference between a real driver's license and a phony one. That might create additional responsibility. I think it is important in the legislative history to define what this Committee meant to pass, if that's the intent of this Committee, by knowing. If knowing is inquiry and a response, then that should be what is in the intent.

Assemblywoman Gerhardt:

That would be very important for me.

Chairman Anderson:

We need to clearly establish in the record and make note in the record that it is the intent, if we are going to move with the bill.

Assemblyman Holcomb:

When you say "knowingly," what about constructive knowledge? In other words, the courts say yes and you didn't know, but you should have known. It is not reckless, but let's say parents have alcohol on the premises and they are going to go on a trip. They have had problems with their son and they did not know, but they should have known their son was going to drink when they were away. That is constructive knowledge. We are going to impose knowledge, and we are going to say that you did know, but it is constructively knowing. It's a term that is well known in the legal fields.

Bill Bradley:

I believe that constructive knowledge is the kind you define and would be knowledge. You indicated a very important fact, which is that you have had problems with your child in the past going against your wishes, stealing your alcohol, or consuming your alcohol. Quite frankly, under that scenario, I think that you are on an affirmative duty from that point forward.

Assemblyman Holcomb:

Would this also include constructive knowledge? In other words, you have a situation where the courts can say, "Yes—factually, you did not know, but we will say you should have known, given the situation." So, does this imply also

that this bill includes constructive knowledge? I think it does because you answered it.

[Assemblyman Holcomb, continued.] Basically, we are really inviting a lot of lawsuits with insurance companies. I have been in the insurance business for a number of years. I know that insurance companies basically pay claims rather than litigate because it is more cost-effective to settle claims than go to court, because of the cost factor. Because of constructive knowledge, it is opening the door to a lot of lawsuits, potential lawsuits, or claims.

Chairman Anderson:

Will you bring this up at work session?

Assemblyman Holcomb:

Yes, I will. This bill does open the door to constructive knowledge with law. The courts will impose knowledge even if you did not know constructively.

Bill Bradley:

Constructive knowledge means constructive knowledge. There have to be facts to create the constructive knowledge. I've been in this business for 24 years, and I have seen two cases involving this. I think the overriding social message is equally as important to allowing liability to attach when parents do not act responsibly with underage drinkers going out in the general public.

Chairman Anderson:

I think we still need to clarify the criminal questions that I asked earlier. I want you to make sure I am on the right page here relative to understanding what, criminally, we may be opening up here, in terms of liability and potential problems. If you could clarify the bill for us, that would be helpful, so we can stay on track.

Risa Lang:

I think the point has been made for Section 1 of the bill, and there needs to be some type of harm that is caused to create the liability. Section 2, which is your criminal misdemeanor statute, does not require you have harm, but you engage in the act of selling, giving, furnishing, and otherwise providing an underage person with alcohol. By deleting "parent or guardian," we have deleted that exemption for parents providing alcohol to the children under this criminal statute. Now it would be every person who knowingly sells, gives, or otherwise furnishes alcoholic beverage to a person under 21 who would be liable under this statute, other than a physician. Parents would be included. If that is not the intent, then perhaps we need to change that.

Bill Bradley:

I agree.

Chairman Anderson:

We do need to reexamine the intent of the bill?

Bill Bradley:

I agree with Ms. Lang regarding the criminal side of it. It does impose that criminal liability. When I looked at it initially, in answer to Mr. Ocegüera's question, I did not see the Section 2. Ms. Lang is correct.

Chairman Anderson:

So, we may need to provide some clarity, as this was not your intent?

Senator Wiener:

I think of the example of a parent who would provide wine for a religious ceremony or a cultural experience. I do not want to exclude something that is part of a family tradition. That would not be my intent. I do not know where the fine line would be drawn, but I also do not want to see parents pumping bourbon into their kids. I would certainly be happy to work with the Committee to distinguish what would be appropriate and what would be dangerous to the child.

Chairman Anderson:

There are certain cultural traditions that are difficult to discern unless you happen to be from that particular ethnic group. I am mindful of those cultural heritages.

Erin Breen, Director, Safe Community Partnership, Las Vegas, Nevada:

I will electronically submit my testimony to you ([Exhibit I](#)). I want you to know that it concerns me to hear all of the questions about this bill and all of the circumstances where you, as responsible parents, cannot see yourselves in this position of having children consuming alcohol in your homes. We are working on a daily basis with people who are living tragedy, as a result of their children being in homes where parents knowingly provided alcohol. These parents turned their back when they knew children were arriving at their home with alcohol and allowed them to get in their cars and drive home.

Senator Wiener alluded to a terrible tragedy in southern Nevada last year where 3 young lives were lost. In my comments that I am going to submit to you, you will see messages from a father who lost his son in that crash and the mother of the driver. What you are also going to hear is the most startling, and that is why I wanted to tell you in person today. In that home where the boys were

that night, the parents had been cited for minors in possession of alcohol in their home prior to the night of that crash. But more importantly, they have also been cited since the night of that crash. Three young children, wonderful boys, lost their lives that night, and those parents still did not get the message. This bill is terribly important, and it is time we let children in Nevada know that underage drinking is not acceptable under any circumstances outside of your own home. I urge you to find a way to support this bill as it is written.

Chairman Anderson:

I am of the opinion that there may be some questions relative to some other things, even to try and get it to a position that would be acceptable to the Committee. The irresponsible parents are a problem that I have dealt with for over 30 years and for as long as I can recall as an adult. The bad behavior of some individuals cannot be changed because of a piece of paper, even though we would like it to happen that way. I think we have to send a clear message on a regular basis on what is and what is not acceptable behavior. Until parents take on that responsibility, I think we are okay.

I will leave the record open for anyone else who wishes to submit testimony. [\[Exhibit J\]](#) was submitted to Chairman Anderson by Laurel Stadler, Chapter Director for Mothers Against Drunk Driving.]

Senate Bill 337 (1st Reprint): Makes changes pertaining to intoxicating substances. (BDR 3-784)

Senate Bill 287 (1st Reprint): Prohibits person from leaving child who is 7 years of age or younger in motor vehicle without certain supervision. (BDR 15-14)

Not heard.

[Chairman Anderson adjourned the meeting at 10:55 a.m.]

RESPECTFULLY SUBMITTED:

Carole Snider
Committee Attaché

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 5, 2005

Time of Meeting: 8:20 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
S.B. 338	B	Robert C. Kim, Chairman, Executive Committee, Business Law Section, State Bar of Nevada	Letter to Committee regarding background of S.B. 338
S.B. 338	C	Assemblywoman Barbara Buckley	Article from <i>Las Vegas Sun</i> , entitled "Law Keeps Identity of Landowners a Secret," dated 4-29-05
S.B. 453	D	Scott Anderson, Deputy, Commercial Recordings, Nevada Secretary of State's Office	Letter to Chairman Anderson, dated 5-5-05, regarding S.B. 453
S.B. 453	E	Renee Parker, Chief Deputy, Nevada Secretary of State	Email to Chairman Anderson, entitled "Notary Amendments to S.B. 453"
S.B. 453	F	Derek Rowley, President, Nevada Resident Agent Association	Article dated February 2005 "Charging Order Protection for Nevada Corporations"
S.B. 337	G	Senator Valerie Wiener, Clark County Senatorial District No. 3	Report entitled "Nevada's Underage Alcohol Consumption"
S.B. 337	H	Senator Valerie Wiener, District No. 3, Clark County	Senator Wiener's speech to Committee
S.B. 337	I	Erin Breen, Director, Safe Community Partnership	Testimony of Erin Breen
S.B. 337	J	Chairman Anderson	Letter to Chairman Anderson from Laurel Stadler, MADD Chapter Director, dated 5-3-05, regarding S.B. 337