

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session
April 12, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9 a.m. on Thursday, April 12, 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 Mike McGinness
Senator Dennis Nolan
Senator Valerie Wiener
Senator Terry Care
Senator Steven A. Horsford

COMMITTEE MEMBERS ABSENT:

Senator Maurice E. Washington, Vice Chair (Excused)

GUEST LEGISLATORS PRESENT:

Senator Dina Titus, Clark County Senatorial District No. 7

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Brad Wilkinson, Chief Deputy Legislative Counsel
Lora Nay, Committee Secretary

OTHERS PRESENT:

William R. Uffelman, Nevada Bankers Association
Scott Scherer, Nevada Resident Agent Association
Scott Anderson, Deputy for Commercial Recordings, Office of the Secretary of State

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CHAIR AMODEI:

We will discuss Senate Bill (S.B.) 212.

SENATE BILL 212: Revises provisions governing the issuance of nonrestricted gaming licenses in certain counties. (BDR S-998)

Senator Michael A. Schneider has indicated he is still working on issues regarding unintended consequences.

SENATOR CARE:

I requested that we get a response from the Nevada Gaming Commission on how they would proceed under the proposed language and the proposed amendment, especially circumstances beyond the control of the holder of the license. We have not received anything.

CHAIR AMODEI:

I indicated to Senator Schneider that if he wants to continue to work the issue to narrow the potential application of the scope due to concerns of the Nevada Resort Association and how to apply this by the State Gaming Control Board, he can continue to do that. There are gaming bills coming from the other House which would be germane, and if he wants to update us on the concept at some point, I will provide him that opportunity.

We will go to S.B. 291.

SENATE BILL 291: Revises certain provisions governing civil practice in actions in which plaintiff is a nonresident or foreign corporation. (BDR 2-1309)

SENATOR CARE:

I have looked at the correspondence from William Cashill and Randall Tindall's reply and his proposed amendment (Exhibit C, the original is on file in the Research Library), pages 5 through 12. I have suggestions. I am not worried about the constitutionality of the out-of-state plaintiff posting of the bond. Currently, the figure is \$500. It probably ought to be raised to \$1,000. If the defendant can demonstrate circumstances where that figure ought to be raised during the course of the litigation, then I am agreeable to saying the additional undertaking must be ordered. That does take discretion away from the court, but if the defendant is located in Nevada and can make the case, then that figure ought to be increased. The language is unnecessary in laying out the

standard or the practice to be considered for the court to make that determination.

I disagree with the proposed change, on page 12 of [Exhibit C](#) in the language to subsection 4 of the current statute saying that after 30 days, the court "must" dismiss the action. I will make a motion to amend and do pass, the amendment being: Raise the figure to \$1,000 as is contained in the current language of the bill; in section 1, subsection 2 on line 15, leave the language "must be ordered" and take out lines 17 through 22 which talk about what the defendant must show. Leave the language in place on line 33, page 2, where the court "may order" as opposed to "must" because circumstances may vary depending on the case.

SENATOR CARE MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 291.

SENATOR WIENER SECONDED THE MOTION.

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

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CHAIR AMODEI:
Senate Bill 292 is the Uniform Mediation Act.

[SENATE BILL 292](#): Enacts the Uniform Mediation Act. (BDR 3-1114)

SENATOR CARE:

I made the announcement on Tuesday when this bill came before this Committee for work session that I would attempt to communicate with those who have lodged proposed amendments and concerns. Based upon my conversation with Mr. Bruce King, with others and a letter from David I. Nielsen, Arbitration and Mediation Commissioner for the First Judicial District, the Supreme Court mediation program and the Family Court mediation programs will be exempt from this Act. There are possibly other minor issues, and if this bill makes it out of the Senate as amended, I will work with the Assembly on these issues.

SENATOR CARE MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 292.

SENATOR CARE:

The amendment will exempt the Supreme Court mediation program and the Family Court mediation programs.

SENATOR NOLAN SECONDED THE MOTION.

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

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CHAIR AMODEI:

Senate Bill 299 talks about enhancing the traditional violence crimes.

SENATE BILL 299: Establishes provisions relating to crimes against unborn children. (BDR 15-730)

There is material in your work session document, pages 22 through 25 of [Exhibit C](#), showing what Maine does. There is also material requested by Senator Nolan concerning the standard battery, rape and other violent crime enhancements provided to pregnant women. The other issue is the testimony from the victim was in the context of driving under the influence (DUI). In terms of criminal prosecution, there was discussion of the mens rea element which creates a dichotomy in considering the best Committee response for a DUI scenario.

I read the submitted materials and Cotter C. Conway's amendment. We are at the point where there are enhancements in a DUI context and a proposal talking about a separate right of action and the phrase used was "quick child." Mr. Wilkinson, is it a phrase that is not necessarily a term of art but a matter of revised statutes? Is it a term that has been used in other jurisdictions?

BRAD WILKINSON (Chief Deputy Legislative Counsel):

It is not a defined term in *Nevada Revised Statutes* (NRS). Some state courts interpreted "quick child" to mean the mother is aware of the existence of the fetus, that it is moving "quickening." That is the most common definition. Other

courts have interpreted it to mean the fetus is viable. To my knowledge, Nevada courts have not ever interpreted that term.

SENATOR CARE:

I appreciate the passion with which all of the opponents and proponents of this bill testified. If we are going to do anything, the amendment offered by Mr. Conway is the only thing that would address the issue of DUI which was the basis for the bill in the first instance. *Nevada Revised Statute* 200.210 has its origins in legislation dating back to 1911. I did not find any case annotations under that statute, though there was testimony that there have been prosecutions.

SENATOR CARE MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 299.

SENATOR CARE:

The amendment is to delete the bill as a whole and adopt the language contained in the amendment proposed by Mr. Conway.

CHAIR AMODEI:

The motion dies for lack of a second.

Where are we on the discussion of credit cards in S.B. 302?

[SENATE BILL 302](#): Revises provisions governing credit cards. (BDR 8-1173)

William R. Uffelman (Nevada Bankers Association):

I talked with Mr. Wilkinson about whether the amendment we were offering gutted the bill legally and have not heard a definitive response.

MR. WILKINSON:

Senator Titus is on her way and should have an amendment that she is proposing.

SENATOR DINA TITUS (Clark County Senatorial District No. 7):

I met with Brenda J. Erdoes, Legislative Counsel, for her opinion on the effect of these amendments. The word "solely" does exactly what I thought; it guts the bill, but even worse, it establishes they can use universal default charges; they just do not use them alone. They can use them with other things. To add

"solely" would not just take away the purpose of what I want to do; it would move it in the direction of actually putting in statute where they can use these default clauses. I urge you to not include the word "solely"; it would be better to just kill the bill.

I appreciate they want to be sure they can look at other services provided by their bank. I do not mind their recommendation to add language that is not an affiliate or a subsidiary, but I want to narrow it so I have offered an amendment ([Exhibit D](#)). The way it works now is some banks allow you to pay all your bills, like your power bill, at the bank or online. They could argue that would be an affiliation of the bank with the power company because they provide that paying service. We want to narrow the definition of affiliate on page 2 of the new amendment. You have to say the affiliate has the same name of the user or the creditor or the name is sufficiently similar to the user of the credit card that reasonable cardholders would know they are doing business with that same bank. It was a little disingenuous that this was presented as not harming the bill.

MR. UFFELMAN:

I would suggest there was nothing disingenuous about offering "solely" because it did not go to the notion of universal default. Looking at payment characteristics relative to cards issued by other people does not go to universal default. Universal default looks at other activities in which you have engaged.

CHAIR AMODEI:

It is clear that in S.B. 302 we will not be voting on genuineness or disingenuousness; do you have any comments on the proposed amendment?

MR. UFFELMAN:

Looking at the mock-up as offered by the Senator today looks like that is not a problem. The bill-paying services are not part of the discussion.

SENATOR WIENER MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 302.

SENATOR WIENER:

Senator Titus offered two amendments, one just presented and the other one dealing with the prohibitions against cash purchases.

SENATOR HORSFORD SECONDED THE MOTION.

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

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CHAIR AMODEI:

Senate Bill 317 concerns agents for service of process.

SENATE BILL 317: Makes various changes to provisions relating to agents for service of process. (BDR 7-445)

SENATOR CARE:

The Committee members have a proposed amendment. The resident agents and their representatives have agreed on this language and the Secretary of State is no longer involved. In the name of legislative intent, we ought to get a comment from Mr. Scherer. The so-called charging order deals with the rights of a judgment creditor against a stockholder when that would apply and corresponding language changes related to writs of execution and writs of garnishment.

SCOTT SCHERER (Nevada Resident Agent Association):

The proposed amendment removes most of the existing sections of S.B. 317, including the section dealing with the moratorium on corporation sole. It provided the charging order protection amendment. If there is a judgment against a shareholder of a small corporation, you could get a charging order which would allow you to garnish or attach the stream of income to that shareholder but not execute and take away other shares and force your way into a closely held corporation and create disharmony. Small corporations are 75 shareholders or less which is the threshold under Internal Revenue Service rules. This is something that is already available to other business entities, such as partnerships, so it is not something unique. It is just currently not available to corporations. Many small corporations are more like partnerships so that is the reason for this.

There were a few changes to the two sections kept in the bill. Section 3 is renumbered as section 2. There were unnecessary provisions because they are already covered in NRS. Section 2 says if you are in the business of being

a registered agent, you must have a location that is properly zoned under local zoning law for that business. Section 5 is renumbered to section 3.

SENATOR CARE:

This Committee has already passed S.B. 242, the Model Registered Agents Act, with amendments from the Secretary of State's Office. There may be conflicting language, but the model act, unlike the uniform acts, is immensely malleable. I have no objection to the language in section 6.

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

We came to an agreement with the resident agents that we would pull our amendment reserving the right to come back with other language if needed.

SENATOR CARE MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 317.

SENATOR CARE:

The amendment before the Committee is the one contained in the work session document [Exhibit C](#).

SENATOR MCGINNESS SECONDED THE MOTION.

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

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CHAIR AMODEI:

Next is Senate Bill 471.

SENATE BILL 471: Revises provisions relating to the registration of sex offenders and offenders convicted of a crime against a child. (BDR 14-1426)

SENATOR MCGINNESS MOVED TO AMEND AND DO PASS AS AMENDED S.B. 471.

SENATOR NOLAN SECONDED THE MOTION.

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CHAIR AMODEI:

The two amendments are in your work session document. One was to provide the same Tier 3 offender monitoring as we have done in S.B. 232 so they are consistent. The other one requires offenders to pay \$150 to cover costs of obtaining a biological specimen for purposes of registration of sex offenders.

SENATOR CARE:

With the amendment, there is an unfunded mandate because of the \$150 fee. This would require a two-thirds vote, is that correct?

MR. WILKINSON:

Yes that is correct. It would take away the unfunded mandate and create a two-thirds vote requirement.

SENATOR HORSFORD:

Since this was one part of the Governor's proposal, did he not include it in his budget?

SENATOR MCGINNESS:

I will amend my motion; let us take out the \$150 fee.

CHAIR AMODEI:

The amend and do pass is to make it consistent with S.B. 232 and leave out the fiscal provisions. Does the maker of the second agree to that amendment?

SENATOR NOLAN:

Yes.

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

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CHAIR AMODEI:

Senate Bill 553 is next.

SENATE BILL 553: Makes various changes to provisions relating to construction. (BDR 3-960)

The amendment we heard yesterday would replace the bill as originally heard with the amendment provided by Tim Crowley on behalf of his client.

SENATOR WIENER:

I have a disclosure regarding S.B. 553.

Mr. Chair, I would like to disclose pursuant to NRS 281.501 that a client of my company, Wiener Communications Group, is involved in the construction industry. Because the benefit or detriment accruing to my client as a result of the passage of this bill is not greater than that accruing to any other member of the construction industry, I am required to make this disclosure, but am not required to abstain from voting on this bill.

CHAIR AMODEI:

The State Contractors' Board still has concerns regarding staffing. There is an issue of how the existing law is working with respect to corrective actions. The opponents were concerned about fiscal aspects and the trial lawyers think things are working well. My recollection is there have been commitments in past sessions not to visit or revisit this for awhile.

Senator Nolan has requested that we revisit S.B. 299.

SENATOR NOLAN:

Yesterday, I proposed to consider a comparison with Maryland's statutory scheme with what we could do in Nevada and what would be the projected impact on Nevada. There is not ample time; however, I do not want to see S.B. 299 fail. I am sympathetic and was compelled by the testimony. I would like to reconsider S.B. 299 with the amendment that was in the motion by Senator Care.

SENATOR NOLAN MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 299.

SENATOR CARE SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS HORSFORD AND WIENER VOTED
NO. SENATOR WASHINGTON WAS ABSENT FOR THE VOTE.)

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CHAIR AMODEI:

We will go back to S.B. 553 once more.

When we adjourn today, it is my assumption, unless something unforeseen comes up, that we will be adjourned until Monday. For purposes of bills we have not taken specific action on, I would like the record to indicate that S.B. 15 was called up in work session and there was either no motion or it dies for lack of a second.

SENATE BILL 15: Provides that certain governmental employees who enforce local ordinances may be designated as peace officers. (BDR 23-254)

Senate Bill 36, longevity pay for justices of the peace, was called up in work session and there was no motion.

SENATE BILL 36: Authorizes the board of county commissioners to include longevity pay in the compensation of justices of the peace. (BDR 1-269)

Senate Bill 130, which had some eminent domain provisions, was a Nevada Department of Transportation bill and was not heard at the request of the sponsor of the bill.

SENATE BILL 130: Repeals the prospective expiration of the provision relating to the use and sale of certain property acquired by a governmental entity through eminent domain. (BDR S-588)

CHAIR AMODEI:

Senate Bill 204, which was grandparents' rights, was called up in work session. The motion failed for lack of a second.

SENATE BILL 204: Revises provisions governing the granting of the right to visit a child to grandparents and great-grandparents of the child. (BDR 11-806)

Senate Bill 386 has provisions governing mechanics' and materialmen's liens. It was not heard at the request of the sponsors.

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SENATE BILL 386: Makes various changes to the provisions governing mechanics' and materialmen's liens. (BDR 9-1021)

Senate Bill 475 was a Supreme Court request which was withdrawn at the request of the Court. There was another bill that dealt with that matter.

SENATE BILL 475: Revises certain provisions governing policies of insurance for motor vehicles. (BDR 57-1133)

With the exceptions of those bills, every other bill referred to us was heard and every bill that was heard was called up in work session. The record is clear, of those bills I just went through, if they were not heard, it was at the sponsor's request and if there was no action taken, it was because there was no action proposed by the Committee or seconded in work session.

What is the pleasure of the Committee on S.B. 553? Hearing none, this meeting is adjourned at 9:58 a.m.

RESPECTFULLY SUBMITTED:

Lora Nay,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: _____