MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-third Session
April 11, 2005

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 8:07 a.m. on Monday, April 11, 2005, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark E. Amodei, Chair
Senator Maurice E. Washington, Vice Chair
Senator Mike McGinness
Senator Dennis Nolan
Senator Valerie Wiener
Senator Terry Care
Senator Steven Horsford

GUEST LEGISLATORS PRESENT:

Assemblyman Bernie Anderson, Assembly District No. 31
Assemblyman William C. Horne, Assembly District No. 34

STAFF MEMBERS PRESENT:

Nicolas Anthony, Committee Policy Analyst
Bradley Wilkinson, Committee Counsel
Johnnie Lorraine Willis, Committee Secretary

OTHERS PRESENT:

Robert Eglet, Nevada Trial Lawyers Association
William Olsen
Laurel A. Stadler, Mothers Against Drunk Driving-Lyon County
Stan Olsen, Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association

Steve Franks, Lieutenant, Las Vegas Metropolitan Police Department
Tara Shepperson Ph.D., Executive Director, Nevada Cyber Crime Task Force, Office of the Attorney General
Tom Fronapfel, P.E., Administrator, Field Services Division, Department of Motor Vehicles
Kathleen Delaney, Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General
Buffy J. Dreiling, Nevada Association of Realtors
Cheryl Blomstrom, Nevada Consumer Finance Association; MNBA Corporation
John Albrecht, General Counsel, Washoe County School District
William R. Uffelman, Nevada Bankers Association
James Jackson, Consumer Data Industry Association
Chris MacKenzie, American Express
Lynn P. Chapman, Nevada Eagle Forum
Janine Hansen, Nevada Eagle Forum
Mary Lau, Retail Association of Nevada
Gerald Gardner, Chief Deputy Attorney General, Criminal Justice Division, Office of the Attorney General
Patricia Morse Jarman, Commissioner, Consumer Affairs Division, Department of Business and Industry

Chair Amodei opened the hearing on Senate Bill (S.B.) 287.

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)

Senator Valerie Wiener, Clark County Senatorial District No. 3, said S.B. 287 dealt with adults leaving children unattended in cars. She said she authored a bill the previous Session that addressed the same concerns, which passed the Senate with overwhelming support, but was defeated in the Assembly. As a result, she explained, she was back with the same issue.

Senator Wiener noted the Legislative Counsel's Digest indicated the bill held adults responsible for children seven years old or younger who were left unattended in a motor vehicle. She said the supervisory age in a vehicle had been changed from the previous 14 years old to 12 years old. Senator Wiener continued to read her written testimony (Exhibit C).

Assemblyman William C. Horne, Assembly District No. 34, said he was appearing before the Committee in support of S.B. 287. He commented that he felt privileged Senator Wiener had asked him to cosponsor the bill and help in developing the language in the bill. He said in the previous Session, there were concerns about prosecuting a parent who made a mistake they would have to live with for the rest of their lives. He explained S.B. 287 was an effort to draw distinctions between a parent who left their child in the car while they went in and played slot machines or a parent who left a child in the car by mistake. He said S.B. 287 was to educate the public to the fact that leaving a child unattended in a car was an unacceptably dangerous situation that needed correcting. Assemblyman Horne requested the Committee support S.B. 287.

Senator Care asked whether the bill applied to situations where a child climbed into a car on his or her own or whether the bill only applied to parents who knowingly left their child unattended in a car. He questioned that the bill cited private property, and asked if it included parking lots and privately owned driveways. Senator Wiener replied, “Yes.” Senator Care mentioned the car might not be running, but the parent had placed the child into the car and then went back inside the house to retrieve a needed item. Senator Wiener responded, “It could be.” She said in the previous incarnation of this bill, strict qualifiers described the circumstances in which such behavior would become a liability on a negligent parent or caretaker of a child. In this incarnation, she said the intent was to catch such behaviors early so those behaviors could be changed. She commented that S.B. 287 was to educate more than to punish such dangerous behaviors. Senator Wiener explained the key component of the bill was a hammer for citing a person with a misdemeanor; however, the misdemeanor could be dismissed if the person attended the parenting classes described in the bill.

Senator Horsford conveyed a conceivable scenario and stated that everyone should practice caring behaviors automatically in order to protect children.

Robert Eglet, Nevada Trial Lawyers Association, confirmed the Trial Lawyers support of S.B. 287. He said Nevada’s children were dying needlessly from being left alone in cars. Mr. Eglet stated that since 1999, there had been more than 5,000 cases of death or injury to children.

Mr. Eglet said heat stroke was a primary concern, particularly in the summer in places like Las Vegas. He commented that children could also die in numerous other ways. Mr. Eglet said some examples of the ways children left alone could die were from putting a car into motion whether it was running or not, being kidnapped by car thieves or other criminals, strangling by power windows or being trapped in the trunk of a car. He stated 16 children had died in Las Vegas from incidences documented since 1999.

Mr. Eglet explained that in the year 2000, 2 children died from heat exhaustion and in 2003, the Las Vegas Fire and Rescue responded to nearly 600 calls for children left alone in cars; in 2004, there were more than 500 calls for the same reason.

Mr. Eglet stated nearly 176 children were treated each week in emergency rooms nationwide as a result of being left unattended in parked cars. He noted that was more than 750 children a month or 9,000 children a year in this country.

Mr. Eglet explained his law firm became involved with this issue as a result of a tragedy in Las Vegas in 2001. He said his firm helped create some short public announcements describing what could happen to children left alone in cars.

Mr. Eglet said on May 6, 2001, Michael Esposito died at the race track in Las Vegas. He explained Michael was playing hide and seek, his parents had left the car doors open, Michael crawled into the trunk of the vehicle from the back seat and ultimately died of heat exhaustion. He explained that he and his wife represented the family in regard to this tragedy, which tore apart the family.

Mr. Eglet said even though the parents could have been charged under the conditions of S.B. 287, they support the bill. He said the problem was simply a lack of education. He stated parents and other caregivers do not understand how dangerous leaving a child in a car could be, even leaving the car for a few moments to walk a few feet away to talk to friends.

Mr. Eglet described how easily children could strangle themselves or cause severe injury to a carotid artery from a power window or by putting the car into gear.

Mr. Eglet stated the reason the Trial Lawyers were behind the bill was because it meant to educate parents and caregivers. He said the bill was a way to educate the public about the dangers and start saving these children's lives.

William Olsen showed a photo to the Committee. Reading from his written testimony (Exhibit D), he said the picture was of his son Christian Louis Olsen who died in July 2004 at the age of three as a result of accidentally being left unattended in their vehicle for just over an hour. Mr. Olsen continued to read his written testimony.

SENATOR WIENER MOVED TO DO PASS S.B. 287.

SENATOR HORSFORD SECONDED THE MOTION.

Senator Care said the Committee had not really discussed the 12-year-old age cutoff for leaving an attendant with smaller children. He stated the bill should have language indicating an attendant of 12 years old or older should have some level of competence. He said the Committee was assuming a child aged 12 would be of average intelligence, and he was not sure whether the sponsor wanted to address the issue. Senator Wiener explained the age was 14 years in the original bill. She affirmed in her testimony that she did address the issue of child endangerment. Senator Wiener said S.B. 287 was to address a mistake, not an intent. She stated laws address more severe child endangerment situations; however, this bill intended to change the behavior as early as possible. Senator Wiener said the scenario described by Mr. Olsen was not the kind of scenario that S.B. 287 was addressing.

Senator Wiener said when researching other state's age limits, she found those age limits all over the map. The Senator said she used seven or younger because in the criminal statutes in Nevada, that was the age a child was presumed not to know right from wrong. Senator Wiener commented that substantial input indicated age 12 years as a standard age for babysitters in Nevada.

Senator Wiener noted she did not know how to determine competence. She said she was unaware of the test Nevadans used for competence in babysitters. Senator Wiener stated the 12-year-old cutoff was requested by an individual who was involved in drafting the bill.

THE MOTION CARRIED. (SENATOR NOLAN WAS ABSENT FOR THE VOTE.)

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Chair Amodei closed the hearing on S.B. 287 and opened the hearing on S.B. 337.

SENATE BILL 337: Establishes civil liability for serving, selling or otherwise furnishing alcoholic beverages or controlled substances to minors in certain circumstances. (BDR 3-784)

Mr. Eglet said the Nevada Trial Lawyers Association was in support of S.B. 337. He said the Committee was aware drunk driving statistics were overwhelming. He commented this bill would not completely curtail or remove all drunk driving involving minors. He explained the Trial Lawyers believed the bill would impose criminal and civil liability on adults who furnished alcohol to minors in residential settings. Mr. Eglet said the bill provided a deterrent for giving alcohol to minors and an educational component in order to teach the public the dangers of providing alcohol to minors.

Mr. Eglet stated he had lived in Nevada nearly his entire life and could personally attest to attending many parties where adults served alcohol to minors under 21 years of age. He said at the time, like everyone else at the party, he thought those parents were really “cool.” He explained he matured and understood the ramifications of these children leaving these parties intoxicated to go out and severely injure or kill themselves or someone else. He stated such situations were great dangers, and the bill was an excellent way to help address the problem. He hoped the bill would help educate the public and curtail such behavior.

Senator Horsford asked about instances in which minors were served communion and wanted to know whether the bill had a provision or exception to cover such scenarios. Senator Wiener said she would address that issue when she gave her opening remarks on the bill.

Chair Amodei said the bill created the assumption that the furnishing of alcohol was the proximate cause of any damages; the bill refers to intoxication, but he wondered whether the bill linked all these issues. Mr. Eglet responded that

under section 1, subsection 2, of the proposed amendments (Exhibit E and Exhibit F), the language was written, "If an injured person prevails in an action brought pursuant to subsection 1, the court may award the injured person his actual damages, costs, attorney's fees and punitive damages." Mr. Eglet said the burden of proof was still on the injured person, and there were still burdens under tort liability laws to prove.

Chair Amodei read from the bill that if a person prevailed, "... the court may award the injured person his actual damages, costs, attorney's fees and punitive damages." He said the bill was written with an automatic entitlement to punitive damages and wondered whether that automatic entitlement remained after the amendments. Mr. Eglet replied the amendment was the court "may award," not "must" or "shall." He pointed out the court may award the person his or her actual damages. He said economic damages had been removed and replaced with actual damages. Mr. Eglet explained actual damages would include economic damages as well as general damages, cost of pursuing the claim, attorney's fees and punitive damages. He said all damages were a "may," leaving the decision to the judge or jury. Mr. Eglet claimed under Nevada law, a punitive damages claim was a two-step process. He said the result would be two trials, the first for the economic and general damages. He stated the second step was a special verdict form from the jury to determine whether an award of punitive damages should be considered; only an affirmative answer would involve a second trial on what amount, if any, should be awarded.

Chair Amodei asked by delineating what the bill contained if the Committee had focused the procedure in the context of the bill on the issues documented. He inquired whether that was a wise thing to do, rather than leaving the decision to the general law, which provides for punitive damages under appropriated circumstances. He wondered why the bill and the amendment had the laundry list that included some specifics, but was not all-inclusive. Mr. Eglet responded he had not conferred with Senator Wiener since he had received copies of Exhibit E and Exhibit F as to why there was a laundry list. He said he understood the reasoning for the cost of pursuing the case and the attorney's fees and punitive damages. He stated he was not sure why the amendments said actual damages instead of economic and general damages. Mr. Eglet agreed the laundry list could be problematic if it were interpreted to mean general damages were not recoverable.

Senator Care advised there was a gray area in which persons 18, 19 or 20 years of age might be serving the alcohol whereas they were not old enough to be considered adults in other areas of the law such as gambling. Senator Care asked whether the parents of a 21-year-old college student serving other students not yet of age, with the full knowledge of the parents, would be a party to any action taken against the student. He said the bill did not address that situation. Senator Care also wondered why Exhibit F addressed the issue of single family residences and recreational vehicles, but not two people sitting on a curb or college dormitory passing alcohol back and forth.

Senator Care said in view of the notoriety this issue has had in the news for the last couple of years, he thought confining the issue to residential settings was too limiting. Mr. Eglet replied he agreed that confining the issue to residential settings was limiting; in initiating legislation, the sponsors of the bill were seeking to start somewhere on the issue. He said the problem was to identify and document every scenario possible to apply to this bill. Mr. Eglet stated the bill addressed the most prominent setting of private parties in homes. Obviously, he said the same issues were in fraternity and sorority houses on various campuses and dormitories. However, he assumed Senator Wiener was looking to start educating the public with this legislation.

Senator Wiener urged the Committee to support S.B. 337 which dealt with what was commonly called “social hosting.” The Senator continued to read her written testimony (Exhibit G).

Senator Care asked Mr. Eglet, regardless of which amendment the Committee considered, whether case law said that a third party victim, someone who was broadsided by an intoxicated juvenile who had been drinking at some person’s house, could not file suit against the adult supplying the alcohol. He wanted to know if section 1 of the bill enhanced current law or created a remedy that did not currently exist. Mr. Eglet replied that section 1 of the bill created a remedy that did not previously exist. He stated no remedy under Nevada law resulted from current law prohibiting action against casinos, bars and hotels. This legislation targets residential settings. He said the idea of the bill was to create a cause of action for third party contributors to alcohol-related legal actions.

Mr. Eglet said the Nevada Trial Lawyers Association took the position that if a minor was served alcohol or controlled substances in a residential setting, the host was just as guilty of whatever happened when that minor left the premises, whether it was a single-car accident or a multiple-vehicle-plus entity occurrence. He explained most 13- to 20-year-old persons were unaware of what could happen to them as a result of consuming alcohol and other controlled substances. He said the children did not or could not understand how such things could diminish their reaction time or attention to the situation at hand. Under the above mentioned circumstances, Mr. Eglet said the Nevada Trial Lawyers Association did not believe the host who served or did not stop the serving of alcohol or other controlled substances to minor children should be exempt from prosecution.

Senator Care said the only thing bothering him was having the bill pass with the residential-setting terminology. When it involved a college dorm, he feared if some child left a fraternity party under the influence, the interpretation of S.B. 337 could say that "If the Legislature intended to include this sort of situation, it would have said so; therefore, there is no cause of action, case dismissed." He said the Committee should address that issue. Mr. Eglet said he agreed with Senator Care and would expect exactly that to happen if the bill left out specific documentation such as fraternities or other multifamily-person-type dwellings. He said the Trial Lawyers would not oppose the broadening of the statute; however, he did not believe the bill could include the entire universe. He claimed because of the time limits imposed on the Legislature, the Trial Lawyers did not want the bill held up.

Senator Wiener said one of the problems addressed when drafting the bill was how to cover all bases, and she would be happy to work with Senator Care to better provide clarification for the bill. She said the bill was not about vendors selling alcohol to juveniles; the bill was about juveniles allowed access to alcohol or controlled substances in residential settings.

Chair Amodei said in Exhibit F, section 3, for the possession or consumption of alcohol, the consumer under the age of 21 was culpable for either possession or consumption of alcohol, which would result in a juvenile offense for age 17 or younger or an adult offense for ages 18 to 21. He said these individuals should not be able to bring suit against the host providing the alcohol. In the case of a minor wrapping him or herself around a telephone pole, he asked if the minor's parents or primary caregivers could file suit against such an adult. Chair Amodei

stated he was worried about creating a civil cause of action, which in effect would give someone a leg up when that person violated a criminal provision regarding consumption or possession of alcohol. Mr. Eglet replied, "Yes, if the minor was killed, it would create a cause of action for the parents or primary caregivers of the minor involved." He said while that minor may be committing a criminal act, it could create a cause of action if the minor was severely injured on behalf of the minor and the parents; the whole argument was the fact 16- and 17-year-old children did not understand what the consumption of alcohol could do to them. He said because these children do not understand the consequences of their actions, the adult host should be held responsible, even if the result was injury or death to the child consuming the alcohol.

Laurel A. Stadler, Mothers Against Drunk Driving-Lyon County (MADD), said MADD's mission was to stop drunk driving, support the victims of this violent crime and prevent underage drinking. She said underage drinking was a huge problem in this country and the State. Ms. Stadler explained that MADD supported the idea of host liability, especially for service to minors. She affirmed that MADD supported the second amendment option on Exhibit F in which the underage drinker was not able to bring action. She said MADD always supported the position that any server or dramshop liability should be for recovery of innocent victims only, and a minor who consumed the alcohol would not be an innocent victim.

Ms. Stadler reaffirmed MADD's support of S.B. 337, but acknowledged several questions. She said MADD questioned the residential setting versus the single family residence, because the original language of the bill said a residential setting without any specific definition. She said residential setting would include the fraternity house, sorority house, apartments and any other structure where people actually lived. Ms. Stadler explained the amendments change that to a single family residence which limits where those actions would be illegal.

Ms. Stadler cited that in 2001, about 44 percent of all surveyed college students reported binge drinking, and many of them lived in fraternity houses, dorms or sorority houses. She stated MADD maintained it was important to include those types of settings in this legislation. She said the bill would miss a huge number of instances of underage drinking if college settings were not

included. Ms. Stadler said that every year, college drinking was the cause of 1,700 deaths, 600,000 injuries, 700,000 assaults, more than 90,000 sexual assaults and 474,000 students engaging in unprotected sex. Ms. Stadler said there were many other residual effects of underage drinking.

Ms. Stadler said the original bill language addressed the situation of a parent serving his or her own children alcohol, which MADD believed was inappropriate. She claimed the problem of a parent serving his or her own child alcohol was that the child then went out into public, either by driving or becoming involved in another social problem, such as a fight. She said she would like to see that provision of the bill enforced in the revision of the law because parents who provided alcohol to their children and then allowed those children to go out into public created a dangerous situation. Senator Wiener replied she did not know whether parents would be precluded from the bill if they were over the age of 21 and serving the alcohol in a residential setting.

Ms. Stadler said parents need to know what happens in their homes with their children and their children's visiting friends. She said the question of "knowingly providing alcohol" or "the knowledge of the alcohol consumption" could use some clarification. She asked when did someone knowingly "know" something, and stated that was a problem with other statutes using similar language.

Ms. Stadler said many parents just do not get it. She said only 31 percent of parents of 15- to 16-year-old children believe their child had a drink in the past year compared to 60 percent of that age group who reported drinking. She claimed a wide range of parents did not think their children were drinking, when in reality, they were drinking. She questioned whether these parents who not knowingly knew those children were drinking in their home would be subjected to provisions of this bill because they were unaware of the drinking?

Ms. Stadler quoted that in 2001, approximately 119,500 alcohol-related visits to emergency rooms involved children under 21 years of age. She said these children were getting the alcohol, and that consumption was leading them to emergency rooms.

Ms. Stadler reiterated that MADD supported S.B. 337 so adults serving alcohol to minors were liable under the law.

Mr. Eglet pointed out that as the amendments were written, the statute would impose liability for parents because the language did not exempt parents.

Stan Olsen, Las Vegas Metropolitan Police Department (Metro); Nevada Sheriffs' and Chiefs' Association, stated support for S.B. 337. He said many times around graduation, parents supply alcohol for celebration parties and the Metro ended up getting calls for everything from fights to traffic deaths as a result of this lax attitude of parents. He said this bill would be another tool to help address the issue.

Senator McGinness asked whether the parties start small and escalate into larger gatherings as a result of cell phones and other instant communication devices. He said these parties get out of control, and it was mentioned that 14- and 15-year-olds show up to graduation parties. Mr. Olsen replied that was an issue; sometimes, parties meant to be common sense and small escalated out of control. He said the parents had a responsibility to notify the police when a planned, small party got out of control. Mr. Olsen stated the parties of the greatest concern were where the parents said, "Do whatever you want," and proceed to supply the alcohol and relinquish control to a bunch of teenagers.

Chair Amodei requested the Legal Division review the amendments with respect to the recitation of damages available. He asked legal counsel to check whether it was necessary to recite every instance of abuse. He said he felt once this offense was created, if someone proved their case, they were entitled to all appropriate damages according to proof or under the circumstances. He said if this was the way it was customarily said, then the Committee needed to make sure everything was covered. Chair Amodei explained if not all scenarios were covered by the bill, the Committee needed to find a different way to present the issue that was all encompassing; if a victim was entitled to damages in accordance with proof, the Committee should seek to enact the clearer language.

Senator Wiener said she would like to invite Senator Care to help work with Mr. Wilkinson on the issue of residential setting as opposed to single-family residential setting.

Chair Amodei closed the hearing on S.B. 337 and opened the hearing on S.B. 347.

SENATE BILL 347: Makes various changes concerning personal identifying information. (BDR 15-15)

Senator Wiener said S.B. 347 was a bill dealing with identity theft. She said this bill represented the interest and concerns of the Attorney General's (AG) Advisory Board for the Nevada Task Force for Technological Crime, which gives direction to the AG's Nevada Cyber Crime Task Force. Senator Wiener continued reading her written testimony (Exhibit G). She introduced a proposed amendment to the bill (Exhibit H).

Assemblyman Bernie Anderson, Assembly District No. 31, said the Advisory Board on Technological Crime and the Task Force on Cyber Crime were created from a piece of Senate legislation in the 1999 Session. He stated it was an important piece of legislation, especially because it had developed over time. Assemblyman Anderson then read his written testimony (Exhibit I).

Assemblyman Anderson said he wished he could tell the Committee that law enforcement was ahead of the bad guys. Unfortunately, the longer he sat on the Task Force, the more he understood that being ahead of the bad guys was not a realistic possibility. He said, at that point in time, all that was possible was to react with the level of technology the criminals had in trying to make sure the State's citizens were protected from these new crimes tied to plastic money and the information age grows. He explained the Legislature needed to make sure twenty-first century criminals were treated with twenty-first century solutions and appropriate punishments. Assemblyman Anderson stated that was why the Task Force existed and why the State needed to ensure it kept up to date.

Steve Franks, Lieutenant, Las Vegas Metropolitan Police Department, claimed the crime of identity theft was growing by leaps and bounds. He said, unfortunately, Nevada was No. 2 on the list for the number of identity thefts committed in the country. When visiting our State, he said, Nevada was good at protecting tourists, but woefully inadequate in protecting those same tourists' financial information.

Lieutenant Franks said S.B. 347 was geared more to protect people. He emphasized his awareness of individuals' fears concerning fingerprints on driver's licenses. He pointed out that criminals used stolen identities with identifiers that showed who was innocent and who was not innocent.

Lieutenant Franks explained that like the other law enforcement officers with him, he had to first ascertain who was innocent in an identity theft before going after the actual criminal. He stated with the fingerprint option cited in the bill, law enforcement could quickly determine an innocent person.

Mr. Olsen said Metro and the Nevada Sheriffs' and Chiefs' Association supported S.B. 347 as written. He said some tools in the bill would help identify and bring these criminals to justice faster. Mr. Olsen explained that by using the right thumb, since most people were right handed, there was little a person could do without using their right hand, and therefore, that print was more easily obtainable from items used in a crime. He said if law enforcement had the thumbprint of a suspect in identity theft, then if that person were licensed in Nevada, law enforcement could match the print with the record taken during licensing.

Mr. Olsen conveyed that identity theft devices as small as a garage door opener could capture data information on up to 500,000 credit cards before it needed to be downloaded to sophisticated labs using computers and printers. He indicated the devices used for identity theft were common and could be purchased locally and on the Internet.

Mr. Olsen asserted that identity theft had ruined a number of lives in southern Nevada. He said one was a young girl going from high school to college whose identity was stolen and taken over by a prostitute, who later died. He explained that the prostitute was sought by the Internal Revenue Service (IRS). He said the IRS hounded this young woman for three years. Mr. Olsen stated the Metro worked for three years to get the IRS to realize this young woman was a victim of identity theft. He said another victim was a young man who worked for McDonald's. He said this young man had someone obtain credit cards in his name and had a warrant for his arrest. He claimed the young man spent four days in jail before he was released and his name was cleared. Mr. Olsen continued that another victim was a banker whose identity double decided to rob banks and ended up in prison. He said the result was the victim kept getting fired from his banker jobs.

Mr. Olsen stated identity theft truly destroyed lives and was an unbelievably heinous crime. He said he had also been a victim, but fortunately, his bank was quick at identifying such problems. He said he had taken extra care to keep his information private, and he was still a victim. He concluded anyone could become a victim.

Tara Shepperson Ph.D., Executive Director, Nevada Cyber Crime Task Force, Office of the Attorney General, said Nevada Cyber Crime Task Force worked with the Advisory Board for the Nevada Task Force for Technological Crime. She said the Task Force supported S.B. 347. She said predictions for the future were that one in five people would fall victim to identity theft within the next couple of years.

Ms. Shepperson said most people had heard about many of the recent breaches in personal information. She pointed out that identity theft was a generic term for all kinds of thefts, frauds and scams. She said these crimes include physically stealing computers, intrusions, Google hacking, fishing schemes through e-mail and the use of public records. She said all those were methods for identity theft. She said when addressing identity theft, law enforcement had to address a whole host of crimes.

Ms. Shepperson stated identity theft crimes were actually tied to other kinds of crimes. She said identity theft had become a lucrative business for criminals. She said more groups from overseas were organizing identity theft activities, credit card fraud, check frauds and more.

Ms. Shepperson said recent examples in this area included a group of waiters at a restaurant in Lake Tahoe. She said they stole credit card numbers, then made counterfeit cards and ran up $839,000 in bills in one month. She said another example was a Romanian gang who actually broke into cars in remote campsites in Nevada. She said they stole one credit card without hurting the car or disturbing other things so the victim did not realize what had happened. She said the gang then made cash advances from a casino and made counterfeit cards from the records.

Ms. Shepperson said there had been a request for the federal Department of Justice to launch a national study because when investigating identity theft and methamphetamine use, the methamphetamine users were on the bottom rung of organized crime. She said methamphetamine users broke into cars and houses

to steal driver's licenses, credit cards, blank checks and other things. She said they sold these items to organized criminals for drugs. She said law enforcement was arresting methamphetamine users, but these crooks were only a tie to far more dangerous criminals up the ladder.

Ms. Shepperson said dealing with identity theft would address a whole host of other crimes.

Ms. Shepperson added that recently the national, high-technology crime unit in the United Kingdom said the biggest trend in identity thefts was the growth in organized and cross-border crimes. She said these criminals made about the same as a large corporation with over 1,000 employees, which was around $5 billion a year. She said the Task Force increasingly dealt with global crime rather than local crime.

Ms. Shepperson said the Task Force was trying to assess the exact estimate of losses within the State of Nevada. An example, she said, was that within a 2-month period, 3 identity theft cases drew estimated losses in southern Nevada of $340,000. She said when adding cases, the State's losses in that 2-month period were over $45 million for such things as Internet fraud, intrusion, and mail and wire fraud, which were all common forms of identity theft. She said as the State starts to recognize identity theft in all its forms, she assumed it could better estimate the true losses.

Senator Care wanted to know whether S.B. 347 asked for a fingerprint to get a driver's license. Tom Fronapfel, P.E., Administrator, Field Services Division, Department of Motor Vehicle, said the way the bill was written, every person who came to renew or obtain a driver's license or identification card would be required to provide a fingerprint, and the Department of Motor Vehicles would be required to maintain those records. Senator Care asked whether the print would go on the card. Mr. Fronapfel said as S.B. 347 was written, "No," which was one of the concerns he had. Senator Care said the notion of having to submit a fingerprint was also a concern of his. He said he understood times

were changing and everyone wanted to be more secure, but the flip side was everyone had to give up something. Senator Care reiterated the idea that having to give a fingerprint in order to get a driver's license was problematic for him.

Kathleen Delaney, Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General, said she echoed the support for this much-needed legislation addressing identity theft. She said several bills being proposed were essential to stamping out identity theft. She claimed identity theft was more and more prevalent in Nevada. She explained her main reason for testifying on S.B. 347 was the subject overlapped a bill the Attorney General's Office introduced in the Senate Committee on Commerce and Labor, S.B. 435. She said when the Attorney General's Office introduced that bill, it was unaware there would be such a significant overlap.

SENATE BILL 435: Enacts provisions relating to security of personal information. (BDR 52-571)

Ms. Delaney said the Attorney General's Office proceeded with S.B. 435 because it felt the bill would complement S.B. 347; however, it turned out to have many overlapping areas. She said to that end, the Attorney General's Office wanted S.B. 347 to proceed, but wanted to amend the bill as proposed on "Proposed Amendment to Senate Bill No. 347" (Exhibit J). She said language in S.B. 435 needed to be adopted into S.B. 347 addressing the issue of prevention of security breaches, and that notice be given to the victim when a security breach could leak information to the wrong parties.

Chair Amodei suggested Ms. Delaney speak with Mr. Wilkinson and work out the specifics of the amendment.

Mr. Fronapfel said the Department of Motor Vehicles (DMV) wanted the flexibility to collect fingerprints for the purpose of identity verification and recognized that identity theft issues were serious. He said the DMV took its job of trying to identify individuals seriously. He suggested S.B. 347 would provide the DMV with another mechanism to correctly identify people. Mr. Fronapfel said it would take a considerable amount of time to obtain all fingerprints of Nevadans and put them into the system, but the bill would allow them to do so.

Mr. Fronapfel said the DMV also prepared a fiscal note for the bill. He said for the first year of the biennial, the cost would be about $114,000, which included the necessary hardware and software to collect fingerprints at the counters. He said the total also included around $28,000 worth of program costs and about $8,500 a year to maintain the system.

Buffy J. Dreiling, Nevada Association of Realtors, said S.B. 347 would impact some of the Association's members because many of them collect and maintain some data identified in S.B. 347. She said the Association did not oppose the provisions of the bill with regard to requiring notification upon a breach of security.

Ms. Dreiling said the area of the bill causing the Association concern was section 25 on page 14 that allowed a civil action with attorney's fees if a notification of breach of security was not published in what others considered a reasonable expedient time. She said impact on smaller businesses could be extensive, and the Nevada Association of Realtors felt the business whose data had been attached was also a victim. She said the concern was allowing civil actions with attorney's fees created a breeding ground for people who liked to bring these kinds of actions. Ms. Dreiling said the Association felt the Attorney General's Office should have the sole authority to regulate and enforce these provisions. She said if that was not adequate, she suggested the issue be looked at again during the next Legislative Session.

Ms. Dreiling proposed the bill be amended by deleting, "the right to a civil action" in section 25.

Ms. Dreiling said the other concern the Association had was in section 26, subsection 1, on page 14 that implied businesses would come under this legislation if a business just transmitted a person's name. She said to do that, the transmission would be required to be encrypted, and she was unaware whether that was the intent of the section. She said that language seemed a little broad. Ms. Dreiling said two definitions, one for personal identifying information and one for personal information, would be a combination of two things, such as name and social security number or driver's license number. She suggested encryption should require a combination of two identifiers other than just the person's name. Senator Wiener responded that in one of the rounds of proposed amendments, it was ascertained that encrypted information should be two or more identifiers.

Chair Amodei asked Senator Wiener whether both of Ms. Dreiling's concerns were addressed. Senator Wiener replied she was not sure that all of those concerns were addressed, and said there may have to be more amendatory activity.

Cheryl Blomstrom, Nevada Consumer Finance Association; MBNA Corporation, said the Committee had received a "Proposed Amendments to SB347" (Exhibit K). She said Senator Wiener allowed changes to the bill that mirrored the federal regulation, and the people she represented were thankful. She said it gave them one set of rules to work with rather than 51 different sets of rules.

Ms. Blomstrom said the first suggestion for amending the bill was to add in section 22, page 13, line 16 of the bill, "Local government records or widely distributed media." She said if a person could access information on the Internet, the Consumer Association and the MBNA were not sure that constituted a security breach. She said if a person hacked into a private database, the company should be responsible, but if their records were captured by any other means, the Nevada Consumer Finance Association and the MBNA Corporation did not believe the company should be held accountable for a breach in security.

Ms. Blomstrom said the Consumer Finance Association and the MBNA agreed with Ms. Dreiling's people about civil actions. She said they spoke with Senator Wiener about this issue that when business data was hacked, the business was also a victim. She said they preferred this issue be handled by the Attorney General's Office or the district attorney of the county in which it happened rather than a private right of action and the possibility of an extensive class action lawsuit.

Ms. Blomstrom said the last thing the accounts she represented were concerned with was the date the law became effective. She said they wanted the date to be January 1, 2006, and Senator Wiener had included that in her amendment. She stated that gave the businesses time to notify all affiliates and roll out these security changes appropriately.

John Albrecht, General Counsel, Washoe County School District, read his written testimony (Exhibit L).

William R. Uffelman, Nevada Bankers Association, said his handout (Exhibit M, original is on file at the Research Library) documented the policy adopted by the Office of the Comptroller of the Currency of the Federal Reserve, Federal Deposit Insurance Corporation (FDIC) and the Office of Thrift Supervision to implement the requirements of the Financial Modernization Act of 1999, also known as the Gramm-Leach-Bliley Act that addressed the protection and release of private information.

Mr. Uffelman said in working with Senator Wiener, the Nevada Bankers Association appreciated all the effort and cooperation she put into S.B. 347. He said in the items discussed for amending the bill, a reference stated that if a bank or thrift et cetera was in compliance with the Act and the jointly adopted regulation, that stood as compliance with State law.

In regard to encryption of data, Mr. Uffelman said one thing to remember was if data stored at a facility in an encrypted fashion was improperly accessed but the algorithm was not lost, the loss was not subject to the Act because the algorithm that allows the decryption of the data was not lost. He said this was also in the amendments.

James Jackson, Consumer Data Industry Association (CDIA), said he wanted to echo the comments of his colleagues. He stated for the record that the CDIA and all its members support initiatives to stop identity theft. He said the CDIA worked with the federal government, and many federal regulations that control their actions regarded future things to help stop data breaches.

Mr. Jackson said section 23, page 14 of the bill was discussed with Senator Wiener regarding a minimum number of possible identity theft victims. This number applied when notification had to be sent to the consumer data reporting industry by a business or agency that had been breached. He said the CDIA set that number at 1,000. He said the language they constructed stated:

> In the event that a person [business or individual] discovers circumstances requiring notification pursuant to this section of more than 1,000 persons at one time, the person shall also notify without unreasonable delay all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis as defined by 15 USC 1681a of the timing distribution and content of the notices.

Mr. Jackson said the purpose was to alert consumer data reporting agencies as soon as possible that the breach had occurred so those agencies could begin the flagging process. He said this allowed the reporting agency to know in case of a query that a breach in security occurred, and the person's file could be adversely affected. He said the reasoning for the number 1,000 was that discussions affirmed that 500 persons were too few and 1,500 persons were too many. He said the 1,000 number also mirrored California's law.

Mr. Jackson said, as previous testifiers indicated, the CDIA would rather have the Attorney General's Office handle any actions against agencies that allow personal data to be stolen than have individuals have the right to civil actions. He said the CDIA wanted to put the issue in the hands of the agency best suited to enforce this type of legislation.

Mr. Jackson said section 28 was the last section he wanted to address dealing with personal identification numbers (PIN). He said S.B. 80 working its way through the Senate was a credit file-freezing bill.

SENATE BILL 80: Establishes requirements and procedures for consumers to place security alerts and security freezes in certain files maintained by credit reporting agencies. (BDR 52-284)

Mr. Jackson said the bill allowed citizens of Nevada to contact any of the three major reporting agencies and inform them that the citizen wanted to place a freeze on their credit file. He said at that point, no further access to that credit file could be gained by any individual, unless the consumer specifically authorized the release of the information or lifted the freeze entirely. He said at the time a person placed a freeze on his or her file, he or she would be issued a PIN. He said the CDIA and the other involved entities agreed providing a PIN was the easier way to handle the situation. He said only issuing a PIN when a person puts a freeze on his or her file made it easier than having every consumer have a PIN for this or that reason. He said a simpler PIN system makes Nevada's systems more consistent with systems from other states that adopted file-freezing legislation. Mr. Jackson said the CDIA determined it was a better management tool that would put less of a burden on their industry.

Mr. Jackson said he wanted to argue for S.B. 80 and S.B. 347. He said the two bills would work well together, and if the Committee amended S.B. 347 to reflect the changes he and his colleagues suggested, the CDIA would be happy with the bill.

Chris MacKenzie, American Express, said many of their concerns were addressed when working with Senator Wiener in the construction of the bill. He said his clients expressed concern that S.B. 347 apply the overlying theory of federal legislation so there was equal treatment across the states.

Mr. MacKenzie said a concern American Express had was in section 26, which even required the encryption of data to e-mails going from their office to the consumers and back again. He said customers often use e-mail to communicate with American Express. He said the encryption requirement would make it difficult for American Express and especially for smaller business.

Senator Wiener said the subject of encryption came up during the discussion of the name plus another identifier constituting personal information. She asked whether e-mail used just usernames or if other identifying information was transmitted at the same time. She asked whether e-mail could be sent and received with just the username without another personal identifier. Mr. Jackson replied the concern was identifying information in the body of the e-mail, not just the labeling. He said no one was quite sure where the encryption came into play as employees of American Express exchanged identifying information among the individuals within the company trying to solve whatever problem e-mailed by the customer. Senator Wiener said that issue would have to be addressed with committee counsel.

Lynn P. Chapman, Nevada Eagle Forum, said Nevada Eagle Forum was in support of S.B. 347, but she questioned why the provision was in the bill in section 3, page 2, where it talked about people age 60 or older. She stated many young people at 18, 19 or 20 years old receive credit cards. She said these individuals were inexperienced and unaware of all the safeguards they needed to take. She said middle aged people trying to put children through school do not always have a lot of money to pay for the problems and untangle the mess associated with identity theft. She said she did not understand why only older persons were covered under that section.

Senator Wiener told Ms. Chapman that section defined later references to enhancements for identity theft crimes against older vulnerable persons. Ms. Chapman replied that her father wanted to get a satellite dish and was required to give his social security number. She said the problem was he did not want to give them his social security number, so they went round and round with him trying to explain he had lived in his house for 40 years and the satellite dish people did not need his social security number. She said he finally won the argument, but this led to the fact that our social security numbers were kept everywhere with all kinds of companies that made them vulnerable to identity theft. She said there was a problem with too much information required from citizens in order to receive services that left the door open to identity theft. Ms. Chapman said if the government required citizens to have social security numbers, the government was responsible to protect the citizens from the crimes related to that requirement. She stated things were getting totally out of hand.

Ms. Chapman said two weeks before, there was an article regarding Amazon.com, Incorporated's penchant for gathering every kind of information they could get on every person who had ever purchased anything from them. She said that was a scary idea, as all that was needed was for someone to hack that system, and they would have the option to steal millions of people's identity and all privileges that go with those identities.

Ms. Chapman said the Eagle Forum was in favor of section 6 on page 2 of the bill that mandated the incarceration and fine penalties, but why not have the criminal pay restitution to his or her victims. She said the higher the penalty, the better chance of stopping some of the nonsense that was happening.

Ms. Chapman said on the Internet at the California Department of Consumer Affairs' Web site, there was a four-page checklist for identity theft victims. She said the site contains effective information for protecting one's self from identity theft. She said the site also explains how to talk to the Department of Motor Vehicles to tell them what happened, and the back page explained what happened when someone used someone else's social security number. Ms. Chapman suggested Nevada should have such a Web site for the protection of its citizens.

Janine Hansen, Nevada Eagle Forum, said the Forum had long supported identity theft legislation. She said the Forum initiated legislation in the 2001 Session

asking Congress to protect social security numbers and supported Senator Wiener's previous identity theft legislation attempts. She explained in just the past year, 10-million people were affected by identity theft, and over 27-million people were affected in the last 4 years. Ms. Hansen said those identity theft cases cost $47.6 billion to businesses and $5 billion to consumers. She said each person hit by identity theft spent an average of 600 hours to untangle the mess.

Ms. Hansen said the Forum supported Senator Wiener's efforts in this area for a long time and were concerned about this issue.

Ms. Hansen said page 10 of S.B. 347 stated that driver's license records would include a fingerprint of the right thumb of the applicant. She exclaimed only twice in her life had she been fingerprinted, one voluntarily when she received her Concealed Carry Weapon Permit and the other when she was involuntarily arrested for petitioning. She said she had serious concerns about people in general giving up their fingerprints to the government. Ms. Hansen affirmed that Americans were told from the beginning that our social security number would never be used for identification purposes; yet, through the Internal Revenue Service, that promise had been violated. She said social security numbers were used everywhere for identification purposes.

Ms. Hansen stated the Forum had no faith in the statement on line 10 of the bill that says the fingerprints would be used for the sole purpose of determining whether a person unlawfully obtained the personal identifying information. She said at any time, the use of these fingerprints could be expanded; everyone knows that once this becomes law, it will expand and expand. She said the Forum did not believe fingerprinting was necessary. Ms. Hansen said the fingerprint might make it more difficult for police to specifically identify who was the perpetrator and who was the victim. She emphasized the members of the Forum were seriously concerned that a law would force law-abiding citizens to give up their fingerprints to the government. She testified that everyone knew the Department of Motor Vehicles had been broken into recently, which put all those people at risk of identity theft. She said to tell the public that information was confidential was a joke; no information was confidential. She said all information kept on connected online systems was open to hackers.

Ms. Hansen said on line 14 of page 13, the bill states, "The term does not include publicly available information that is lawfully made available to the

general public from federal, state or local governmental records." She said public access to governmental records was a serious problem. She said most people's social security number (SSN) was on their voter registration information, and anyone could obtain that information. She pointed out that since the Help America Vote Act, people were no longer required to give social security numbers; people could give just the last four SSN digits or their driver's license number.

Ms. Hansen stated that was another way to breach the system. She said Nevadans should be concerned about this dissemination of information. She said a bill in the Assembly was trying to address this issue; however, it was still a serious concern.

Ms. Hansen said a marriage license also, had a person's social security number. She pointed out marriage licenses were also public records available to the general public. She suggested that was another source of information not protected by S.B. 347.

Ms. Hansen explained when obtaining her hunting license, she was required to put her social security number on the record. She said the employees were incompetent; they needed to call over three or four people to get her hunting license information on record. She said all four of those clerks who worked for minimum wage had access to her social security number. Ms. Hansen stated there needed to be better protection for the 130 licenses that now require an individual's social security number, especially when a person had to turn this information in to a clerk who may be untrained in the methods of keeping records private. She said this issue was not addressed in S.B. 347.

Ms. Hansen said the social security administrator said the best that could be hoped for was to protect individual's information, and social security numbers were the most abused form of identity information. She said everyone had to start identifying the areas of possible abuse, and that could reduce the reasons for distributing this information.

Ms. Hansen related that a few years ago when she needed to go to surgery, the hospital intake nurse required she give her social security number, but she objected. She said the intake nurse told her it did not matter because they already had that information. She said when she went to have her blood taken,

she explained to the laboratory technician that she was concerned about identity theft, and the technician took the information off her records.

Ms. Hansen pointed out that the school districts did not want to comply with the regulations laid down in S.B. 347. She stated the federal Family Educational Rights and Privacy Act did not provide any security of the information if someone breaks into the school and steals it. She said there were many vulnerable children; small children in school were the most vulnerable, even more so than elderly people.

Ms. Hansen said several years ago, she became aware of a student who broke into the school's computer and changed his grade so he would not fail a class. She said if her nephew could break into the school computer and change his records, all those social security numbers were vulnerable to theft. She stated the schools should not require social security numbers; the schools should use different numbers for identification reasons. She urged that the schools not be exempt from the requirements of the bill.

Ms. Hansen said through the No Child Left Behind Act, social security numbers and other identifying information was available to military recruiters and others which placed all that information in jeopardy.

Ms. Hansen reiterated her concerns about the fingerprint and pointed out that people were concerned about giving out their driver's license numbers. She said if the State required people to put their thumbprint on the license, more people would become concerned about obtaining a driver's license, whether it be for general or religious reasons. She urged the Committee to consider that part of the bill; the Nevada Eagle Forum did not support that section of the bill, although the Forum supported the concept of the bill.

Mary Lau, Retail Association of Nevada (RAN), said RAN had worked with Senator Wiener on this issue. She said RAN was not represented in the discussions that took place the previous week about items in the bill. She said the bill was a good step forward, but as law enforcement knew, by the time the bill was enrolled and engrossed in the general file, thieves would have already found ways around the regulations.

Ms. Lau said RAN's concerns were with section 25 about the private right of action and the passage that said any person who was injured because of a violation of the chapter could bring a civil action to recover actual damages. She said part of the information that businesses keep and share with others was employment information. She said that information was amended out of S.B. 80 with the permission of Senator Beers. She said in Nevada, an employer may get preemployment screening on employees or if they do not have the facilities to do their own investigation, they hire private investigators to do the research. She stated that the private investigators use the credit bureau databases and the Internet. She questioned if a private investigator was giving private information on employment and that person did not get employed because of that information, how the actual damages would be assessed. She said RAN would like to see clearer definitions on who would be culpable.

Ms. Lau said RAN also had issues with the encryption part of the bill since most agencies that employ people used the Internet to send, receive and obtain information about employees. She said businesses also used facsimile machines. She said most often, private investigators would confirm the person authorized to receive the information was in fact at his or her desk or at the fax machine before sending private information. She said that was an electronic communication, and she did not know how that could be encrypted. She said she wanted to put those concerns on the record, work with Senator Wiener on the information and come up with a possible amendment.

Lieutenant Franks said Metro shared the concerns everyone had for the security of the fingerprint system, but at the moment, anyone could get a Nevada driver's license online for $75 out of Canada. He said if he had the social security number of anyone who testified, he or anyone with that information could arrange for that person to get a citation. He said the only way law enforcement had to prove a person's identity was by comparing fingerprints. He said that was the only way a person could prove they were not guilty of crimes committed by a thief using their identity.

Lieutenant Franks said law enforcement officers were too busy trying to catch real criminals than to be thinking up ways to harass everyday citizens. He stated his unit spent more time proving people innocent of some of these crimes than chasing the real criminals. He said his unit's first responsibility was to keep innocent people out of jail. He stated the fingerprint clause in S.B. 347 would help prove people's innocence immediately.

Chair Amodei closed the hearing on S.B. 347 and opened the hearing on S.B. 432.

SENATE BILL 432: Revises exemption from execution of certain money, benefits, privileges or immunities arising or growing out of life insurance. (BDR 2-1316)

Chair Amodei said hearing no testimony on the bill, he closed the hearing on S.B. 432 and opened the hearing on S.B. 456.

SENATE BILL 456: Makes various changes to provisions relating to crime of involuntary servitude. (BDR 15-113)

Gerald Gardner, Chief Deputy Attorney General, Criminal Justice Division, Office of the Attorney General, said all members of the Committee were given a red packet from Attorney General Brian Sandoval's Office titled, "Testimony and Materials in Support of Senate Bill 456" (Exhibit N, original is on file at the Research Library). He asked, and Chair Amodei agreed, that Exhibit N would be made part of the record.

Mr. Gardner said that day was a day for important discussions regarding criminal and societal issues. He said the issue of human trafficking might not be the sort of issue the Committee considered as much as drunk driving or identity theft, but it was just as real an issue as other subjects spoken of that day. He said the issue had become more and more prominent in Nevada. Mr. Gardner read his written testimony (Exhibit O).

Senator Care said the bill was aimed at human trafficking and prostitution rings, but asked whether section 3, subsection 1, paragraph (f) of the bill, "Causing or threatening to cause financial harm" would be interpreted such as an employer threatening an employee by saying if the employee did not come and work on his day off, the employer would fire him and ruin his life. Senator Care said he was sure that was not what the Attorney General's Office had in mind, but literally read that situation could come under the purview of S.B. 456. Mr. Gardner replied that the intent of the statute was to target those who engage in illegal prostitution and migrant labor. He said the clause in that section of the bill was intended to address where a person was brought in from another country and kept in fear of financial debt. He said many of these people wanted to come to the United States, but could not get here. He said these

people were brought here under the guise that they had to pay a debt to the traffickers, then that debt grows and grows from the original quoted amount. He said these people were told they would be bankrupted, and their parents and families in their home countries would be bankrupted. Mr. Gardner said he supposed it was possible to interpret the statute as Senator Care, but disputed whether any law enforcement or prosecution agency would read the statute to mean a legitimate employer would be guilty of trafficking or involuntary servitude by trying to pressure his employee to come to work on his day off.

Senator Care said he was sure that was not the intent of the bill, but the Committee needed to look at all possibilities. He said section 4 says a person who knowingly recruits or entices people for the intent of human trafficking could be prosecuted. He asked whether a prosecutor in Nevada still charged and prosecuted if the victim never actually came to Nevada. He explained there could easily be a telephone operation to recruit for trafficking purposes, which would be conduct under the bill. He asked if a person went somewhere else and never actually got to Nevada, if the traffickers could still be prosecuted under this statute. Mr. Gardner replied any action that took place within the State of Nevada could be prosecuted and investigated in the State of Nevada, even if the only action taken within the borders was the act of conspiracy that predicated the crime.

SENATOR WIENER MOVED TO DO PASS S.B. 456.

SENATOR HORSFORD SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR NOLAN WAS ABSENT FOR THE VOTE.)

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Chair Amodei closed the hearing on S.B. 456 and opened the hearing on S.B. 489.

SENATE BILL 489: Makes various changes to provisions concerning protection of consumers. (BDR 15-108)

Ms. Delaney said the bill was being presented by the Attorney General's Office Consumer's Advocate, Adriana Escobar-Chanos, and the Bureau of Consumer Protection. Ms. Delaney read her written testimony (Exhibit P) up to page 3, section 4. She interrupted her verbal testimony to tell the Committee she had received a proposed amendment to section 5, subsections 8 and 9 by the Nevada Association of Realtors (Exhibit Q). She said the Realtors Association had concerns that section 5 had vagueness that would be difficult, and the statute might impact people who hold deposits for property. She said she would address those concerns when the representative of the Nevada Association of Realtors presented her testimony.

Ms. Delaney continued to read the remainder of Exhibit P.

Chair Amodei asked Ms. Delaney to provide her notes to committee counsel so they could be included in the Senate Floor statements from the Committee. Ms. Delaney said she was quite willing to do that.

Patricia Morse Jarman, Commissioner, Consumer Affairs Division, Department of Business and Industry, said she worked closely with the Attorney General's Office on S.B. 489. She said the Consumer Affairs Division was in full support of the bill and asked support from the Committee.

Ms. Dreiling said Exhibit Q contained the amendment ideas the Realtors Association would like to discuss for changing the bill. She said the concern with how this statute would affect realtors was that there was no specific definition of a consumer transaction. She said one section in S.B. 489 defined property as including real property. Even though it had not yet happened in Nevada, she said the concern was a favorite lawsuit against real estate licensees for unfair trade practices. Ms. Dreiling said nothing in the bill excluded real estate licensees from the provisions of the bill. She said the Realtors Association would like clearer provisions as to how the statute applied to its members.

Ms. Dreiling said in section 5, subsection 8 on page 7 of the bill, "creating a probability of confusion" to the Realtors Association was so broad, realtors did not know how to defend such an accusation. She said it would be different if someone knowingly misrepresented a person's legal rights, obligations or liabilities. She said this passage needed to be more definitive. She said the language was too vague to be defensible.

In section 5 subsection 9 of the bill, Ms. Dreiling said the members of the Realtors Association and real estate licensees often held a deposit on behalf of another person. She said they were the in-between person from the buyer and the seller. She said in most cases, the realtor was not the one making a decision whether or not that tenant or buyer was entitled to the return of the security deposit. Ms. Dreiling stated the Association drills into the heads of its members that they were not lawyers or judges; they were not to make a legal determination about the complex nature of some of these lease agreements and purchase contracts as to whether or not the agreement or contract was lawfully terminated.

Ms. Dreiling stated she preferred the provision as written to not apply to a real estate licensee who held money as an intermediary on behalf of another person when the seller or landlord said the real estate person better not give the money back because the real estate person worked for the seller or landlord. She said the language was broad enough to potentially encompass that type of scenario.

Ms. Dreiling said Exhibit Q made it clear if the real estate licensee was holding the deposit, down payment or other payment on behalf of another person, the provision in the bill would not apply to them.

Ms. Delaney said the Attorney General's Office would be amenable to amendments to clarify the language and its intent. She said the two provisions in question were taken from uniform code provisions that exist throughout the country and were verbatim from many other states.

Ms. Delaney said in section 5, subsection 8, the intent that "knowingly creates a probability of confusion" was intended to address those who discuss the legal rights and obligations in such a way that it causes confusion for the consumer. She said whereas she accepted "knowingly misrepresenting the legal rights, obligations or remedies of a party to a transaction" as an amendment, she cautioned that many businesses and sellers were well versed at not exactly

misrepresenting, but giving information leading consumers to believe their rights and obligations were other than what they truly were. She said the Attorney General's Office wanted to capture the totality of those circumstances and "knowingly and purposefully" provide the necessary protection to those innocently discussed, whatever the circumstance.

In section 5, subsection 9, Ms. Delaney said the concern was addressed without an amendment whereas further down it states, "Fails in a consumer transaction that is rescinded, cancelled or otherwise terminated in accordance with the terms of an agreement, advertisement, representation or provision of law, to promptly restore to a person entitled to it a deposit, down payment or other payment ... ." She said the scenario Ms. Dreiling documented was a situation where it had not yet been determined who was entitled to that deposit. She said there was some dispute as to which party should get the money; in that circumstance, it was not something where the government was going to intervene to resolve that dispute. She said the bill sections were intended to address situations where deposit returns were not provided when the business canceled the transaction. Ms. Delaney said this situation came up most often with car dealership transactions where the dealership invokes its 15-day right of rescission and then fails to return the deposit. She said she thought the language was sufficient to address the concerns stated. She said "yes," in general, the uniform Deceptive Trade Practices Act applied to all businesses engaging in consumer transactions and was intended to do so. She said the government would not intervene unless the business engaged in a deceptive trade practice or egregious, misrepresentations post sale. She said the statute would not be enforced in a situation where there was no fraud.

Ms. Dreiling said the language in section 5, subsection 9 was still too broad. She said while the government said they were not going to come in and enforce the Act, it did not prevent a plaintiff's attorney from still applying these provisions. She said even in the cases where the language stated in accordance with the agreement or representation of provision of law, in her experience in real estate transactions, the buyers always said they were terminating the agreement in accordance with the agreement, and that was difficult to determine. She said in security deposit situations with landlords, many situations put the property manager in the middle of a dispute between an owner and a renter. She said one party or the other was unreasonable and probably did not have any basis under the law to either demand their money back or refuse to return the money. She said this put the person who has no

authority over the money in a position of trying to judge and interpret the law on behalf of the client or risk getting a suit filed against them, which inevitably would happen.

Ms. Dreiling stated the suggested amendment did not harm the intent of the bill and made it clearer.

Chair Amodei asked whether any member of the Committee wanted to move the bill to be amended and do passed in accordance with the amendment language offered by Ms. Delaney regarding section 8 and offered by Ms. Dreiling in section 9. Senator Care said he would move that, but also wanted to add additional language consistent with case law. He said instead of "reasonable diligence," section 2, subsection 1, paragraph (d) should read "due diligence."

SENATOR CARE MOVED TO AMEND AND DO PASS AS AMENDED S.B. 489.

SENATOR NOLAN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Amodei closed the hearing on S.B. 489 and adjourned the meeting of the Senate Committee on Judiciary at 10:59 a.m.

RESPECTFULLY SUBMITTED:

Johnnie Lorraine Willis,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: