

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session
May 3, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:11 a.m. on Thursday, May 3, 2007, in Room 2149 of the Legislative Building, Carson City, 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 William Horne, Assembly District No. 34
Assemblywoman Sheila Leslie, Assembly District No. 27

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence
Scott Anderson, Deputy for Commercial Recordings, Office of the Secretary of State

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Keith L. Lee, State Contractors' Board
Leo M. Drozdoff, Administrator, Division of Environmental Protection, State
Department of Conservation and Natural Resources
Karl S. Hall, Chief Deputy District Attorney, Criminal Division, Washoe County
District Attorney
Carol Sala, Administrator, Aging Services Division, Department of Health and
Human Services
Randy Robison, Nevada Credit Union League
William R. Uffelman, Nevada Bankers Association
Kristin L. Erickson, Nevada District Attorneys Association

CHAIR AMODEI:

We will open the hearing on Assembly Bill (A.B.) 15.

ASSEMBLY BILL 15 (1st Reprint): Enacts the Uniform Child Abduction
Prevention Act. (BDR 11-732)

ASSEMBLYMAN WILLIAM HORNE (Assembly District No. 34):

If A.B. 15 is received favorably by the Legislature and signed into law, Nevada will be leading the way in protecting children and families from the crime of child abduction. Only Nebraska has enacted this law, known as the Uniform Child Abduction Prevention Act ([Exhibit C](#), original is on file in the Research Library).

SENATOR CARE:

This is one of the newer acts promulgated at the annual National Conference of Commissioners on Uniform State Laws last July. I have complete confidence in the work of the Commissioners and the drafting committee.

SENATOR WIENER

How many uniform acts are there, and how many have we heard this session?

SENATOR CARE:

This session there were 13 uniform acts and 1 model act. There were two from this Committee; Senator Amodei sponsored one, and I sponsored the other. There have been over 100 acts in the history of the Conference. As happens with all laws, times change, values change and new issues arise. Many of these bills go through revisions and amendments.

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SENATOR WIENER:

The reason I ask is that I was in Mr. Horne's committee a couple of days ago and overheard a conversation to the effect of over 1,000 such acts.

SENATOR CARE:

I have a Conference handbook which lists all the acts. There are model acts and uniform acts. I do not believe they exceeded 1,000. I am inclined to say a couple hundred, but it depends on whether you calculate amendments and revisions.

SENATOR WIENER:

I appreciate that Assemblyman Horne brought this forward.

ASSEMBLYMAN HORNE:

The Nevada Network Against Domestic Violence had a concern addressed by an amendment in the Assembly. I do not know whether they have additional concerns. I have provided you with a copy of the testimony of T. Arthur Ritchie, Jr., District Judge, Department I, Eighth Judicial District, from the Assembly hearing ([Exhibit D](#)).

SUSAN MEUSCHKE (Executive Director, Nevada Network Against Domestic Violence):

We testified in the Assembly regarding concerns this act might be used against a parent who is fleeing or taking children to a safe place to avoid violence. An amendment was crafted to address our concerns. It is up to us to monitor the legislation and bring it back to you if there is a problem.

We are not supporting this legislation, but we are not opposing it.

SENATOR WIENER:

Assemblyman Horne, when you were working on the uniform act, was there any dialog on this issue in the Conference? Why was it not addressed in the crafting of the act?

ASSEMBLYMAN HORNE:

I do not recall dialog particular to that issue. It may have come up, but we felt it was addressed. The Assembly wanted to provide more comfort and clarity.

SENATOR WIENER MOVED TO DO PASS A.B. 15.

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SENATOR CARE SECONDED THE MOTION.

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

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CHAIR AMODEI:

We will close the hearing on A.B. 15 and open the hearing on A.B. 25.

[ASSEMBLY BILL 25 \(3rd Reprint\)](#): Makes various changes to provisions governing business associations. (BDR 7-544)

SCOTT ANDERSON (Deputy for Commercial Recordings, Office of the Secretary of State):

Assembly Bill 25 proposes several changes to Title 7 of the *Nevada Revised Statutes* (NRS) that further standardize the filing processes of the Secretary of State's Commercial Recordings Division. It also provides for the establishment, by regulation, of an administrative process to remedy fraudulent filings submitted to our office. I have provided a copy of my testimony ([Exhibit E](#)).

CHAIR AMODEI:

You indicated some amendments may be offered.

MR. ANDERSON:

We have been approached by some individuals for an amendment regarding securities regulation that applies to pump-and-dump types of schemes which are using shell corporations to pump up stock and dump it. We are waiting for details. We expect to have the information within a couple of days and will work with legal staff to craft an amendment.

SENATOR WIENER:

In section 7 of the bill, you are asking for an administrative process to deal with fraudulent documents. Do you currently need to work through the Attorney General's Office and the court system?

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MR. ANDERSON:

We would work through the Attorney General's Office, to a degree. However, for the most part, it is a private cause of action. Victims of fraudulent filings must go to court on their own for a remedy.

SENATOR WIENER:

Please give us an example of what this might entail.

MR. ANDERSON:

Someone might be named as an officer, director or resident agent without their knowledge; there could be the reinstatement of a corporation by parties who do not have the authority to do so; there could be fraudulent addresses for the resident agent or officers, causing difficulties with service of process.

We are trying to help those third parties, who should not have to go to private action and court proceedings to correct the public record.

SENATOR WIENER:

I have a resident agent for my business. If someone were to name her as their resident agent without her knowledge and some cause of action is brought against the company for which she is supposedly the resident agent, the first notice would be when she is named in the lawsuit. Would that be the point of notice at which someone would contact the Secretary of State's Office for a correction?

MR. ANDERSON:

Yes, once she is aware of a problem, she would put a complaint in writing to us, and we would go forward from there. We may request more information and possibly issue an interrogatory to the party that has aggrieved her.

SENATOR WIENER:

Would her name be dropped as a party to the action? What kind of notice would you put out to the public?

MR. ANDERSON:

They would have to come to us. We may not be aware they are a party to an action.

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SENATOR WIENER:

How will you let people know they can contact your office for a remedy?

MR. ANDERSON:

We will be notifying the public. We will have something on our Website. When people call our office with a complaint, we will inform them of the process. We will do everything we can to get the word out.

The Nevada Resident Agent Association is aware of this. Their membership and the resident agent community will know about it.

CHAIR AMODEI:

We will close the hearing on A.B. 25 and open the hearing on A.B. 63. It has been requested that the hearing on A.B. 63 be continued to next week. We will close the hearing on A.B. 63 and open the hearing on A.B. 94.

ASSEMBLY BILL 94 (1st Reprint): Revises provisions relating to administrative procedure. (BDR 18-219)

KEITH L. LEE (State Contractors' Board):

We oppose A.B. 94. I direct your attention to section 2, subsection 5, which changes "shall" to "may" with reference to a court dismissing a late intervenor who was not part of the underlying action. We would like the word "may" changed back to "shall."

ASSEMBLYWOMAN SHEILA LESLIE (Assembly District No. 27):

This bill repeals the change we made last session and completely eliminates the prohibition of citizens to challenge agency decisions unless they can demonstrate a financial interest in the outcome. That change removed the right under our U.S. Constitution of citizens to petition the government for redress of grievances.

The other major problem is that it creates a conflict of the statute with federal laws. If we do not repeal the prohibition, it will cause some huge conflicts and could cause the federal government to come in and remove our State's ability to enforce clean air and water acts.

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The only change from the original bill is the addition of section 3, which made the act effective upon passage and approval. I encourage you to pass this bill as is and repeal the mistake we made last session.

CHAIR AMODEI:

Can you tell us the genesis of the change Mr. Lee talked about, changing "shall" to "may"?

ASSEMBLYWOMAN LESLIE:

I asked the bill drafters to repeal what we did last time. We should ask the Legal Division to explain it.

SENATOR CARE:

I voted against the bill last session. Since it was passed, I have heard stories that people were excluded from the process; they were not even allowed in the hearing room. That led to the effort to repeal.

ASSEMBLYWOMAN LESLIE:

In the Assembly, last year's bill went through the Committee on Government Affairs. It was presented as something that affected administrative proceedings for insurance agents, and nobody objected. However, when you review the minutes of the meeting, Assemblyman Pete Goicoechea, Assembly District No. 35, pointed out it would prevent environmental groups and other public interest groups from intervening. Assemblyman John C. Carpenter, Assembly District No. 33, objected on the Assembly Floor. He is a cosponsor of this current bill.

We need to correct our mistake.

CHAIR AMODEI:

Mr. Wilkinson, do you have any thoughts on what to change in the language Mr. Lee discussed? Did what was done in section 1 trigger something?

BRAD WILKINSON (Chief Deputy Legislative Counsel):

That was part of S.B. No. 428 of the 73rd Session. The minutes state that Jim Wadhams, Attorney, Jones Vargas law firm, Las Vegas, requested the change.

MR. LEE:

That is not good.

MR. WILKINSON:

There does not seem to be extensive discussion about that particular change.

MR. LEE:

I have no objection to the deletions after "State Contractors' Board" in section 2, subsection 5. We are talking about a petition for judicial review after a final decision has been rendered, not about the initial proceedings at the agency level. It says the court "may" dismiss from the judicial review action any person who was not a party to or granted intervenor status in the underlying administrative proceeding. It should be changed back to "shall."

CHAIR AMODEI:

Assemblywoman Leslie, by removing the part from section 1 prohibiting someone from participating administratively, this wording in section 2, subsection 5, then means someone has to participate at the administrative stage in order to participate at the judicial review stage. If the bill passes, we open the gate to let them back in administratively. They could not skip the administrative level and go to the judicial level. Is the amicus curiae procedure available?

MR. LEE:

Amicus curiae would still be available. If I understand amicus curiae practice, anyone can petition for amicus curiae status, and you do not need to have standing as a party.

SENATOR CARE:

Under those circumstances, the court would probably dismiss. Historically, this Committee always believes in the court's discretion. Sometimes we use "shall," but it has been rare. I understand Mr. Lee's argument, but the court, considering all facts and circumstances, would probably dismiss. I am more comfortable leaving it the way it is.

ASSEMBLYWOMAN LESLIE:

I will leave it to your knowledge, which is better than mine. Maybe others can speak on that point. I am fine with Senator Care's suggestion.

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CHAIR AMODEI:

Is anyone else here from the State Contractors' Board?

LEO DROZDOFF (Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources):

We are in support of A.B. 94 and striking section 4 of NRS 233B.127. I have provided you with a copy of my testimony ([Exhibit F](#)).

SENATOR CARE MOVED TO DO PASS A.B. 94.

SENATOR WIENER SECONDED THE MOTION.

MR. LEE:

We have no major objection. Senator Care's analysis is correct. Over 90 percent of the time, the court will dismiss parties to narrow issues as much as possible. We can report back next session if this becomes a problem.

CHAIR AMODEI:

I am still wondering why the Contractors' Board was left in and the language concerning other entities was removed from section 5 of NRS 233B.130.

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

We will close the hearing on A.B. 94 and reopen the hearing on A.B. 87.

ASSEMBLY BILL 87 (1st Reprint): Requires certain officers and employees of financial institutions to receive training concerning the exploitation of older persons and vulnerable persons and to report the suspected or known exploitation of older persons or vulnerable persons. (BDR 55-157)

ASSEMBLYWOMAN LESLIE:

We were given some proposed amendments for A.B. 87 this morning from the Nevada Credit Union League ([Exhibit G](#)). This bill has been worked on extensively in the Assembly Committee on Judiciary. It relates to financial abuse of the elderly. We have seen an upswing in this type of crime in our banks and credit unions. The bill requires training be provided to officers and employees in our financial institutions so they can better identify when older and vulnerable persons are financially exploited.

There were objections, initially, with some people saying we were placing too much responsibility on bank tellers to identify the abuse. We worked with the banking industry to address that. We have the training provisions and, in section 11, the requirement that each institution designate someone who will be the central point to receive, review and forward the reports to Elder Protective Services.

We are not asking the banks to investigate these situations; we are asking them to train their employees to recognize when this abuse is occurring and report it. The elder abuse people in the district attorney offices will take it from there.

That is the intent of the bill. We have civil penalties; we removed all the criminal penalties. It is not where we started, but I hope the bill will move us down the road a bit. We modeled our legislation, to a great extent, after what was passed in California. I want our financial institutions to be comfortable with the bill; we will start small and track how it works. We can look at it next session and strengthen it, if necessary.

KARL S. HALL (Chief Deputy District Attorney, Criminal Division, Washoe County District Attorney):

The purpose of A.B. 87 is to aid in identifying exploitation of elder and vulnerable persons. Financial institutions are on the front line, able to report financial abuse or instances of financial exploitation immediately and help prevent this type of crime.

Lee Mack was an individual in Reno who befriended an elderly couple. The husband died and this man provided the woman with some services, work around the house, rides to the store to buy groceries etc. Soon, he began to get money from her in amounts of approximately \$3,000 to \$4,000 a month. The year before he was arrested, he gambled \$80,000 he had obtained from this older woman. The banks should be aware it would be unreasonable for her to give this kind of money to an individual. They should spot it early on and report it to investigating agencies.

The bill requires employees be trained, learn what to report and make the reports. The bill requires certain information to be reported. I reviewed the amendments proposed by the Nevada Credit Union League this morning, [Exhibit G](#). On page 1, the misdemeanor language is deleted. The NRS 200.5093 and NRS 200.5935 would have a misdemeanor penalty for failure to report by

people involved with elder persons on a regular basis. However, to accommodate the financial institutions and their situation, we decided to go with a monetary penalty of \$1,000 if the omission to report was not willful and a \$5,000 penalty if it was willful.

Another proposed amendment is on page 1 of [Exhibit G](#). Normally, people are required to report as soon as practicable but not less than 24 hours after they know, or have reason to know, that abuse or exploitation has occurred. The banks would like the required reporting to be "as soon as reasonably practicable." We do not have a problem with that since they are working 5 days a week and may not have an opportunity to report it within 24 hours.

The other proposed amendments outline what a person who has reason to believe exploitation has occurred should report. They discuss disclosing the facts that form the basis of the reporter's determination. I would like to see documentation as well as facts. If I prosecute a case, I want the bank records and the monthly bank statements. They will help me outline where the money went and establish a pattern of spending so we can determine whether exploitation has occurred.

I would propose an amendment to require documentation as well as facts. We originally had provisions in the criminal section, NRS 200.5092, and we moved them to the banking section to make these provisions more accessible to attorneys representing banks and people in the banking industry.

SENATOR MCGINNESS:

Was it not the bank that reported the situation you described?

MR. HALL:

I have had a couple of instances in which Wells Fargo reported exploitation.

SENATOR MCGINNESS:

A bank teller who knows the person is usually the one to request an investigation. We seem to beat up people on the front lines. We see the banks stepping up and now we provide them with a civil penalty if something slips through the cracks. Am I mischaracterizing this?

MR. HALL:

Yes, you are. We have discretion whether to prosecute a case. We have to look at it realistically and make a determination. The law requires reason to believe exploitation is occurring, and we have to evaluate all facts and circumstances surrounding the failure to report. If the exploitation is blatant, that is one thing. If it is something obscured by someone who is capable of hiding what they are doing, it may not be a situation in which someone should be penalized. We are not out to punish people; we want to ferret out crime.

SENATOR MCGINNESS:

I recently saw an ad at my small bank branch for a part-time teller for \$9 an hour. Then, they are provided training and told they will incur a civil penalty if they screw up.

MR. HALL:

This is a penalty against the bank, not the individual teller.

CHAIR AMODEI:

What is involved in the training?

MR. HALL:

Banks in California have already instituted training. People should look for any change in the normal banking habits of an elderly person. It is pretty easy to spot for most people in the industry. A recent case involved an older gentleman who was set in his ways. He paid his rent, phone bill and a couple of other bills. Then, he got a new caregiver. She came in and put her name on the account; suddenly, there were expenditures at casinos and restaurants he never visited. Those types of things are easily spotted, and we would train people for that. The Attorney General and law enforcement have agreed to participate in the training.

CHAIR AMODEI:

In Section 22, a reporter is entitled to immunity from liability for making a report in good faith. That is a good idea. On the flip side, if the bank misses reporting, it is fined \$1,000 or \$5,000. How does that affect potential civil liability?

MR. HALL:

That was discussed extensively. The immunity statute is set forth in NRS 200.5096. Additionally, this statute contains language designed to not

change the status quo: you have immunity if you report in good faith; if you do not report in good faith when you should report based upon the facts and circumstances, the institution is subject to a \$1,000 or \$5,000 penalty.

CHAIR AMODEI:

That is the administrative end. However, if I am representing someone like the elderly lady and \$80,000 is gone from the account and there was no report, the bank pays a \$1,000 or \$5,000 fine. That is a pretty good place to start in a civil lawsuit against the bank. Was there any discussion of that?

MR. HALL:

Yes, there was discussion. If my checks are forged, I look to the bank for restitution. It is the same situation; it would be the same in any civil case. That is why we are not changing the civil remedies. The administrative fine is a stepping stone for a civil lawsuit, but the law is not designed to change the liability of the banks with respect to criminal conduct. They would not be civilly responsible for criminal conduct over which they have no control.

CHAIR AMODEI:

I am trying to find some equilibrium. We are providing an administrative mechanism to jump start an action, and that did not exist before. It is not necessarily inappropriate, but it is something we need on the record for discussion.

SENATOR CARE:

There is no fine unless the state decides to take action. What would happen if a bank did not report exploitation? Would you have to wait until the exploiter is convicted to initiate the civil action? What if he is acquitted? You still have the civil burden of proof, preponderance of the evidence. That would be a discretionary call as well.

MR. HALL:

That is correct. The person may be acquitted for a number of reasons. We could exercise our discretion concerning the outcome of a criminal case in a positive or negative light.

SENATOR WIENER:

Section 12 of the bill refers to the failure to report the suspected or known exploitation. If each check is an incident of exploitation, these penalties could come to a tidy sum.

MR. HALL:

The series or pattern is the exploitation. It could be one amount, but typically, it is a series.

SENATOR WIENER:

Would that be at the discretion of someone to determine?

MR. HALL:

In my opinion, it would be one incident of nonreporting.

SENATOR WIENER:

An incident could be a single check of \$80,000 or 15 checks. Is that correct?

MR. HALL:

Yes, and it would be at the discretion of the person bringing the charges.

CAROL SALA (Administrator, Aging Services Division, Department of Health and Human Services):

I am here to support A.B. 87. I have provided you with a printed copy of my testimony as well as information on a training organization called BITS ([Exhibit H](#)). The Elder Rights Unit, through our Division, investigates elder abuse. The most difficult and time-consuming investigations are those involving financial exploitation.

SENATOR MCGINNESS:

Have banks been reluctant to share records with you?

MS. SALA:

It depends on the individual bank. Some banks are very cooperative. We have subpoena rights for records. Many times, we learn about the possible exploitation, not from an institution, but down the road from a family member after they have seen a pattern. If banks were able to identify the problem earlier, we could get involved earlier.

RANDY ROBISON (Nevada Credit Union League):

Credit unions in Nevada certainly favor measures to protect all of our customers, including our elder members, against financial abuse of any kind. The proposed amendments we submitted in [Exhibit G](#) are clarifying in nature, consistent with the discussions we had in the Assembly. This adds further clarification regarding the manner in which one reports; it clarifies that the reporter is not liable for a misdemeanor; it adds the provision outlining the types of factual information a reporter can use as the basis of his decision to report and protects the confidentiality of our records and customers.

WILLIAM R. UFFELMAN (Nevada Bankers Association):

We have worked with Assemblywoman Leslie and the district attorneys on this bill. It began as a criminal statute, and what you see is the result of a lot of hard work by a lot of people. California's law went into effect on January 1 of this year. They had a year to train people and develop a process. The case mentioned was reported by a Wells Fargo teller. Once an institution starts a training program, they train everybody. The California training program for Wells Fargo has been instituted in Nevada, and the teller had been to the training program.

The bill provides for a single reporting officer so an individual teller is not required to make the report. You have an experienced banker who does the review and the reporting. The availability of immunity in the statute is important. The statute is well thought out, and the proposed amendments from the credit unions are fine. This is a work in progress.

KRISTIN L. ERICKSON (Nevada District Attorneys Association):

We want to place our support of this bill on the record.

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CHAIR AMODEI:

We will close the hearing on S.B. 87. There being no further business, the meeting of the Senate Committee on Judiciary is adjourned at 10:20 a.m.

RESPECTFULLY SUBMITTED:

Carolyn Allfree,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: _____