MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Fourth Session
April 13, 2007

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:40 a.m., on Friday, April 13, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 2450 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblyman William Horne, Vice Chairman
Assemblywoman Francis Allen
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblyman Marcus Conklin
Assemblywoman Susan Gerhardt
Assemblyman Ed Goedhart
Assemblyman Garn Mabey
Assemblyman Mark Manendo
Assemblyman Harry Mortenson
Assemblyman John Oceguera
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Risa Lang, Committee Counsel
Christina van Fosson, Committee Secretary

OTHERS PRESENT:

Randy Ecklund, Representative, Howard Hughes Corporation
Pam Scott, Representative, Howard Hughes Corporation
Nancy Ford, Administrator, Division of Welfare and Supportive Services
Jim Wadhams, Representative, Wynn Las Vegas
William Vassiliadis, Representative, Nevada Resort Association
Robert Ostrovsky, Representative, Nevada Resort Association
Sam McMullen, Representative, Las Vegas Chamber of Commerce and Nevada Restaurant Association

Chairman Anderson:
Meeting called to order [8:40 a.m.].

Assembly Bill 230: Revises certain provisions relating to the jurisdiction of justice courts. (BDR 1-519)

Jennifer Chisel, Committee Policy Analyst:
Assembly Bill 230 (Exhibit BB) was originally heard on March 13, 2007, by the Committee. It was presented by the Department of Agriculture. This bill was also discussed in a work session last week and earlier this week, as well. The bill would extend the jurisdiction of the justice courts when an arrest is made by a field agent or inspector of the Nevada Department of Agriculture. There are no amendments to this measure.

Chairman Anderson:
This bill continues to come up over and over again. The biggest issue is that Highway 50 passes through several counties. Interstate 80, from east to west, goes through Elko, Humboldt, Lander, Pershing, and Washoe counties. If a person brings in unvaccinated cattle or agricultural products he would have to be cited in each county court. The Highway Patrol recognized this issue several years ago and we gave them the jurisdictional authority to cite only in one county. The agricultural community requests a similar opportunity with regard to citations.

The last time we heard this bill we consulted with representatives from the various, predominantly agricultural, areas of the state. Mr. Carpenter was the sole, designated hitter for all the cowboys in the State and got to hear many of their concerns. Assemblyman Goedhart obviously represents a large portion of southern Nevada's agricultural interests, as well. The two of you get to be the key questioners here.

Assemblyman Carpenter:
The representatives came to see me. I called Jim Connelly, who is the Chief of Agriculture Law Enforcement for the Nevada Department of Agriculture, and he explained the situation to me in detail. I will support this legislation, but I have some concerns. I foresee that we will subsequently have other people in here like the Department of Wildlife, the game wardens, and there could be a few other agencies with an interest in this. We could address that situation when it arises. I reluctantly support this bill.

We need to include in the record that they will not take advantage of this. That especially applies to the people who are living in the communities involved. If they get cited they should be allowed to have their case heard in their locale. The Highway Patrol often stops people from New York or elsewhere. When they do, they are unconcerned about where the cited individual must go to handle their citation, whether it is Beowawe, Crescent Valley, or Battle Mountain. They need to be very careful and judicious with the use of their authority.

I have a question for our legal counsel. Under the original language of the bill it says that justice courts have jurisdiction over all misdemeanors. Does that include gross misdemeanors?

Risa Lang, Committee Counsel:
I am not sure whether all gross misdemeanors go to the justice courts, as well. Some do. They potentially have up to one year. They may occasionally reach the district court.

Assemblyman Mortenson:
I agree with Assemblyman Carpenter. I can see how a great deal of abuse of this legislation is possible. If this is going to be a recurring issue, perhaps it would be wise to craft an amendment that would say something to the effect of "If a person is cited in a certain county, and he lives in that county, then he will be tried in that county." If it was a truck from Oshkosh, Wisconsin, heading through Nevada, the person could be tried in any county.

Chairman Anderson:
So, if a truck driver lives in Mountain City and is cited in Elko County, he is going to have to stay? Even if he is driving a truck from Utah or driving illegal product from Idaho? He would have to be cited in his county of residence? Is that what your intention is—regardless of where the truck is from?

Assemblyman Mortenson:
If he is a resident of the state and he is cited in the county where he lives, then the trial would occur in the county where he resides.

Assemblyman Goedhart:
I was also approached by the proponent of the legislation that we are discussing. I am still reluctant because I do not see where the current system is failing to the degree it necessitates a change in the law. I do not think this legislation is necessary.

Chairman Anderson:
We have reluctance to support this bill from Assemblyman Carpenter and Assemblyman Goedhart is in opposition. Assemblyman Mortenson has proposed an amendment prior to passage. The amendment would discuss that a resident of the county in which he is cited be required to appear in court in that county, rather than other counties where they could potentially appear. That proposed amendment would not damage this bill. If we move forward with this legislation, we would do so with Assemblyman Mortenson's proposed amendment. I will consider an Amend and Do Pass motion with the amendment suggested by Assemblyman Mortenson. The proposed amendment would affect people from out-of-state the most. Would anybody like to make an Amend and Do Pass motion?

> ASSEMBLYMAN MORTENSON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 230.
>
> ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

Assemblywoman Gerhardt:
Assemblyman Carpenter, is this amendment going to satisfy your concerns?

Assemblyman Carpenter:
It will go a long ways to satisfy my concerns. We need to keep track of what happens. Assemblyman Mortenson was correct in saying that it would be very easy to abuse this legislation. We should observe progress on this piece of legislation for the next year or two.

Chairman Anderson:
In response, Assemblyman Carpenter has given a fair warning that in the future we need to pay close attention to this legislation and that we are not broadening power without the demonstration of its need. There was a decided lack of demonstration of need for this legislation.

THE MOTION PASSED. (ASSEMBLYMEN COBB AND GOEDHART VOTED NO.)

Chairman Anderson:
The rest of us support this bill. The floor assignment belongs to Assemblyman Mortenson.

Assembly Bill 396: Makes various changes to the provisions governing common-interest communities. (BDR 10-1284)

Jennifer Chisel, Committee Policy Analyst:
Assembly Bill 396 (Exhibit C) was presented by Assemblywoman Allen on April 3, 2007. This bill makes various changes to the provisions governing common-interest communities. The bill deals with the issues of delegate or representative voting, lien foreclosures by homeowners associations, publications that are provided by the associations, also certificates for community managers, and the requirements of a bond.

During the hearing there were several parties who opposed this bill. Assemblywoman Allen, however, worked with many of the opponents of the legislation and was able to have an amendment drafted as a compromise. The mock-up language is attached to the work session document.

The amendment language changes delegate or representative voting; stating it is prohibited in an election for, or removal of, members of an executive board, but is authorized for all other issues within a common-interest community, including a time-share plan within a common-interest community.

In addition, the common-interest community may not impose an assessment on tax-exempt property that lies within the common-interest community. That was an amendment presented by Assemblywoman Allen during the hearing in the form of a mock-up. That amendment has been retained.

Chairman Anderson:
That mock-up is on page 6, Section 2, subsection 3.

Jennifer Chisel:
That is correct, Chairman Anderson. The amendment also deals with proxy voting, which would be prohibited in an election or removal of executive board members. Again, the exception is a time-share plan. Proxy voting would be permitted in a time-share plan.

The fifth language change detailed on your work-session document is that money in an operating account of an association may not be withdrawn unless there are two signatures by either a member of the executive board or a combination of officers. That is on page 15 of the mock-up. That is the language that is highlighted in green—Section 6.7, subsection 2.

The sixth amendment change details language requiring that an association obtain prior approval from the commission before a lien could be foreclosed. That has been deleted from the mock-up. It has been replaced with a broader oversight provision that requires the commission to grant approval, but only as long as the association has sent out the requisite notices to the unit owner. It is more of a broad oversight provision and that provision is on page 17 of the mock-up. The new language ensures that the association has mailed the notice of delinquency which is in subparagraph (a) on page 17 at the top; also a notice of default, which is in subparagraph (b) on page 17.

Additionally, the publication requirements have been clarified to address candidates or ballot questions and also civil law suits. That language is on page 19 of the mock-up. There is a new subsection 6. Lastly, the bonding requirement has been modified slightly so that it requires a bond be posted in a form and in an amount required by regulation—that is on page 20, Section 10, and subparagraph (b). That is the extent of the amendments. I can assist you in locating any of them if necessary.

Chairman Anderson:
Ms. Chisel, would this be an appropriate vehicle for one of the concerns that was raised in A.B. 11 (Exhibit D)? In Section 2 of that measure, it states members of an executive board who stand to gain any personal profit or compensation of any kind from a matter before the executive board shall disclose and abstain from voting. That needs to be clarified in the statute. Assemblywoman Allen, do you think that would harm the intent of your bill?

Assemblywoman Allen:
No, I supported Mr. Park's bill initially and I welcome that amendment. I also would like to clarify something with Assemblyman Carpenter. I would like to know if he has had his issue resolved in Elko County in regard to reserve studies.

Chairman Anderson:
I was thinking about this so I asked Ms. Chisel and she put this in writing for me. Assemblywoman Allen, thank you for your work on this bill.

Assemblyman Carpenter:
I have had some discussion but I do not think this has been taken care of because the only way to resolve this is to make an exemption for one of these small communities. I have not had time to look closely at it.

Chairman Anderson:
Some of your concerns fit into another piece of legislation that we will discuss. I did not think that your concerns pertained to this matter. Assemblywoman Allen is under the impression that they are.

Assemblywoman Allen:
I have no preference either way. I wanted to make certain that Assemblyman Carpenter's concerns were addressed.

Chairman Anderson:
Assemblyman Carpenter, have you had the opportunity to speak with legal counsel about how we can resolve your concern?

Assemblyman Carpenter:
I have not had the opportunity to do that because I have been occupied with other pertinent matters. I will have to do research to find various sections of law that we might be able to amend to address this problem.

Chairman Anderson:
Would you be comfortable with accepting Assemblywoman Allen's suggested amendments? We would Amend and Do Pass, amending in this section from A.B. 11, which ensures that the executive boards of these groups, when they stand to personally gain, have the responsibility of disclosure and abstaining from voting rights. If we made the amendments would you feel comfortable voting in favor of the bill?

Assemblyman Carpenter:
Yes, I absolutely would, thank you. There is another one of these small associations in Elko and this would take care of some of their problems. That would help us.

Chairman Anderson:
Ms. Lang and Ms. Chisel, please spend some time looking at the Senate bills that will be coming over which relate to common-interest communities and the problems of these smaller associations that are uniquely different. When you have a group of less than 25 homeowners who have met to decide the rules, we want to know what they can and cannot implement. The board that has been working on the common-interest communities may have a decided view on

this issue. They may be more familiar with the wide variety of common-interest communities than we are. They may have some suggestions for us. We will remain attentive to the matter that needs to be fixed regarding this bill.

Assemblywoman Allen:
Thank you for addressing Assemblyman Carpenter's concerns. An issue that I would like to draw attention to that was not totally agreed upon is the bond requirement. In particular, there were concerns from the property manager group, Cameo. They do not want the bonding requirement. In our negotiation we included amendment five on the work-session document. It requires two signatures to acquire money from the operating account to provide protection from misuse of money. Bonding should be required, but it should be the Committee's decision whether or not they want the bonding requirement and the signatures or something in lieu of them. This should be discussed further.

Chairman Anderson:
In item number four of the proposed change, there is proxy voting allowed except for those from the Howard Hughes Corporation.

Pam Scott, Representative, Howard Hughes Corporation:
I do not think that we have seen the document that you are referring to so it is difficult to discuss it at this time. The issues that we have raised are with delegate voting.

Chairman Anderson:
Assemblywoman Allen, proxy voting is prohibited in elections for members of the executive board except in a time-share plan within a common-interest community. Did you want to discuss that issue?

Assemblywoman Allen:
This may be a drafting error. I recall at the hearing that Vice Chairman Horne asked me about proxy voting. I expressed that I felt strongly about the delegate voting portion and not so much about the proxy voting. There was no dialogue on proxy voting at all, other than my testimony that I did not care to change it. The portion that Ms. Scott is currently addressing is the delegate voting portion. On the conference call that we had regarding delegate voting, the decision was made to go with the first change that is outlined in the work session document. Everyone was in agreement with this, with the exception of the Howard Hughes Corporation. Michael Buckley, the common-interest community chairman, also agreed. Ms. Tusconte is the homeowners association board president of the Lakes. A few other members of the public also agreed that this would be a good compromise. It would not prohibit delegate voting, it would only partially prohibit it for the election of the homeowners association board members.

Chairman Anderson:
The new language in the bill in Section 1(3)(d) would be "prohibit a common-interest community created before January 1, 1992, or a common-interest community described in *Nevada Revised Statutes* (NRS) 116.31105 from providing for a representative form of government, except that, in an election for a member of the executive board or for the removal of a member of the executive board, the voting rights of the units' owners in the association for that common-interest community may not be exercised by delegates or representative; or (e) prohibit a common-interest community created before January 1, 1992 or a common-interest community described in NRS 116.31105 from providing for a representative form of government for a time-share plan created pursuant to chapter 119A of NRS which is within a common-interest community." It also removed Section 2 from the bill.

Randy Ecklund, Representative, Howard Hughes Corporation:
Based on the new language that you have just shared, it appears that we could be in support of the modifications as they relate to delegate voting.

Chairman Anderson:
Recognizing that you will not see the language until after we amend it, it is always a little difficult when you are not physically with us. We can see if we can get that faxed down to you in Las Vegas.

Randy Ecklund:
That would be very helpful.

Chairman Anderson:
That would only include the sections dealing with A.B. 396.

Assemblyman Manendo:
I have a concern about proxy voting being prohibited in an election. I was wondering if we could perhaps include some language that would continue the proxy voting in the election and limit it to two people. I am in a homeowners association. When I am here in Carson City, if there is an election and I want my proxy to go to a trusted neighbor, maybe we could limit it to two. I do not know if they would need to go around collecting 25 and 50, but perhaps two or three per unit owner or something like that would be appropriate to include in the amendment.

Assemblywoman Allen:
I do not feel strongly on amendment number four at all. If the committee wishes to, I have no problem striking that. My concern is to get to the heart of the delegate voting where there is some manipulation of elections of boards going on.

Assemblyman Cobb:
If we are talking about the election of members to the board, and I am uncertain of how this is handled in other homeowners associations, but in mine we have always done this by secret ballot through the mail so that we are directly electing people. I do not understand why you would need a proxy to vote on who you want to be on the board. There is no other issue that could come up during a meeting. I do not understand the need for proxy voting in this matter.

Chairman Anderson:
Which section of the bill are we currently addressing, Ms. Chisel? We are going to remove all reference to that part. Is that what you are suggesting? All of that would be the first section? So we would make none of the amendments in Section 3, page 2? We would remove the other references in the purple, or is that nonexistent language?

Jennifer Chisel:
The proxy voting portion is in Section 6, on page 12 of the mock-up. That language is underlined in orange. There is also a reference to proxy voting on page 13, Section 6, subsection 5.

Chairman Anderson:
We would ask the bill drafter then to do what? There are several other places in the green language that I see which refer to delegate or representative.

Jennifer Chisel:
The delegate and representative voting is separate from the proxy.

Risa Lang, Committee Counsel:
We could simply remove Section 6 from the bill. The orange language that is underlined is existing language. The green language is what was being added. If you would like to remove that language, we could just remove the section from the bill.

Chairman Anderson:
That is current language that we would be removing?

Risa Lang:
No, you would be leaving the current language and removing the amended sections; the green language is what we would remove. Conceptually, you could review it and decide whether that is what you want; we can find any issue that needs to be addressed and fix them in the bill.

Assemblywoman Allen:
I leave it to the discretion of the Committee. I do not feel strongly one way or the other. Assemblyman Cobb's assessment is accurate in that by law all homeowners association board elections have to be secret written ballots. It is questionable whether or not there would be a need for proxy voting, but again, this is not an issue that I personally feel strongly about.

Assemblywoman Gerhardt:
We are better off with the new language in that section because it is added protection. I would rather we err on the side of caution.

Chairman Anderson:
Are you saying that in your opinion we should retain item four on the work session document regarding this bill?

Assemblywoman Gerhardt:
Yes.

Chairman Anderson:
I will consider an Amend and Do Pass. The amendments would be those included in the mock-up, and those outlined in one through eight of the working document. Additionally, the language as suggested by Section 2 of Assembly Bill 11, regarding an executive board that stands to gain compensation of any kind shall disclose that information.

> ASSEMBLYMAN MABEY MOVED TO AMEND AND DO PASS ASSEMBLY BILL 396.
>
> VICE CHAIRMAN HORNE SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Chairman Anderson:
Assemblywoman Allen is handling this bill. We will ask Vice Chairman Horne to support her in the event that she needs it.

Assembly Bill 418: Makes various changes relating to unarmed combat. (BDR 41-889)

Jennifer Chisel, Committee Policy Analyst:
Assembly Bill 418 (Exhibit E) was presented by Assemblyman Munford on April 5, 2007. This bill relates to provisions of unarmed combat. The bill would eliminate the Medical Advisory Board within the Nevada Athletic Commission. Additionally, it would remove all references to wrestling within the definition of unarmed combat. There have been no suggested amendments for this bill.

Chairman Anderson:
This is Assemblyman Munford's bill. I put the bill in play because I believe we can safely move ahead with changing the definition of unarmed combat, removing the reference to wrestling—not that people do not get hurt wrestling. They should be apprised of the medical questions in front of them.

It appears to be more entertainment versus the professional level. If I were to speak to any kids from high school who have spent six minutes on the floor wrestling around, in competition, they would say that it is the most competitive 6 minutes in the world. They would disagree with someone saying wrestling is not a competitive sport because it surely is.

Given some of the problems that have occurred in the state regarding the medical questions here, I would like it if the Medical Advisory Board was retained as an independent body rather than being subject to the will of the Athletic Commission. I would like that part of the bill to be retained; however, I am open to other suggestions.

Assemblyman Carpenter:
I agree. I asked at the initial hearing on this bill about the Nevada Athletic Commission forming a committee or subcommittee of so-called experts to act upon a specific problem. I asked them if they could do that or not. I never received an answer. We should definitely retain the Medical Advisory Board.

Chairman Anderson:
It would be prudent to move forward with the bill, removing wrestlers as it relates to the definition of unarmed combat so that they have the opportunity to expand what they are dealing with. But I prefer that we hold on to the Medical Advisory Board. What is the Committee's response to this? I will consider an Amend and Do Pass motion on A.B. 418. The amendments would be to retain the language which refers to the Medical Advisory Board, but we would follow the other guidelines presented in the bill.

ASSEMBLYMAN HORNE MOVED TO AMEND AND DO PASS ASSEMBLY BILL 418.

ASSEMBLYMAN MANENDO SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairman Anderson:
Assemblyman Manendo can assist Assemblyman Munford on the floor, if necessary.

Assembly Bill 63: Revises provisions governing the additional penalty for the use of certain weapons in the commission of crime. (BDR 15-151)

Jennifer Chisel, Committee Policy Analyst:
Assembly Bill 63 (Exhibit F) came out of the interim study on sentencing and pardons, parole, and probation and was presented by Vice Chairman Horne on March 9, 2007. We also heard this bill during the work session on Friday, April 6, 2007. Assembly Bill 63 revises the weapon penalty enhancement to a minimum of 1 year and a maximum of 10 years instead of doubling that prison term for the underlying crime.

In the work session document I have inserted the amendments that were proposed by Jason Frierson of the Clark County Public Defender's Office. The first one is to amend Section 1, page 2, line 12 of the bill by adding that the term for the enhancement shall not exceed the term of imprisonment prescribed by the statute for the crime. The second amendment would be to alter the definition of deadly weapon to limit it to items that are inherently dangerous—we would delete the word instrument and insert weapon, device, instrument, material or substance. The third amendment would be to remove the functionality test from the definition of deadly weapon.

Chairman Anderson:
This is one of those issues that we have seen a couple of times now. These amendments tighten some of the areas of concern. Assemblyman Segerblom has some concerns. Vice Chairman Horne, this is one of our recommendations from the interim study initiated by A.C.R. 17 of the 73rd Session. It is one of the major by-products of that study. Do you have a feeling about this new language?

Assemblyman Horne:
In my communications with members of the Committee and other parties, the functionality test is not going to fare well. People were not comfortable with it,

so we are removing that. The most important portion of the new language is changing the enhancement—the minimum of 1 year and a maximum of 10 years. That gives judges discretion when applying the enhancements. This helps us reach the goal of the A.C.R. 17 of the 73rd Session Interim Committee, which was about streamlining our use of the correctional system and of sentencing, while giving judges more discretion. In moving this bill, that is where our focus would be.

I had conversations with Mr. Frierson and Mr. Graham on this, and Mr. Loop, as well, who represents the judges. They seemed comfortable with tightening the definition on deadly weapon, but not so comfortable with removing the functionality test. They understood the need for the minimum of 1 year and a maximum of 10 years enhancement.

Assemblyman Oceguera:
I agree that the functionality tests and the definition of deadly weapon would be problematic. I made my point clear on that the other day when I spoke against this bill. If those are excluded I would feel much better about the bill. Allowing the judge to have discretion in the enhancement would work for me.

Assemblyman Segerblom:
I thought we had raised another issue regarding Mr. Frierson's amendment in the first line, where it discusses the enhancement not being more than the term of imprisonment prescribed by the statute. I thought we were going to consider changing that to the term of imprisonment that was actually given by the judge. It is possible that the statute could allow 15 years when the judge had only sentenced 10 years.

Assemblyman Horne:
I understand that your concern is the enhancement could be greater than the underlying sentence. I think that the discretion would still be there. We addressed that in the other committee late last night. You could still have the minimum of 1 year and a maximum of 10 years enhancement. The judges do that. Depending on the Committee's favor, this language mirrors that other bill where the total enhancements can exceed the ceiling sentence of the underlying crime.

Chairman Anderson:
I think that is the concern of the Select Committee on Corrections, Parole, and Probation, in terms of the length of time people are spending incarcerated because of the underlying crime being of one duration but enhancements sometimes causing a person being in prison for life; the enhancements are placed on top of what the punishment was for the crime itself. It illustrates the

fact that where we set punishment for an initial crime should have a sufficient penalty so the enhancements are really not needed. We would do the one penalty for the weapon and I think we all understand that. The broader question is how those enhancements overlap with one on top of the other.

Assemblyman Cobb:
Do we have a definition of the language that was added for the words "inherently dangerous" when used to describe a deadly weapon?

Chairman Anderson:
We are removing that language.

Assemblyman Carpenter:
I realize that we had a lot of discussion in our former committee. I have been thinking about this and I am in favor of giving the judge that discretion. I wonder if we could change that from a 1-year maximum term to up to 20 years in case of the rare case where the judge thinks the defendant should be sent to prison for a longer period of time.

Assemblyman Horne:
In those cases where the judge believes that a longer period of time is called for, such as cases where an egregious crime has been committed, the underlying crime already carries a wide range of penalties which the judge has at his discretion to choose from. He can choose the upper end of the penalty range. For example, if the penalty for a crime had a range of 2 to 20 years prison time, a first time offender might get 2 to 5 years as a sentence. A repeat offender might have a prison sentence closer to the ceiling of 20 years in prison.

If the judge determines the offender has not understood the message of his original punishment, then he can give 8 to 20 years or an additional 1 to 10 years served after the underlying sentence. The offender's sentence could end up being upwards of 30 years. Those 1 to 10 years are discretionary and are consecutive. The judge can choose anywhere in that range. He could choose the low end of that range or the high end of that range of that enhancement.

Chairman Anderson:
Assemblyman Carpenter's question relative to the enhancements could be easily addressed when we see what will happen in the Select Committee on Corrections. It will deal with prison overcrowding. We will see what Dr. James Austin has to say on Tuesday, April 17, 2007.

Assemblyman Oceguera:
Assemblyman Carpenter's amendment is reasonable. We are going from doubling the sentence to enhancing it with 1 to 10 years. He is just trying to have a fair compromise. The doubling could be quite a bit more. We have compromised on all the other areas so I support Assemblyman Carpenter's amendment.

Chairman Anderson:
It is not a matter of us not supporting his amendment. This is one of those issues that we are going to be dealing with in the Select Committee. We can make our recommendations and then decide what comes into conflict, though I want to try to avoid that. It is a strained issue when there is a committee, like the Select Committee, handling part of this. I do not want to remove the prerogative of this Committee either, so I see a potential problem.

Assemblyman Horne:
I may have a solution that may get the bill to move. If we did the enhancement to the 1 to 20 years as suggested by Assemblyman Carpenter, it would also be reflected in the other committee. In the enhancement we could include that they are not to exceed the underlying sentence. We already discussed that. That way we are not in conflict with what we were doing in the other committee. That way the judge has that 1 to 20 year range in his discretion. We are also not in conflict with what the select committee passed last night.

Assemblyman Carpenter:
That is what I had in mind. If you say that the sentence is 2 to 20 years and the judge gives an offender 20 years, but thinks that the crime perpetrated was really terrible, then he could use his discretion to enhance the sentence up to 20 years more if he thought the offender really should be incarcerated longer. It gives the judges discretion. That is what they really wanted.

Risa Lang, Committee Counsel:
I can certainly put that together if that is what the Committee wants.

Jennifer Chisel:
I agree with Ms. Lang.

Chairman Anderson:
We will take the suggestions as they are outlined in the work session document to amend the bill so that we do not exceed a term of imprisonment prescribed by statute for the crime. We are going to further make certain that the underlying notion is giving the judges discretion in the enhancement. That way he can come up with a longer period of time. We will also narrow the definition

of deadly weapon. We will remove the functionality test. I will consider an Amend and Do Pass motion on A.B. 63.

Assemblyman Cobb:
You are including these amendments? Or just number one?

Assemblyman Horne:
We are including just number one.

> ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS ASSEMBLY BILL 63.
>
> ASSEMBLYMAN OCEGUERA SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Assembly Bill 596: Makes certain changes to provisions concerning obligations of support for a child. (BDR 11-1411)

Jennifer Chisel, Committee Policy Analyst:
Assembly Bill 596 (Exhibit G) was heard by the Committee on April 9, 2007. It was presented by Nancy Ford, the administrator for the Nevada Division of Welfare and Supportive Services. Assembly Bill 596 relates to obligations of child support. The provisions of the bill would allow parents who do not reside together to recover child support, and every child support order would require health care coverage for the child.

To comply with federal law, a $25 fee must be collected each year in each case where the state has collected at least $500 in child support and the recipient of child support has never received Temporary Assistance for Needy Families (TANF). During the hearing Nancy Ford presented several amendments which would change the terminology from health care coverage to medical support. A definition of medical support has been provided. There is also some clarifying language which states that it is any person who receives the support payments regardless if they are the custodian or not. That is an amendment to Section 3 of the bill.

In your packet you will also find that there is a chart that outlines some of the other methods that other states use to collect their fees. The chart also outlines collection performance.

Chairman Anderson:
One of the questions that Assemblywoman Gerhardt posed is reflected in a document that was prepared by Ms. Ford. Ms. Ford, would you allow us to ask you a few more questions?

Nancy Ford, Administrator, Division of Welfare and Supportive Services:
The handout that you have in your work session packets includes fees that are currently being charged by other states. This is not the $25 fee. These are other fees that other states charge in various aspects of their child support program. I had previously emailed another chart that showed what the proposals were under the Deficit Reduction Act, but it did not get into your work session packet. There was a survey done of the states as to how they were going to collect their $25 fee. They got a response from about 39 states, including Nevada. Twenty-three of those states were collecting from the custodial parent. Thirteen of the states were paying the fee themselves. One state proposed that the non-custodial parent pay. Connecticut was undecided and they were adopting legislation that mirrors the federal law until the federal regulations come out.

That particular chart was emailed to the Committee members but did not make it into your work session packets.

Chairman Anderson:
We need to perform a lot better in the collection of child support. It is embarrassing when you see yourself as 53rd in the nation, when you include Guam, the Virgin Islands, the District of Columbia and Puerto Rico. It leaves only Arizona behind us as being the worst at collection. Of course, California is 50th. What is Minnesota doing that makes them so efficient? Does each side collect one percent?

Nancy Ford:
That is correct. In Minnesota they charge the non-custodial parent one percent of the collection and they charge the custodial parent one percent, also. Actually, the applicant for services could be either the custodial or non-custodial parent. Many times the non-custodial parent applies for services because they want an independent entity monitoring their payments. Whoever applied for the services pays the one percent. I apologize for misstating that.

Chairman Anderson:
If we do not do this, what is the downside?

Nancy Ford:
The federal government has made it mandatory for us to collect this $25 fee. If we do not have legislation indicating where we are going to collect it from, it will be deducted from the State of Nevada. The federal government will take $25 per case and withhold it from our reimbursements. So, it is paid one way or the other.

Chairman Anderson:
If we take no action then the federal government will deduct the $25 fee from the amount of money that we would normally be reimbursed, based on the number of cases. It would be a disincentive for us to increase collections because by increasing collections we give them greater opportunity to withhold the $25 fee from our normal reimbursement.

Nancy Ford:
I have never thought about it in that way. That is one approach to the situation. The fee kicks in once we have collected $500 in the case. If we never collected anything for somebody, there would be no fee.

Chairman Anderson:
So it is a disincentive for us not to implement this fee? We want you to collect the support money.

Nancy Ford:
We agree wholeheartedly. One thing I will point out is the percentage of the current support collected. It is a fraction based upon the number of current cases we have, with current support and what needs to be collected versus the amount that is actually being collected. If there are any cases that are not closed, and should be, that adversely affects the percentage shown. It gives the appearance of a lower percentage. I do not know if that is the case. We agree wholeheartedly that we need to improve in our performance.

Chairman Anderson:
What can we do to motivate your agency to improve collections?

Nancy Ford:
We have already taken action to improve collections. We are attempting to streamline our processes and encourage the district attorneys that participate in the program to use those streamlined processes to ensure that collection is expedited in a much timelier manner.

Assemblywoman Gerhardt:
You have summed up the problem. For the record, since our performance is so poor, I am not going to penalize the children for our lack of performance. If we have to come up with the $25 fee, I cannot support it coming from the custodial parent – absolutely no way.

I understand that it is easiest to collect the fee from the custodial parent because you have their address. But that does not mean that it is fair. I do not care if that is the easiest path. It should either come from the non-custodial parent or from the State of Nevada.

Nancy Ford:
We agree that we do not like taking it from the custodial parent, but that is the only place where we can be assured that we are going to receive payment. In interstate cases, if the non-custodial parent is in another state, we do not have personal jurisdiction over them to collect that money. If we are going to change this tact, I point out there is no fiscal note on this bill; if we are going to take it against the non-custodial parent or the State of Nevada, there will need to be a fiscal note that is going to have be drafted for this bill.

Chairman Anderson:
On the face of this bill we noticed that this was requested by the Committee of Ways and Means. It is a joint referral. You are going to Ways and Means regardless.

Nancy Ford:
As I stated in my previous testimony, it is up to the Legislature. We proposed the method that assures us being able to collect the money. If the Legislature desires for the State to pay it or the non-custodial parent to pay it, it is going to cost more to implement either of those. We decided that it should be a Legislative decision.

Chairman Anderson:
The answer to Assemblywoman Gerhardt's question is that the State of Nevada could pay for the $500 per successful collection. What we want to do is make successful collections.

Assemblyman Carpenter:
In this handout we have the 2006 annual collections (Exhibit G).

Chairman Anderson:
This is the deficit reduction of 2005 including the $25 annual fee.

Assemblyman Carpenter:
Is that the total amount of money that was collected for the children?

Nancy Ford:
This is the total amount of arrearages and current support which is collected and passed onto the families.

Chairman Anderson:
According to the handout, the only state that has passed this is Wyoming. Since that time I assume that other states have joined?

Nancy Ford:
Nationwide, this is a controversial subject. This is the only state which we were able to confirm had passed this legislation. We know there is legislation either pending or that may have passed in other states and we are still trying to determine the information regarding how they are going to implement this. Some states may already have authority to assess fees and may not have to go to their legislatures.

We are still collecting information to find out exactly what the other states are doing and what legislation has been passed.

Assemblyman Cobb:
When we discuss the collection of $25, is that a one-time fee over the course of a year? Or is it every time you collect money and that amounts to more than $500?

Nancy Ford:
This is an annual fee. It is $25 annually. But only in cases where there was never public assistance paid. The person had never been on TANF. After you collect $500 then you collect $25 annually.

Assemblyman Cobb:
So, once per year, someone who has never been on welfare pays a $25 fee for receiving the benefit of your services?

Nancy Ford:
That is the decision that needs to be made. Do you want the applicant to pay the $25 fee, the non-custodial parent, the custodial parent, or the State? You have four choices. As it stands, the bill would have the $25 fee come from the custodial parent. We are already collecting that money so it is easier to deduct it and distribute it rather than go through the expense of reprogramming our system and developing an accounts receivable system.

Chairman Anderson:
If we remove Section 3 of the bill, we would send the bill on with the other amended language. We would make Ways and Means aware that we did not like who was paying for it and articulate that it should be the responsibility of the State. Then Ways and Means would have to deal with the issue instead of us. One way or another Ways and Means is going to deal with the issue.

Assemblywoman Gerhardt:
I asked for some additional information from Ms. Ford when I was looking at all this. The sheet that we are looking at here, entitled Deficit Reduction Act of 2005, is a little misleading. I asked for the 12 states that were also doing the worst in their collections. When you consider those states, only three others are using this first option. In those cases they are collecting more than twice as much as we are. So, this big chunk at the top that says custodial parent, shows the states that are not doing well are not by and large choosing this option, for this Committee's information.

Nancy Ford:
I suggest that rather than deleting Section 3 that it be amended to say that it is the intent that the State pay this fee. That way it is clear to Ways and Means what the intent of this Committee is.

Risa Lang, Committee Counsel:
I am not certain what would be left in Section 3 if you take out the fee entirely. Typically, we do not just put statements of intent into a statute. If the Committee wants to send a notice of intent to Ways and Means or if there is something else that you want to add to Section 3 of a statutory nature then we could do that.

Assemblywoman Gerhardt:
Are we settled on making the State pay for it? I understand that if we ask the non-custodial parent, we are going to have some circumstances where we are dealing with individuals who are out-of-state. That will cause some type of fiscal impact, but maybe that is a less financially burdensome option than putting the entire burden onto the State.

Chairman Anderson:
The ramifications of this for your agency are very extensive. We are trying to move this bill from Judiciary to Ways and Means in one form or another.

Nancy Ford:
With charging the non-custodial parent it is basically going to be voluntary because there is no provision for us to be able to use income withholding or all

our other collection methods to collect that $25 fee. If the non-custodial parents do not pay, the State ends up paying for them. We would defray some of the cost to the State because some non-custodial parents do pay. That was Assemblywoman Gerhardt's point.

Chairman Anderson:
Rather than retain the amount of the $25 fee we would be putting the burden onto the non-custodial parent, who is already strapped to come up with the money to pay child support. Again it is a diversion of funds that could potentially be going towards the children involved. That is our common primary concern. That is why we are so disappointed about your collection rate.

Nancy Ford:
There is currently a movement on the national level to get this $25 fee revoked. There are not any bills that do that, yet. But I want the Committee to be aware that there are individuals trying to get this fee revoked. Perhaps we could also amend the statute so that if the fee is revoked, we have provisions in place for that.

Assemblyman Cobb:
I sympathize with the idea of shifting the fee to the non-custodial parent. But it sounds like there is not a very strong likelihood of recovering the fees this way. Given that this fee is being mandated by the federal government, it is appropriate to leave the language as it is. It is an annual fee for individuals who seek the services of the state for their benefit. These are not individuals who have been on public assistance. It should not be burdensome to the people who are directly receiving these benefits. I agree with the language as it is written.

Chairman Anderson:
I think Ms. Ford's point is that as long as this law remains in place it is important to amend the language.

Assemblywoman Gerhardt:
I respectfully disagree with my colleague. As someone who has received child support, sometimes $25 determines whether you can put new shoes on your child's feet, or whether you can pay for a piece of athletic equipment that they need, or an instrument that they play. Twenty-five dollars is important. I could not support any legislation that will remove $25 from the child when we are already doing so poorly at collecting child support as it is. Another component is that they are not receiving any pubic assistance. These are perhaps the single moms that are working extremely hard to be sure that they are taking care of their children and families and we propose to penalize them and their children. I could not support that.

Chairman Anderson:
I suggest an Amend and Do Pass motion. I am going to try to pick up what your intent is, Assemblywoman Gerhardt. I would like to Amend and Do Pass with the amendments that were suggested by Ms. Ford, as seen in our work session document and at the initial hearing. We have some amendatory language changing the effective date and the medical support definition. I want the bill to be further amended to take into consideration the TANF provisions pursuant to Title IV, leaving those in place. We do not want the $25 to come from the custodial parent, but from the non-custodial parent. That may reduce the amount of available funds coming into the State. But we will give the issue to Ways and Means to assess.

Assemblywoman Gerhardt:
Will we take the suggestion of turning off the requirement if the federal government repeals the fee?

Chairman Anderson:
I included provisions for that. We are striking that only a person who has physical custody of the child is not and has never been a recipient of assistance. We are trying to ensure that the fee comes from the non-custodial parent. Is that correct, Assemblywoman Gerhardt?

Assemblywoman Gerhardt:
Yes.

Assemblyman Carpenter:
I have a problem with that because many times the non-custodial parent has a second family. If we take the money from them, they would suffer also. It should be the State's responsibility. These people are not only paying taxes, but also paying for the custodial children and the non-custodial children as well. I do not favor that motion.

Chairman Anderson:
We have to figure out how to get it to Ways and Means so they can take care of the State's fiscal responsibilities as they apply to this matter. Our committee's responsibility does not involve determining fiscal impact of this legislation. Ms. Lang, is it possible to amend this bill so that we reflect the needs of the Department of Welfare and Supportive Services and place the fiscal responsibility at the State level?

Risa Lang:
Removal of Section 3 would make the state responsible for the $25 fee. I am uncertain where you would need to require the State to pay that unless I

misunderstand. If you do not provide for it to come out of the non-custodial share or the custodial share, it would automatically be deducted from the State.

Chairman Anderson:
Are you saying that we do not need to refer to the Temporary Assistance for Needy Families (TANF)?

Risa Lang:
If the State is going to pay this $25 fee, we do not need Section 3.

Chairman Anderson:
If we do not make that reference, then, is there a point to passing the legislation?

Nancy Ford:
We still need the medical language and the "not residing together" language for remedying that Nevada Supreme Court decision. Those sections would still be necessary.

Vice Chairman Horne:
Will you accept a motion?

Chairman Anderson:
I will accept a motion.

Assemblyman Horne:
Motion with an Amend and Do Pass, striking Section 3 of the bill with the requirement of the $25 fee.

Chairman Anderson:
Are we accepting the other language?

Assemblywoman Allen:
I have significant concerns with the state picking up the tab for such a large amount of money. I question how this will work out in practice. If we send it to Ways and Means with our amendments we know there isn't money this session for it. So what would happen to it?

Chairman Anderson:
We would be better off designating one parent or the other. While I appreciate Assemblyman Carpenter's opinion, if we give another alternative to the Ways and Means Committee, they may agree with us. But if we make no suggestion one way or the other, they will not be willing to place the fiscal responsibility of

this fee upon the State. I have seen situations like this before and many well-intentioned programs have gone down the drain in Ways and Means due to lack of funding.

Assemblywoman Gerhardt:
I offer one other thought for the Committee. In most cases, as long as the non-custodial parent is paying regularly, the custodial parent does not need the option of state-assisted collection of child-support. Nobody wants to wait for their money. Nobody wants to handle all the paperwork involved. If you have a non-custodial parent who is cooperating and is taking care of their children, then no one has to go through social services. In that vein, I do not feel badly about placing the burden upon the less responsible parent. Hopefully that helps Committee members to make the best decision.

Chairman Anderson:
It does make a difference. But the people who are going to be harmed are ultimately the custodial parent. Regardless of whether we take $5 or $25 away from non-custodial parents, we cause his quality of life to drop by taking his money. If that parent is trying to make a good faith effort, he is doing the best he can. The people we are after are those who are not financially supporting their children. We want to help motivate your people, Ms. Ford, to take care of this important issue. I want there to be an incentive for you to do this. I would like to have the State support the fiscal impact on this, but it would not work out that way based on my experience. I would support placing the financial responsibility of paying the fee upon one of the parents.

Assemblyman Cobb:
Could we provide both alternatives and prioritize the alternative that we deem more appropriate? For example, the State could attempt to recover the $25 fee from non-custodial parent first. Then if that parent failed to pay, the fee could be collected from the custodial parent.

Chairman Anderson:
We could make each parent pay $12.50.

Nancy Ford:
The State of Georgia is making the custodial parent pay $12 and the non-custodial parent pay $13. I do not know how much this is going to cost them to implement, but that is what they are attempting to implement.

Assemblyman Mabey:
I support the original bill.

Chairman Anderson:
Okay. Some Committee members support the original bill, some would like the responsibility of the $25 fee all on the non-custodial parent, some would like the fee split equally or, like in Georgia's case, $13 to $12. Some would like all of Section 3 removed from the bill. I am still without a clear understanding on what we are going to do. Does anyone have an alternative suggestion?

Assemblyman Carpenter:
I can offer my support of the original bill and supplement my grandchildren the $25 fee.

Chairman Anderson:
Assemblywoman Gerhardt will not support the bill. Assemblywoman Allen is a no, so we have three in support. Would you like to propose a motion Assemblywoman Gerhardt?

Assemblywoman Gerhardt:
I would like to Amend and Do Pass A.B. 596 with the first amendment outlined in the work session document. This would change the bill to put the burden on the non-custodial parent with the State picking up the remainder. I would also like to provide some wording that would provide a turn-off clause to this if the federal government decided to rescind this mandatory fee.

Chairman Anderson:
I will accept Assemblywoman Gerhardt's motion of Amend and Do Pass of A.B. 596. The amendments are the ones suggested by Ms. Ford on behalf of the division of Welfare and Support Services. They include the insertion of medical support coverage as it is defined in the new language, that the other change would be to make the bill conform to the non-custodial parent being the person responsible for the $25 fee. That would be the case unless the fee was not paid. If the fee is not paid, the State of Nevada would pay it. There would be a further provision permanently repealing the fee if the federal government repeals the mandatory clause requiring the fee.

Assemblyman Carpenter:
Is the fee collected for each child?

Nancy Ford:
The fee is charged per case regardless of the number of children. If a parent has three children with one non-custodial parent, there is one $25 fee. If a parent has three children with three non-custodial parents, there are three $25 fees. It is on a per case basis.

Chairman Anderson:
I want to reiterate that this fee is charged on a per-case basis, not based upon the number of children involved in a case.

Risa Lang:
I also would like to clarify that if we are to collect from the non-custodial parent, would there be any limitation based on whether they have been a recipient of TANF or does that go away because the fee is no longer being taken from the custodial parent?

Nancy Ford:
That is dependent upon the person who is collecting the support. It only involves the child or custodial parent having received TANF. It is tied to who the support is being collected on behalf of.

Chairman Anderson:
Thank you for providing clarification. I have accepted the motion of Amend and Do Pass. Those amendments have been stated.

> ASSEMBLYWOMAN GERHARDT MOVED TO AMEND AND DO PASS ASSEMBLY BILL 596.
>
> SECONDED BY ASSEMBLYMAN HORNE.
>
> THE MOTION PASSED UNANIMOUSLY.

Chairman Anderson:
The bill has passed and we will send it to Ways and Means after it is amended. Assemblywoman Gerhardt, we will ask you to keep an eye on this bill. We now have two bills left on our agenda. Both of them are somewhat controversial. We should have an easy solution, but there is not.

Assembly Bill 357: Revises provisions governing tips and gratuities received by employees. (BDR 53-1166)

Chairman Anderson:
We will begin our discussion and see where that leads us. We can discuss this for ten minutes and then we may need to recess.

Jennifer Chisel, Committee Policy Analyst:
Assembly Bill 357 (Exhibit H) was heard by the Committee on March 27, 2007, and was presented by Assemblyman Beers. This bill governs tips and gratuities received by employees. It would prohibit an employer from exercising control

over the collection or distribution of tips. The bill would not apply to employees who are covered by a collective bargaining agreement.

There was lengthy testimony during the initial hearing. Several individuals were in opposition. What is presented for you is a conceptual amendment which would replace the existing bill and it would provide that employees who are in a supervisory capacity at a gaming establishment may not solicit or accept tips. Other gaming employees at that establishment may accept tips, but cannot solicit them.

Dealers at gaming establishments may accept tips which are to be pooled on a prorated basis. Dealers of poker are excluded and may keep their own tips. Again, this does not apply to employees who are under a collective bargaining agreement. Violators of this provision would be guilty of a misdemeanor.

Chairman Anderson:
I asked the Research and Legal Divisions to look at a possible amendment. It will help alleviate some of the problems associated with this bill. Section 2 of the amended language says that a dealer at a gaming establishment may accept tips or gratuity from a patron whom the employee assists. It also says that any tips or gratuity must immediately be deposited in a locked box reserved for that purpose, accounted for, and placed in a pool for distribution pro rata among the dealers. The distribution is based upon the number of hours each dealer has worked. The Board may authorize tips or gratuities to be retained by the individual dealers in the game of poker. Apparently poker has some unusual sets to it. If you are in a collective bargaining agreement, the collective bargaining agreement would take precedence. The person who violates the provisions of this shall be guilty of a misdemeanor. The commission would be the responsible party of this. As used in the section again, the reference to a supervisor is outlined in federal statute. The federal definition is extensive. In Section 1 we may have some problems so I want to make certain that if there is someone who would like to explain the impact of Section 1.

Jim Wadhams, Representative, Wynn Las Vegas:
In general, the problem with Section 1 starts in the first two sentences. It refers to officer, director, manager, member, and key employee who serve in a supervisory position, and any other supervisor. Those descriptions cover a wide range of people, particularly in some establishments. If a dealer has any kind of compensation authority, they would be considered a key employee. In some establishments that is indeed the case.

The other problem with this language is the use of the word "supervisor." As Chairman Anderson mentioned, under the federal statute that includes anyone

who has the ability to effectively recommend any action on a grievance in the employment arena. What most of us would ordinarily think of as hire and fire ability, under the federal law, goes far greater than that. Simply having the ability to recommend that your fellow dealer is dealing seconds could effect his employment and that would constitute satisfaction of the definition of supervisor. It also would prohibit persons who might serve as casino hosts from accepting tips. It would make it criminal for them to accept tips.

Chairman Anderson:
It would be possible to put "supervisor of a gaming establishment other than a supervisor who works exclusively at non-gaming activities shall not solicit or accept any tip or gratuity from any player or patron." Is that the policy in most establishments?

I know it was several years ago when I put myself through college by working in casinos. Fortunately, they provided a great source of income. I am very familiar with the need for ensuring that tip money is not taken by individuals who have not earned it. That has always been my primary concern regarding this legislation. We should make certain that the people who benefit from tips are the people who have earned them. I also understand that there are employees who earn tips, but are not involved in the physical element which attracted the tip. There are some employees who are part-time and have dual responsibilities during a shift where they may be in a supervisory position for an amount of time. I am fully aware that giving away meal coupons is not an unusual event but they are held onto fairly close by the immediate supervisor, whereas drink tokens are not.

I am a little concerned about the bill. I am disappointed by the situation that led to this bill being drafted. People who are not contributing to tip pools should not be able take profit from them. I understand that we have one particular gaming establishment that has brought this to a head. But there seems to be a broader problem before us that we need to find a solution for. That is the purpose of the bill. This bill not only intends to solve one particular problem, but tries to ensure that the broader problem is addressed.

Jim Wadhams:
I am being joined by some experts. I do not mean to join in a debate, but I think this is important. If we look at the original law, NRS 608.160, it has served Nevada very well. It has two sections. It states that employers cannot take the tips. The purpose that has been established through court cases is that employers can use their ability as employers to protect employees in the line of service from being discriminated against when they are providing service to customers. The theme "line of service" has been at the heart of the original

section addressing this matter. The bill proposed by Assemblyman Beers rejects the principle of the law protecting employees in the line of service. This amendment now focuses on licensees under NRS Chapter 463. That covers quite a few people since that is our major employment sector.

We are trying to use words and phrases that do not necessarily equate with the principle of management taking tips. Supervisors are not necessarily management. The lead dealer on a team of dealers is a supervisor under the federal statute. I am concerned that we are creating a very complex problem out of a relatively straightforward situation where people in the common line of service now may become criminals. It is important that we do not remove the ability of an employer to maintain a fair workplace and prevent discrimination based on gender or race and other circumstances that might occur.

Assemblyman Horne:
Part of the problem is that, arguably, we have a statute that has served the State of Nevada very well. It is arguable because someone is taking advantage of some ambiguity in the original bill. What we are addressing is the intent the legislature had when they put the bill into the statutes. We could implement something that identified an exclusion to non-gaming supervisors, so we do not pull in the maid supervisor, or the lead bellman—we would keep it strictly to the gaming floor. The original intent of the legislature was to protect the individuals who remain on their feet dealing cards, scooping dice—all those people. Is there a way to draft this so that we focus on gaming supervisors, so that they are not taking from the tip pool? Is there a way to draft that?

Jim Wadhams:
The simplest answer is no. The reason is because we are trying to avoid a situation in which management personnel are participating in a service employee's tip pool. That is the subtlety we have been unable to remedy.

Chairman Anderson:
Do you think that there is language we could use to fix this issue?

Jim Wadhams:
There is, but it would take some time to do this in a way that does not completely disrupt the entire service sector.

William Vassiliadis, Representative, Nevada Resort Association:
I am here to express the Association's concern with the amendment that we saw this morning. We have not had the time to study the implications of this bill. On the surface, we are concerned that this has gone much further than the Committee intended, based on the comments from the March 27, 2007 hearing.

The notion of who contributes money to the tip pool needs to be addressed. The new customer service paradigm is that customer service is not limited to direct customer contact; touch points are not limited to one single person. There are two hats worn by dealers and non-dealers within the customer service arena. Every one benefits when it comes to gratuities. At this point, we have significant concern about the language.

Robert Ostrovsky, Representative, Nevada Resort Association:
I am aware of our time constraint. There are a number of unintended consequences for several other employee groups inside a gaming establishment. Paragraph two also presents some problems associated with how the money would be redistributed.

Chairman Anderson:
We do not have time to hear extensive testimony.

Sam McMullen, Representative, Las Vegas Chamber of Commerce and Nevada Restaurant Association:
I am here representing the Las Vegas Chamber of Commerce and the Nevada Restaurant Association. This bill impacts any establishment that has gaming of any kind. I understand the issue about the gaming floor, but usually the term is "gaming establishment."

Chairman Anderson:
Section 2 specifies a "dealer."

Sam McMullen:
Yes, I am aware of that. My point is that it needs to be specifically limited. It also distinguishes between union and non-union employers. We are against this bill.

Chairman Anderson:
Is there anyone else who wishes to be on the record? We are going to recess. Do we wish to take a motion on the bill with the amendment? Do we wish to leave the bill alone? Should we go to the floor and think it over? On the Floor you can express your opinion to me.

Assemblyman Oceguera:
We need to get to the floor meeting. There are five members of this Committee who are on Commerce and Labor who also have a full agenda today.

Chairman Anderson:
Would that place our reconvening meeting at 11 p.m.? We can assume that Commerce is going to run late. Does anyone want to make a motion?

Assemblyman Oceguera:
I have spoken with the Speaker and the appropriate thing to do is to finish this work agenda and go to the Floor.

Chairman Anderson:
Does the Committee wish to provide an amendment? The hearing is closed on A.B. 357. I will remove it from the work session document.

Assembly Bill 499: Makes various changes to the provisions governing common-interest communities. (BDR 10-1342)

Chairman Anderson:
We have a question regarding Assembly Bill 499 (Exhibit I). We heard this bill the other day. It refers to the overall process of the common-interest communities. The Committee seemed concerned about potential issues arising from it. I put it into the work session document so that we could all be comfortable and I want to make sure that we make any necessary amendments. Does anyone want to make a motion on this bill? The Committee has not expressed a desire to move this bill.

We have several issues that we have not heard. If there is anything that the Committee would like to express, this would be the appropriate time to do that. I do not think there are any pressing issues that need to be addressed.

This work session is closed. [The meeting was recessed at 11:32 a.m. and held open. Meeting adjourned at 5:28 p.m.]

RESPECTFULLY SUBMITTED:

_____
Christina van Fosson
Committee Secretary

APPROVED BY:

_____
Assemblyman Bernie Anderson, Chairman

DATE:_____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 13, 2007 **Time of Meeting: 8:30 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
A.B. 230	BB	Jennifer Chisel, Committee Policy Analyst	Work session document
A.B. 396	C	Jennifer Chisel, Committee Policy Analyst	Work session document
A.B. 11	D	Assemblyman Bernie Anderson, Assembly District No. 31	Proposed amendment
A.B. 418	E	Jennifer Chisel, Committee Policy Analyst	Work session document
A.B. 63	F	Jennifer Chisel, Committee Policy Analyst	Work session document
A.B. 596	G	Jennifer Chisel, Committee Policy Analyst	Work session document
A.B. 357	H	Jennifer Chisel, Committee Policy Analyst	Work session document
A.B. 499	I	Jennifer Chisel, Committee Policy Analyst	Work session document