

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-third Session  
May 4, 2005**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 8:01 a.m. on Wednesday, May 4, 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 Mike McGinness  
Senator Valerie Wiener

**COMMITTEE MEMBERS ABSENT:**

Senator Maurice E. Washington, Vice Chair (Excused)  
Senator Dennis Nolan (Excused)  
Senator Terry Care (Excused)  
Senator Steven Horsford (Excused)

**GUEST LEGISLATORS PRESENT:**

Assemblyman Joseph M. Hogan, Assembly District No. 10  
Assemblywoman Genie Ohrenschall, Assembly District No. 12  
Assemblyman Scott Sibley, Assembly District No. 22

**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Jim Van Winkle, Municipal Court, Department 3, City of Reno

Senate Committee on Judiciary  
May 4, 2005  
Page 2

Barbara K. Finley, Reno Township Justice Court, Department 5, Washoe County  
Kevin Higgins, Sparks Township Justice Court, Department 2, Washoe County  
Nancy A. Becker, Chief Justice, Nevada Supreme Court  
Nancy M. Saitta, Judge, Eighth Judicial District Court, Department 18,  
Clark County  
Chris A. Beecroft, Jr., Alternative Dispute Resolution Commissioner, Eighth  
Judicial District Court, Clark County  
Jon L. Sasser, Washoe County Senior Law Project  
Brian Burke, Nevada Disability Advocacy and Law Center  
James F. Nadeau, Nevada Association of Realtors  
Ernie E. Adler  
William R. Uffelman, Nevada Bankers Association

Chair Amodei opened the hearing on Senate Concurrent Resolution (S.C.R.) 21.

**SENATE CONCURRENT RESOLUTION 21**: Urges Washoe County and City of  
Reno to study feasibility of colocating or unifying Justices' and Municipal  
Courts. (BDR R-1426)

Jim Van Winkle, Municipal Court, Department 3, City of Reno, said the  
Committee had his written testimony ([Exhibit C](#)), and he did not want to tax the  
Committee's time by repeating it.

Judge Van Winkle urged the Committee to vote favorably on S.C.R. 21, which  
allowed Reno and Washoe County to consider the idea of combining the justice  
and municipal courts. He said if the findings were as anticipated, the courts  
would return during the next Session and ask permission to combine those two  
court systems.

Chair Amodei said he understood S.C.R. 21 allowed the appropriate people to  
study the issue and report back to the Legislature in two years with the  
conclusions and recommendations in order to seek responsive action from the  
Legislature. Mr. Van Winkle responded Chair Amodei understood the point of  
the bill.

Barbara K. Finley, Reno Township Justice Court, Department 5,  
Washoe County, said she reiterated what Judge Van Winkle said. She explained  
they met as a committee several times and a lot of questions were still

unanswered. Judge Finley commented the intent of the committee was to study all aspects of the issue to ascertain the feasibility of combining the court systems.

Kevin Higgins, Sparks Township Justice Court, Department 2, Washoe County, said the Sparks Justice Court representatives attended the meetings with an open mind to consider answers to some of the questions. He said, as Judge Finley indicated, there were fiscal questions about something as simple as if a ticket were written, who got the revenue and who paid the cost. He said there were big questions such as possible changes to the *Nevada Revised Statutes* (NRS), city charters and the State Constitution.

Judge Higgins stated his court had no opinion at the moment as to whether it was a good idea to combine the systems. He said the Sparks Justice Court wanted to know the answers to a lot of questions. He explained the court was concerned whether it could possibly save money and provide better services and intended to participate in the study discussions to determine the answers. He said the court systems could report back to the Legislature in two years as to whether the local communities wanted to combine the court systems.

Judge Higgins explained that Sparks Municipal Court, one of the study committee partners, was less open-minded about the issue than the Sparks Justice Courts and would have to be convinced. He said by answering the many questions, the Sparks Justice Court could make a decision; whether or not the city of Sparks wanted to participate was up to them.

Chair Amodei commented he was aware of the sticky situation regarding consolidation issues as it applied to who does what in the Truckee Meadows. Judge Higgins responded part of the problem was that no one was quite sure what all those words meant. He said if a study was performed nationally, "consolidation" meant one thing in one state and something different in another state, as did "unification." He commented those were all terms of art and needed definition in order to figure out where the systems were going, what the issues were and where to go from there.

Chair Amodei closed the hearing on S.C.R. 21 and opened the hearing on Assembly Bill (A.B.) 468.

**ASSEMBLY BILL 468 (1st Reprint)**: Makes various changes to provisions regarding arbitration and other alternative methods of resolving disputes in certain civil actions. (BDR 2-523)

Nancy A. Becker, Chief Justice, Nevada Supreme Court, said A.B. 468 was the combination of two bills. She explained A.B. 466 was combined into A.B. 468 by request from the chair of the Assembly Committee on Judiciary because both bills generally involved the same topic and would flow smoother if combined.

**ASSEMBLY BILL 466**: Revises provisions governing jury trials in justices' courts. (BDR 3-518)

Chief Justice Becker said the first part of the bill dealt with recommendations for changes in the Alternative Dispute Resolution program in the district court.

Nancy M. Saitta, Judge, Eighth Judicial District Court, Department 18, Clark County, introduced the expert in the field, Mr. Chris Beecroft, so he could discuss how A.B. 468 sought to lift the cap of the Alternative Dispute Resolution programs and make certain name changes to the existing format.

Chris A. Beecroft, Jr., Alternative Dispute Resolution Commissioner, Eighth Judicial District Court, Clark County, said that in 1991 the Legislature authorized the initiation of the Alternative Dispute Resolution programs (ADR) through S.B. No. 366 of the 66th Session in an effort to provide timely resolution in justice to civil matters with a lesser monetary value. He noted the early discussions mentioned \$50,000 per plaintiff. However, he explained, the Legislature wanted to ensure the success of the ADR program and serve the public without overloading the experimental program, so it decided on a \$25,000 threshold per plaintiff. He said after witnessing the program's success at the \$25,000 level, the Legislature raised the amount to \$40,000 per plaintiff in 1995.

Mr. Beecroft said one of the ADR programs, mandatory arbitration, continued to be successful. He noted that in 2004, the programs opened 3,700 cases and according to statistics, 78 percent of those cases were resolved within a period of 12 months. He asserted the most important fact was that less than 2 percent of the remaining cases ever went to trial. Mr. Beecroft acknowledged the results were outstanding and commended the Legislature for authorizing the programs.

Mr. Beecroft said A.B. 468 cleaned up various elements of language in the ADR statute such as changing the overall program name, adding mediation and adding short trial programs. He explained further, the bill changed the types of exemptions allowed, the number of jurors in district court short trials and codified language from the newly amended rules for the Nevada Supreme Court.

Mr. Beecroft pointed out A.B. 468 also increased the monetary threshold to \$50,000 per plaintiff. He said that change provided ADR programs a good monetary threshold for a greater number of litigants.

Mr. Beecroft explained the ADR programs expected the number of cases to increase by 1,000 annually. He reminded the Committee that the funds to handle the increase were already requested in Senate Bill (S.B.) 177, which passed out of the Assembly May 3 and was sent to the Governor for signature.

[SENATE BILL 177 \(2nd Reprint\)](#): Makes various changes related to fees charged in district courts. (BDR 2-522)

Mr. Beecroft said the matters discussed in the bill represented another excellent advance in the district courts' strategic attempt to provide timely access to justice. He stated he was proud to be a part of the ADR programs.

Chief Justice Becker said Senator Care brought up a question regarding section 3, subsection 3, paragraphs (m) and (n) on page 5, lines 5 and 6 of the bill. She explained those sections were additional language to the statute and Senator Care had asked why the language was added after paragraph (l). Chief Justice Becker explained the recommendation at the district court and justice court levels resulted from two committees that worked 18 months. She said the language in question was suggested by the district court committee. Chief Justice Becker noted the committees were made up of plaintiff lawyers, defense lawyers and members of the judiciary. She said the circumstances for the language was to acknowledge there could be extraordinary reasons precluding a certain case from participation in the ADR programs, even though its value may be \$50,000 or less. She said the language simply allowed the ADR commissioner to address that issue in a motion and determine whether the case was so unusual it should not participate in the program.

Chief Justice Becker explained the remaining provisions of the bill dealt with cleaning up some language from last Session. She said last Session, when the

limit for civil cases in justices' courts was raised from \$7,500 to \$10,000, one of the actions taken made short jury trials mandatory in justices' courts. However, she explained the definition for a short jury trial referred back to the alternative dispute resolution program definition, which made the resolution of such a case by consent of the parties. Chief Justice Becker informed the Committee the result was a mandatory program by consent of the parties. She said the minutes of the meeting showed the Legislature's intentions which were not reflected in the language of the statute.

Chief Justice Becker explained it was not cost-effective to put cases on an alternative dispute resolution program that involved \$10,000 or less because a short trial could cost \$2,000 or more and turn into a regular jury trial which would end up costing far more money in litigation than recovering the \$10,000. She said the intent of the legislation was to place all jury trials conducted in justices' courts under those short trial rules that the Legislature authorized the Supreme Court to develop.

Chief Justice Becker said the rest of the language in A.B. 468 simply relocated the previous language from NRS 38.250 to NRS 67, the normal chapter for justice court rules. She asserted the language was identical to the language previously passed and explained why section 5 was added to the bill.

Chief Justice Becker said the remainder of the bill made everything consistent. She explained some sections of NRS 67 were not consistent with what was previously NRS 38.257, and A.B. 468 simply corrected those differences. She commented those changes were also the recommendation of the committee that developed the short trial rules for the justices' court jury trials.

Senator Wiener asked what impact this legislation would have on the justice courts' caseloads. Chief Justice Becker responded that State history showed civil cases involving small amounts of money actually went to jury trials in justice courts. She explained at the time Nevada was a territory, all cases such as negligence or contracts, regardless of the amount in controversy, were entitled to a jury trial. Chief Justice Becker said in the constitutional debates there were discussions about setting a monetary limit, but that was not done.

Chief Justice Becker said because the State's Constitution compelled a jury trial, the Supreme Court committee that studied the issue indicated cases of common law, which had a right to a jury trial, still had that right in justices' courts and the amount in controversy did not matter.

Chief Justice Becker said the issue of the short trial was how to give people a jury trial in accordance with due process and yet keep the costs down. She stated the short trial was the best solution to that problem.

Chief Justice Becker told the Committee that A.B. 468 cleaned up some language, and the rules had already passed that enabled the program to go into effect. She said the way the rules were combined made it easier to conduct these trials in accordance with the Constitution and yet keep the costs down.

Chair Amodei closed the hearing on A.B. 468 and opened the hearing on A.B. 278.

**ASSEMBLY BILL 278 (1st Reprint)**: Revises certain provisions governing termination of residential leases. (BDR 10-1147)

Assemblyman Joseph M. Hogan, Assembly District No. 10, said A.B. 278 provided needed relief to low-income seniors. He explained the bill addressed a housing problem that confronted many seniors sooner or later.

Jon L. Sasser, Washoe County Senior Law Project, said A.B. 278 updated a 1977 law and NRS 118A.340. He said under existing law, if a person age 60 or older had a spouse who died and the couple's income was under \$10,000, the law gave the survivor the ability to break a lease. He explained the bill expanded and updated the old provision in three ways.

Mr. Sasser said A.B. 278 first covered not only the death of a spouse, but the situation when a senior needed to leave his or her residence for care or treatment that could not be provided in the home. He commented that typically happened when someone needed to go into a nursing home.

Mr. Sasser said the bill also expanded provisions to cover not only relief for a spouse, but also relief for a cotenant. He noted many seniors lived with someone else in order to pay the rent. He explained the final thing A.B. 278 did was to remove the \$10,000 income limit.

Mr. Sasser said the bill was amended twice in the Assembly. He said Washoe County Senior Law Project worked closely with the Nevada Association of Realtors to change the time frame from 6 months for giving notice of intent to break the lease, to 90 days for a death and 60 days when a person must go into a nursing home.

Mr. Sasser said the Law Project also worked with Assemblyman Lynn C. Hettrick, Assembly District No. 39. He said the Assemblyman gave an example of a person in a lease with the ability to pay the rent who should not be able to break a lease. This individual had a parent living with them who had to go into a nursing home. As a result of that concern, Mr. Sasser said the Assembly made changes to the bill.

Mr. Sasser explained section 1, subsection 1, paragraph (a) of the bill detailed the provisions in which a tenant with a lease could relocate. He noted section 1, subsection 1, paragraph (b) contained the changes made to address Assemblyman Hettrick's concerns. He said those provisions stated if a cotenant wanted to break the lease for the reasons documented in the bill, the cotenant must be age 60 or older or have a disability or have signed the lease after the original tenant.

Mr. Sasser said section 1, subsection 2 dealt with the death of a spouse or cotenant, and subsection 3 dealt with the verification that must be provided in the written notice to break the lease. He explained that verification showed there was, in fact, a condition requiring the relocation of a tenant.

Mr. Sasser explained the bill was a result of a series of discussions with senior advocates over the past year or so. He said the bill came from Lora E. Myles, Carson and Rural Elder Law attorney, who testified before the Assembly Committee on Commerce and Labor. However, he said, Ms. Myles was unable to testify before the Senate Committee on Judiciary due to a court case.

Mr. Sasser commented A.B. 278 unanimously passed out of the Assembly Committee on Commerce and Labor and the Assembly Floor. He asked the Senate Committee on Judiciary for support and explained others would describe the need and background for the bill.

Brian Burke, Nevada Disability Advocacy and Law Center, said they supported the bill primarily because parts of the bill dealt with individuals with mental and



physical disabilities. He said this bill would particularly benefit individuals hospitalized with a mental illness. He explained those individuals had no control over such situations, and people placed in hospitals were typically there for up to six months. He stated that provisions of the bill gave individuals an opportunity to break a lease on the grounds they could not receive services in their home. He said this provision also covered individuals with physical disabilities whose situation worsened and prevented them from receiving services in their homes.

Mr. Burke pointed out some language in the bill was analogous with the U.S. Department of Housing and Urban Development Fair Housing Act that dealt with individuals asking for reasonable accommodations. He reiterated the Nevada Disability Advocacy and Law Center was in support of the bill.

James F. Nadeau, Nevada Association of Realtors, said the Association had worked with Mr. Sasser on the language of the bill and felt there were appropriate protections for landlords which gave them adequate notice of vacancy. He said the Association also understood the needs of Nevada's elderly and handicapped populations, and the bill contained appropriate protections for both sides.

Chair Amodei closed the hearing on A.B. 278 and opened the hearing on A.B. 365.

**ASSEMBLY BILL 365 (1st Reprint)**: Increases amount of homestead exemption.  
(BDR 10-1026)

Former Senator Ernie E. Adler said he was appearing on his own behalf. He said he spoke with Assemblywoman Genie Ohrenschall, Assembly District No. 12, about the bill, and he stated it was a good bill. However, in his conversations with bankruptcy attorneys from Reno, the indication was the federal Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 necessitated the need to revisit the bill. He said under that Bankruptcy Act, if an individual lived in his or her home for less than 1,215 days, the homestead was reduced to \$125,000, although the individual could bring equity over from previous homes and add it to the balance. He stated there were all kinds of quirks in the Bankruptcy Act.

Former Senator Adler said Assemblywoman Ohrenschall agreed that under Nevada law, the homestead was a total amount for a piece of property, and the bill made that exemption value \$400,000. He asserted the Legislature could help out a lot of people if there was a homestead of \$400,000 for the lot. He said if the deed had multiple owners, each person had an individual homestead of \$200,000. Even with the federal reduction to \$125,000, a married couple within the 3-year limit could at least boost their homestead up to \$250,000.

Former Senator Adler stated the \$125,000 limitation in the Bankruptcy Act created a lot of problems with the exemption on the whole property instead of on each individual. He said a married couple with an elderly parent who lived in a home were limited to \$125,000 homestead exemption. If one person in the household filed bankruptcy because of medical bills, everyone involved may be forced to sell their home in order to use the equity to pay the medical bills.

Former Senator Alder said he tried to write an amendment, but had a hard time getting the wording right.

Chair Amodei directed Bradley Wilkinson, Committee Counsel, to ask some of the bankruptcy attorneys about the Bankruptcy Act and review it again in order to ascertain its effect on Nevada's homestead exemption.

Former Senator Adler said Geoffrey Giles was a bankruptcy attorney who litigated the question as to whether the homestead in Nevada was per individual or per lot, which constituted stacking homesteads with multiple owners on a deed. The former Senator said Mr. Giles told him the bankruptcy courts in Nevada said no, that was not what the legislation meant. Former Senator Adler voiced if multiple owners on a deed stacked those homesteads, even at a lesser amount than the \$400,000 exemption in this bill, that would bring the federal bankruptcy homestead law closer to the Nevada exemption laws.

Chair Amodei told Mr. Wilkinson the Committee needed to study the impact of federal law so when the Committee work-sessioned the bill, they had a 360-degree view. He said if the Committee had to do something with the statute in general or anything along those lines, then it would know what the sidelines were and could end up somewhere between the two approaches.

Assemblywoman Genie Ohrenschall, Assembly District No. 12, told the Committee she doubled-checked the federal act and the Nevada statute with

the Legislative Counsel Bureau Legal Division the day before the hearing. She said she requested the Legal Division compare the act and the statute. Assemblywoman Ohrenschall stated the Legal Division told her the new federal act had a cap of \$125,000, but if a state statute was in place, the Bankruptcy Act allowed the state statute to preempt the federal act. She said if the Legislature passed A.B. 365, people must have lived in the State for 3 years and 4 months in order to take advantage of the homestead exemption in federal bankruptcy court. However, if the person lived in our State for the 3 years and 4 months, he or she could claim our State homestead exemption. Assemblywoman Ohrenschall said if the bill passed, that exemption would be \$400,000, which was substantially more than the federal limit.

Chair Amodei asked if the residency requirement in the federal act was only for bankruptcy. Assemblywoman Ohrenschall replied, "Yes." She said of course, the ability of the trustee also reached back in the "long-arm, strong-arm" cases where there was any allegation of fraud. She said that existed no matter what the Legislature decided.

Assemblywoman Ohrenschall said she checked the information because former Senator Adler brought it to her attention. She said other than that issue, the bill was pretty straightforward. She recited the bill raised the homestead exemption to \$400,000 and became effective in 2005. She said if the Committee looked at the skyrocketing cost of housing in Nevada, they would agree it was a sound thing to allow people to safeguard their homes to that point.

Assemblywoman Ohrenschall urged the Committee to pass A.B. 365.

Chair Amodei asked whether the language on page 2, starting at line 13 of A.B. 365 clearly described a mortgage or deed of trust and said there was language in the bill regarding second mortgages and deeds of trust. Assemblywoman Ohrenschall replied, "Exactly." She stated the limit was high to provide for all the things documented in the bill.

Former Senator Adler said he did not interpret the \$125,000 cap as having to do with residency. He said the way he understood the language in the act was if a person acquired the property within 1,215 days, that person could only claim the \$125,000 homestead exemption.

Former Senator Adler stated the problem with the limitation was if a person in their 50s borrowed money from his or her 401(K) and purchased a house, that person could actually lose the 401(K) money. He explained if that person had a catastrophic problem which led to bankruptcy, he or she could only protect \$125,000. He said he believed Mr. Giles also interpreted the Bankruptcy Act the same way. He cited the reason everyone was confused about the law was it was 500 pages long and few people knew what it meant. The former Senator mentioned it was not that everyone was trying to give the Committee a different interpretation, but the Bankruptcy Act was long and difficult to understand. He said he agreed with Chair Amodei that everyone involved needed to contact the bankruptcy experts and ascertain how the law would affect actions taken by the Legislature.

Assemblywoman Ohrenschall said the Legal Division gave the interpretation she communicated to the Committee earlier, and she suggested it was a good idea to further investigate the issue. She said it was her hope the bill survived.

Chair Amodei said her hope was well-founded. The Committee looked into the issue with a previous bill; researching the subject once was not enough so the Committee would continue to look at the law.

Mr. Nadeau said the Nevada Association of Realtors supported the increase in the homestead exemption. He said with the rapid increase in the cost of homes in Nevada, it was appropriate to protect owners' homes.

William R. Uffelman, Nevada Bankers Association, indicated S.B. 173 was passed out of the Senate with a \$300,000 limit. He stated he wanted to remind the Committee it had already set a limit.

**SENATE BILL 173 (1st Reprint)**: Increases amount of homestead exemption and makes various changes relating to property which is exempt from execution by creditors. (BDR 10-616)

Chair Amodei closed the hearing on A.B. 365 and opened the hearing on A.B. 215.

**ASSEMBLY BILL 215 (1st Reprint)**: Revises provisions relating to disclosure of certain information to purchaser of residential property. (BDR 10-1004)

Assemblyman Scott Sibley, Assembly District No. 22, said A.B. 215 resulted from an unintended consequence of a bill passed last Session. He said the bill reinserted language that required a trustee and the beneficiary of a deed of trust to provide written notice to the purchaser of property in a foreclosure sale specifying any defects they were aware of in the property. He said foreclosure sales were on an "as is" basis without cover of warranty expressed or implied so the notice could be given to the purchaser no earlier than the day of conveyance.

Assemblyman Sibley said the biggest problem at foreclosure auctions with the law as it stood was the law stated that 10 days prior to conveyance of real property, a disclosure notice of any property defects must be given to the purchaser. He pointed out that with an auction out of the courthouse, it was impossible to give such notice because no one knew who would be present for the sale. He said A.B. 215 changed that requirement for properties sold in foreclosure sales and made those sales exempt from giving the 10-day disclosure notice. Assemblyman Sibley explained that in the Assembly, language was added to say if the trustee knew about a condition or defect in the property, it must be made known to the purchaser at the time of the sale.

Mr. Uffelman said the Nevada Bankers Association worked with Assemblyman Sibley and everyone else concerned and were happy with the language of A.B. 215.

Mr. Nadeau said the Nevada Association of Realtors worked closely with Assemblyman Sibley on the language of the bill and felt the bill allowed for disclosure notices in such cases, and they supported the bill.

Chair Amodei closed the hearing on A.B. 215.

Senate Committee on Judiciary  
May 4, 2005  
Page 14

Chair Amodei said he expected to move the bills heard by the Committee that day out of Committee when all the members had familiarized themselves with the content. He pointed out that A.B. 365 required more work, and staff needed to determine how the Bankruptcy Act affected State statute in regard to the homestead exemption. He said he planned to move S.C.R. 21, A.B. 215, A.B. 278 and A.B. 468 out of the Committee by the next legislative day.

Chair Amodei adjourned the meeting of the Senate Committee on Judiciary at 8:50 a.m.

RESPECTFULLY SUBMITTED:

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Johnnie Lorraine Willis,  
Committee Secretary

APPROVED BY:

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Senator Mark E. Amodei, Chair

DATE: \_\_\_\_\_