

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session
April 25, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:01 a.m. on Wednesday, April 25, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 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 in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

Senator Dennis Nolan (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Marcus Conklin, Assembly District No. 37
Assemblyman Mark A. Manendo, Assembly District No. 18
Assemblyman Garn Mabey, Assembly District No. 2
Assemblywoman Peggy Pierce, Assembly District No. 3

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Brad Wilkinson, Chief Deputy Legislative Counsel
Gale Maynard, Committee Secretary

OTHERS PRESENT:

Robert Faiss
Michelle L'Hommedieu
Quinton Singleton
Brandon McDonald
Florence Jameson, M.D.
Bill Bradley, Nevada Trial Lawyers Association
Chris Brooks, Nevada Partnership for Homeless Youth
Sandy Heverly, Executive Director, Stop D.U.I.
Jim Holmes, Northern Nevada D.U.I. Task Force
Frank Adams, Nevada Sheriffs' and Chiefs' Association
Robert Roshak, Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association
Colonel Chris Perry, Chief, Nevada Highway Patrol, Department of Public Safety
William R. Uffelman, Nevada Bankers Association
Lynn Chapman, Nevada Eagle Forum
William J. Birkmann, Vice President, Nevada Alliance for Retired Americans

CHAIR AMODEI:

I will open the hearing on Assembly Bill (A.B.) 179.

ASSEMBLY BILL 179: Revises the provisions governing the terms of office of members of the State Gaming Control Board. (BDR 41-104)

ROBERT FAISS:

I am here in my capacity as adjunct professor for gaming law at the William S. Boyd School of Law. I have three students here from this school to testify on A.B. 179. Chair Amodei, Senator Care and the other members of this Committee have been instrumental in preparing these students and they are solely responsible for their statements. The remainder of my testimony is in ([Exhibit C](#)).

MICHELLE L'HOMMEDIU:

My testimony to this Committee is in my handout ([Exhibit D](#)). This legislation puts forth a suggestion on how the Legislature might clarify the current appointment process.

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QUINTON SINGLETON:

My testimony to this Committee is in my handout ([Exhibit E](#)). I turn over this presentation to a fellow student.

BRANDON McDONALD:

My written testimony on A.B. 179 is in my handout ([Exhibit F](#)).

CHAIR AMODEI:

Are there any questions for these students?

SENATOR CARE:

I have spoken in Mr. Faiss' class. Were there any discussions outside the class or was it just amongst the students? Were there people from the industry who were consulted or spoke on these issues?

Ms. L'HOMMEDIEU:

Mark A. Clayton, State Gaming Control Board, spoke to our class on this issue and the Legislative Counsel Bureau consulted with us.

CHAIR AMODEI:

The record will show that Bret Meich, legislative extern, a student of Boyd School of Law, is here with us today. Are there any further questions? If there is no further testimony, we will close the hearing on A.B. 179. What is the pleasure of the Committee?

SENATOR CARE MOVED TO DO PASS A.B. 179.

SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS HORSFORD, NOLAN AND WASHINGTON WERE ABSENT FOR THE VOTE.)

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CHAIR AMODEI:

We will open the hearing on A.B. 4.

ASSEMBLY BILL 4 (1st Reprint): Revises provisions providing immunity from civil liability for certain medical facilities and certain medical professionals who render certain emergency care. (BDR 3-450)

ASSEMBLYMAN GARN MABEY (Assembly District No. 2):

The purpose of this bill is to restore immunity under the Good Samaritan Act for physicians and nurses who render gratuitous emergency obstetrical care. The Good Samaritan Act was amended in 1990 to allow facilities in rural areas and at the time, the Southern Nevada Memorial Hospital in Clark County, to bill for emergency drop-in obstetrical care where there was no prenatal care. However, physicians who rendered emergency care gratuitously were not able to show immunity for Good Samaritan care.

If someone went into labor and I provided emergency care, I could not receive immunity under the current Good Samaritan Act because the result of the problem was not a result of her lacking prenatal care.

With help from Mr. Wilkinson, Legislative Counsel, and Mr. Bill Bradley in the drafting, the Assembly passed this bill to restore immunity to physicians and nurses who render gratuitous emergency obstetrical care in good faith.

CHAIR AMODEI:

We are okay with the wording of the bill. Is there anything else you would like to add or are there questions from the Committee?

SENATOR CARE:

Do you know how many suits have been filed?

ASSEMBLYMAN MABEY:

I do not know the exact number, but there have been cases and I have a witness, Dr. Florence Jameson, who can testify. People are concerned about rendering emergency care in the hospital because of this issue and it is affecting the care.

A question was raised in the Assembly of what if I am out of town and another doctor is covering, should he get immunity under this statute? The answer is no. It is for a doctor who volunteers and is asked to go to the emergency room or labor and delivery.

SENATOR CARE:

For the example you gave where you do not know the patient and it is an emergency, what does this do for the liability of the hospital? If there is no cause of action against the doctor, is there no cause of action against any other person or entity?

ASSEMBLYMAN MABEY:

I think they will not be immune. I will refer that question to Mr. Bradley.

CHAIR AMODEI:

Is there anyone in the Grant Sawyer Building on A.B. 4?

FLORENCE JAMESON, M.D.:

Years ago, labor and delivery was busy and doctors would assist with no fears and were eager to help in emergency situations. I heard a call and raced to the emergency room where a C-section was being performed and I assisted.

Years later, I was named in a lawsuit for that assistance. My lawyer said that because I was acting as a Good Samaritan, the case should be resolved. Due to the lawsuit, my insurance went up and the case was not dropped. This has been an agonizing experience, and many of my colleagues refuse to assist in emergency care. Many of them, including myself, avoid walking through labor and delivery and have taken themselves off the emergency call-up list.

Many of us want the Good Samaritan Act to be amended to change the environment. The way the current law stands, it is bad public policy.

BILL BRADLEY (Nevada Trial Lawyers Association):

I was under the belief that the Good Samaritan Act extended to obstetricians. When the bill was drafted in 1990, it was unintentional to leave out obstetricians. Assembly Bill 4 gives the Legislature an opportunity to fix the Good Samaritan Act.

The Good Samaritan Act does not extend to the hospital; it reflects physicians, nurses and staff. I have not seen an instance where a person was admitted to the hospital and not receive a bill. If there is a bill sent with an obligation to pay, the Good Samaritan Act goes out the window. A concern is if someone finds themselves in a situation and realizes there was negligence and instructs staff not to send a bill.

This is an opportunity to make sure that the Good Samaritan Act extends to all physicians and other types of compensation are moved to another statute. It is only right that the Good Samaritan Act be clarified for obstetricians.

SENATOR CARE:

The situation I was concerned with is if a patient received prenatal care and followed her physician's instructions to the letter. She goes into labor, her doctor is not at the hospital to deliver and another doctor assists in the delivery. At this point, the hospital is not immune.

MR. BRADLEY:

That is correct, but we have to look at the status of the physician who assisted in the delivery. Where there is some benefit and consideration given, the physician will not get the status of the Good Samaritan Act. Through the efforts of Assemblyman Mabey, physicians will be willing to show up at labor and delivery with no expectation or benefit they will be covered under A.B. 4.

SENATOR CARE:

It reminds me of the old cliché, "Is there a doctor in the house?"

MR. BRADLEY:

Better said would be, "Is there a free doctor in the house?"

CHAIR AMODEI:

We will close the hearing on A.B. 4. What is the pleasure of the Committee?

SENATOR WIENER MOVED TO DO PASS A.B. 4.

SENATOR MCGINNESS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS HORSFORD, NOLAN AND WASHINGTON WERE ABSENT FOR THE VOTE.)

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CHAIR AMODEI:

We will open the hearing on A.B. 299.

ASSEMBLY BILL 299: Makes various changes to provisions concerning youth shelters. (BDR 20-785)

ASSEMBLYMAN MARCUS CONKLIN (Assembly District No. 37):

This is a cleanup bill from the Right to Shelter Law, A.B. No. 264 of the 71st Session. There was a problem with the law where if you had a homeless youth or an unaccompanied minor on the street under the age of 18, they could not get services legally. This bill will rectify that situation.

Over the years, there have been questions about the statute and it has not been used as intended. Section 1 clarifies that "youth" means under the age of 18. Because the statute did not specify age, there were people claiming to be working with homeless youths who were 21 years of age. Clearly, this is not a homeless youth. Section 1 also takes out "absent from his legal residence without the consent of his parent, guardian or custodian," and it pulls out pieces specifically dealing with homeless youths.

In section 2, at the bottom of page 2, it deals with the notification of a parent. When you want to provide services to an unaccompanied minor, we find that these children have been thrown away by their parents. Some of these kids have been abused and run away from home. When the parents are notified, they insist on having the child back, when in fact that is the last thing the child needs. The request is to make a documented attempt to notify the parent. Many times, you cannot reach a parent.

These are the changes to A.B. 299.

CHAIR AMODEI:

Are there any questions from Committee?

SENATOR MCGINNESS:

There are instances where the parent wants the child, but the child does not want to go back. You cannot make a statement that most times the parents do not want them back.

ASSEMBLYMAN CONKLIN:

If a parent wants a child back, we cannot stop that. If we reach a parent and they want them back, we have to comply.

SENATOR MCGINNESS:

Then, there is a real attempt to contact a parent.

ASSEMBLYMAN CONKLIN:

Yes. Under current statute, you actually have to reach the parent. Sometimes there is no parent to reach.

SENATOR MCGINNESS:

Is this an instance where you leave a voicemail and that will be your attempt to contact?

ASSEMBLYMAN CONKLIN:

No. My understanding is that there be a bona fide attempt to contact a parent and it must be documented.

CHAIR AMODEI:

Is there someone in the Grant Sawyer Building who wishes to testify?

CHRIS BROOKS (Nevada Partnership for Homeless Youth)

I am a former homeless youth and urge you to support this legislation. At four years of age, I was abused and put into the child welfare system along with my brother. At the age of 10, I was taken away from my brother and throughout my 15 years under the State's custody, I was shuffled through over 35 foster and group homes and continued to be abused in some cases.

I ran away and at the age of 19, was out of the foster system. I did not have the skills to be a productive member in society. Many youths do not have the support of mentors.

SENATOR WIENER:

I have met with Mr. Brooks several times. In Clark County, how many are coming from other states, and how many are pushed out of the home versus runaways?

CHRIS BROOKS:

I do not have those statistics.

SENATOR WIENER:

Based on your experience, do you have an estimate or a thought?

ASSEMBLYMAN CONKLIN:

For clarification, they are what we would call "throwaways."

CHRIS BROOKS:

Most youths that enter into our program are throwaways. They are forced out of the house.

ASSEMBLYMAN CONKLIN:

Mr. Brooks is a mentor in our program and one of our senior staff members. What do you suppose the term "throwaway" means?

CHRIS BROOKS:

Youths that had to leave the house without any choice. The parents kicked them out and locked the doors.

ASSEMBLYMAN CONKLIN:

I point this out because on a daily basis, parents do not want these kids back. It is a terrible situation and the system has no place for them.

CHAIR AMODEI:

Is there anything else from Committee members? Assemblyman Conklin, I will ask that you work with staff on the "an attempt to notify" part of the bill. We will close the hearing on A.B. 299 and open the hearing on A.B. 8.

ASSEMBLY BILL 8 (1st Reprint): Makes various changes concerning bail or release after an arrest for driving a vehicle or operating a vessel under the influence of intoxicating liquor or certain other substances. (BDR 14-704)

ASSEMBLYMAN MARK A. MANENDO (Assembly District No. 18):

I have people here who will give testimony. In a nutshell, A.B. 8 states that if a person is arrested under the influence of alcohol, a person shall not be released until his breath test shows a reading of 0.04 or less. Likewise, if a person is arrested under the influence of a controlled substance, he will not be released sooner than 12 hours. Persons have been released before these limits, and we believe they cause a public safety hazard.

SANDY HEVERLY (Executive Director, Stop D.U.I.):

I am asking for support of A.B. 8. While most of our driving under the influence (DUI) legislation is borne on the backs of victims, I am happy to say this bill is not one of them. Assembly Bill 8 will help ensure public safety as well as reduce potential liability to city and county jurisdictions.

The amended version of this bill requires all persons arrested for DUI drugs be held for a period of 12 hours before being released on bail or given early-release. Most DUIs are above the legal limit, and ensuring the person has reached some level of sobriety is responsible.

Unfortunately, some privileged DUI offenders are released within a short period of time and are released before they are sober, even when a request from the arresting officer has been made. For those who have the right number to call, the jail doors are open.

This bill will send the message to everyone that if you are arrested for DUI, you have to be below 0.04 before you are released, and if you are arrested for DUI from other drugs, you will be detained for 12 hours. There is a pamphlet ([Exhibit G](#)) released by the U.S. Department of Transportation National Highway Traffic Safety Administration, "Every Drop Counts," and it explains how alcohol reduces driving abilities and increases your risk of a crash.

JIM HOLMES (Northern Nevada D.U.I. Task Force):

Our goal is to raise awareness of tragic outcomes of drinking and driving while impaired. This will take the high-profile offenders who have recently been arrested for DUI off the road and make them accountable. We urge passage of A.B. 8.

CHAIR AMODEI:

Is there anyone else to testify on A.B. 8?

FRANK ADAMS (Nevada Sheriffs' and Chiefs' Association):

I helped to formulate A.B. 8, and one of the issues was overcrowding and the length of stay; a compromise was reached.

The number 0.04 was used because that is the standard for commercial drivers, and the 12 hours for arrest with other drugs was viable. A person under the influence of alcohol loses about 0.02 per hour. If they come in at 0.08, in order

to get below the limit, they will have to be held for at least 3 hours. Sometimes, a person comes in and blows a .08 but is on his way up and tops out at 0.12 or 0.14. This time limit assures us they are at some level of sobriety.

ROBERT ROSHAK (Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association):

We stand in favor of this legislation. The issues we had with overcrowding of the facility were addressed with the amendment in A.B. 8.

CHAIR AMODEI:

What was the amendment dealing with the overcrowding issue in the original bill?

MR. ADAMS:

The first print of the bill required a 12-hour hold for both DUI liquor and alcohol, and it was the alcohol that was addressed in the amendment.

CHAIR AMODEI:

If I read this correctly, if you are arrested for DUI drugs, it is a 12-hour mandatory hold. For alcohol, you must be under a 0.04 in order to leave. It does not matter if someone comes to get you and is not impaired.

MR. ADAMS:

That is correct.

SENATOR CARE:

A bill was passed out of this Committee that passed in the Assembly dealing with people under the influence who violate a temporary protection order (TPO). Is this familiar to you?

MR. ADAMS:

Yes.

SENATOR CARE:

In that bill may be some discretionary language in defining being under the influence as being 0.08 or above. The issue may be that you can be under 0.08 but still be under the influence. The number of offenders of a TPO does not come close to the number of DUI offenders. Is there an overcrowding issue for those who violate a TPO?

MR. ADAMS:

That is correct. The issue in the bill you are referencing deals with the victim to have time to protect themselves in relation to the person under the influence.

SENATOR CARE:

Can someone be at 0.04 and still be under the influence?

MR. ROSHAK:

Yes.

SENATOR CARE:

I understand the issue of overcrowding, but it seems everyone is comfortable with 0.04.

COLONEL CHRIS PERRY (Chief, Nevada Highway Patrol, Department of Public Safety):

The 0.04 is used for commercial vehicle drivers and we make arrests if a person is operating that vehicle at 0.04 or above. We arrest people who are presumed to be under the influence and depending on how they performed on the field sobriety test. There is no grace area. If our officers feel they are under the influence, but not at a 0.08, we will still arrest.

SENATOR CARE:

If you arrest someone at a 0.04 under this bill, they can bail out as soon as the paperwork is done only because this is what the amendment states.

MR. ADAMS:

It has to be less than 0.04. The alcohol dissipates at a level of 0.02 an hour. Booking takes over an hour; therefore, they will be under 0.04 before they are released.

SENATOR MCGINNESS:

Can someone demand a sobriety test every hour to try and get out or are there set standards for testing?

MR. ADAMS:

That will be an operational procedure handled by the jail.

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CHAIR AMODEI:

We will close the hearing on A.B. 8. What is the pleasure of the Committee?

SENATOR CARE MOVED TO DO PASS A.B. 8.

SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS NOLAN AND WASHINGTON WERE ABSENT FOR THE VOTE.)

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CHAIR AMODEI:

We will open the hearing on A.B. 114.

ASSEMBLY BILL 114 (1st Reprint): Makes various changes concerning the protection of personal identifying information. (BDR 8-406)

ASSEMBLYWOMAN PEGGY PIERCE (Assembly District No. 3):

This bill is about further protection for the citizens of Nevada from identity theft. The cost of identity theft for 2006 was estimated at nearly \$57 billion and affected 9 million Americans. The average fraud per victim was \$6,383, and the victim spends an average of \$422 in 40 hours of time to resolve identity theft. In some cases, 41 percent of victims were dealing with identity-theft problems 2 years after the crime was discovered. Another 27 percent were dealing with it 3 years later.

A graph was handed out (Exhibit H) that demonstrates that Nevada ranks second in the number of identity-theft victims. The subject of A.B. 114 is credit card fraud and is the most common identity-theft complaint.

Assembly Bill 114 states that if a credit card company gets back one of their offers and if it has the name but not the address where the offer was sent, they have to investigate and make an effort to contact the applicant to verify identity and to make sure it is the person who completed the application.

The bill lays out ways in which a credit card company can make verifications. I worked with William R. Uffelman and Mr. Roshak to improve this bill. Several states have enacted legislation similar to A.B. 114.

CHAIR AMODEI:

If there are any other testifiers, please come forward.

WILLIAM R. UFFELMAN (Nevada Bankers Association):

The word "substantially" was added to line 5 under section 1. The notion and common practice in the industry is to verify if there is a difference in address. It does no one any good to send credit card applications to the wrong person although the issuer of the credit will be liable.

SENATOR CARE:

That is what I wanted to ask. Has there been any case where some upstart credit card company sent out the application and did not verify that it was the applicant responding and led to damages? In any case, the issuer will be liable.

MR. UFFELMAN:

The issuer of the credit card in the end is liable.

SENATOR CARE:

That is only if someone steals the credit card or you lose the card, is this correct?

MR. UFFELMAN:

No. If I issued you a card, resident of Carson City, when in fact, Senator Care is a resident of Las Vegas, and the new Senator Care in Carson runs up the \$2,000 credit line and a month later we, the credit card company discover we made a mistake and you have proved you did not use the card, then as the issuer, I am liable.

SENATOR CARE:

Any damages I might suffer, I can go after the card issuer.

MR. UFFELMAN:

The idea of the whole system is to issue credit to the person you intended to issue credit at the place you intended to issue the credit.

MR. ROSHAK:

We support this bill and think it is a step forward in reducing identity and credit card theft.

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LYNN CHAPMAN (Nevada Eagle Forum):

As the executor of my uncle's estate, I was a victim of fraud. A letter was sent to the company and the signature card was not his. This is a good bill and I would like to see it pass.

CHAIR AMODEI:

Are there any questions from Committee members?

WILLIAM J. BIRKMANN (Vice President, Nevada Alliance for Retired Americans):
We are asking this Committee for support of A.B. 114.

CHAIR AMODEI:

We will close the hearing on A.B. 114. What is the pleasure of the Committee?

SENATOR WIENER MOVED TO DO PASS A.B. 114.

SENATOR CARE SECONDED THE MOTION.

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

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CHAIR AMODEI:

If there is nothing else to come before this Committee, we are adjourned at 10:16 a.m.

RESPECTFULLY SUBMITTED:

Gale Maynard,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: _____