

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Fifth Session  
May 4, 2009**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:09 a.m. on Monday, May 4, 2009, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was video conferenced to Room 4401 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/75th2009/committees/](http://www.leg.state.nv.us/75th2009/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](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Bernie Anderson, Chairman  
Assemblyman Tick Segerblom, Vice Chair  
Assemblyman John C. Carpenter  
Assemblyman Ty Cobb  
Assemblywoman Marilyn Dondero Loop  
Assemblyman Don Gustavson  
Assemblyman John Hambrick  
Assemblyman William C. Horne  
Assemblyman Ruben J. Kihuen  
Assemblyman Mark A. Manendo  
Assemblyman Richard McArthur  
Assemblyman James Ohrenschall  
Assemblywoman Bonnie Parnell

**COMMITTEE MEMBERS ABSENT:**

Assemblyman Harry Mortenson (excused)

**GUEST LEGISLATORS PRESENT:**

Senator David Parks, Clark County Senatorial District No. 7  
Senator Terry Care, Clark County Senatorial District No. 7

**STAFF MEMBERS PRESENT:**

Jennifer M. Chisel, Committee Policy Analyst  
Nicolas Anthony, Committee Counsel  
Katherine Malzahn-Bass, Committee Manager  
Karyn Werner, Committee Secretary  
Steven Sisneros, Committee Assistant

**OTHERS PRESENT:**

Lee Rowland, Northern Coordinator, American Civil Liberties Union of Nevada, Las Vegas, Nevada  
Sabra Smith-Newby, Director, Administrative Services, Clark County, Nevada  
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association, Mesquite, Nevada  
Chuck Callaway, Las Vegas, Nevada, representing the Las Vegas Metropolitan Police Department, Las Vegas, Nevada  
Steven Silva, Senior Law Enforcement Specialist, Division of State Parks, Department of Conservation and Natural Resources

**Chairman Anderson:**

[Roll called. The Chairman reminded Committee members, witnesses, and members of the audience of Committee rules and protocol.]

We will open the hearing on Senate Bill 125 (1st Reprint).

**Senate Bill 125 (1st Reprint):** Makes changes relating to personal identifying information. (BDR 15-481)

**Senator David Parks, Clark County Senatorial District No. 7:**

[Senator Parks spoke from prepared text ([Exhibit C](#))].

I have passed out an eight-page handout ([Exhibit D](#)) that shows a variety of uses for radio frequency identification device (RFID) cards, documents, pads, access cards, and the like. Many of you may have credit cards with RFID. The information on the credit card can be scanned and used.

I would like to call your attention to the very last page of the handout, which is from Visa. The first line says, "Visa payWave is a quick and convenient payment method that eliminates direct contact at the merchant terminal; it is faster and more convenient than cash and as secure as traditional Visa card transactions." I read other articles, and I was hoping to provide one of those to the Committee, that indicated that that is not quite the case. In some stores that employ this technology, especially convenience stores like 7-Eleven, they were able to read data from as far away as 20 feet. Someone walking along can send out signals that are picked up by a device that is probably no larger than a brick. The reader device can send out waves looking for data, any data that it can find, and from the data skimmed, a stranger can create an identification card, access card, or even get the data from a credit card. I am hoping that Visa, specifically, starts encrypting their data, since there is a lot of data that is not encrypted.

**Assemblyman Gustavson:**

If a reader can read a card from 20 feet away, what happens if a clerk is ringing up a purchase and you walk by? Whose card is the machine going to read, the purchaser's or yours?

**Senator Parks:**

That is a very good question. I would suspect that there is a good possibility that it might be reading mine if I were within the 20-foot radius of the device. On the east coast, gas companies sent out key ring tags that allowed the consumer to wave the little key tag in front of the gas pump, and it automatically read the billing data. My sister had one of those, but she found on her credit card statement that duplicate charges were made. Apparently, the person pumping gas on the other side of the pump was able to get a tank of gas courtesy of my sister's credit card.

**Assemblyman Manendo:**

On the punishment of the category C felony, can you tell me why you came up with category C?

**Senator Parks:**

That was not my choice; it was done by bill drafting when they drafted the bill. My initial reaction was that it was a penalty category a level higher than I intended, but apparently it is consistent with the penalty for theft and fraudulent use of credit cards.

Clark County has requested an amendment. In the Senate, I tried to do a much more general coverage of the concerns that Clark County has; however, when we went into work session, my colleagues informed me that it was much too

broad and needed to be more restrictive. The amendment is very specific, and they feel it is important to have. I do not have a problem with that.

**Lee Rowland, Northern Coordinator, American Civil Liberties Union of Nevada, Las Vegas, Nevada:**

We are here to wholeheartedly support the bill. It is difficult in this day and age of technology to figure out where we can have an expectation of privacy. I think the solution is for legislators to proactively deal with technological issues and lay the groundwork for where we want those policy lines to be drawn. I think this bill does it in precisely the right way. It goes after folks who have criminal intent and appropriately exempts medical emergencies, law enforcement, and triage medical care in disaster situations, so the technology does not end up hamstringing us where it can be useful.

A lot of the language in the bill came from the state of California, where it took them about four years to draft their version of the RFID protection law. Ours tracks a lot of similar exemptions. It is the product of a long policy discussion in California, which we borrowed.

Overall, I think the bill strikes a great balance, and we wholeheartedly support it and urge you to consider its passage.

**Chairman Anderson:**

Since it has to be the intent to commit a crime, is it legal to track what customers buy in a grocery store?

**Lee Rowland:**

It is my understanding that this bill does not outlaw that because it is not an unlawful act. We at the American Civil Liberties Union of Nevada (ACLU) would support the expansion of this bill or a different bill that deals with these issues. The problem is that you would not be going after folks who are committing identification theft; you would be going after private companies searching for information. From an ACLU point of view, it is a threat to privacy interests, but it is a slightly different area than what the bill covers. There is not a criminal intent there.

This bill has been narrowed and does not address all RFID issues. The original bill was quite different and covered all reading by the RFID without knowledge and consent, but there were some complications in getting it to where it needed to be in time.

**Sabra Smith-Newby, Director, Administrative Services, Clark County, Nevada:**

Clark County is in favor of S.B. 125 (R1). We have a proposed amendment in front of you ([Exhibit E](#)). It concerns the RFID tags that are put on baggage tags for the transport of luggage through the airports. In the white, floppy baggage tags that they put on your luggage, there is RFID technology that has some of your personal information: name, destination, where you started from, the plane, and the number of the flight, et cetera. We use this technology to track your bags through the airport and get your bags to your same destination.

Our amendment states, "The provisions of this section do not prohibit the possession or use of any personal identifying information through RFID for the purpose of moving airport passenger baggage at an airport under the jurisdiction of a public body or at ancillary locations supporting the airport's baggage movement processes such as hotel/resorts, convention centers, and transportation companies."

At the end of the amendment, it speaks about the hotel/resorts, convention centers, and transportation companies because of a new program that allows some tourists to check their bags at their hotel. A number of participating hotels are in this program so that customers can check their baggage, spend the day doing whatever they want to do, and the baggage ends up at the airport and on their flight.

**Chairman Anderson:**

The purpose of the tag is not to do anything illegal, is it?

**Sabra Smith-Newby:**

No, it is not to do anything illegal. I think I understand where you are going. The issue that caused us concern and to submit the amendment was that subsections 3 and 4 are also not for illegal purposes, and yet they are exempted from the provisions of section 1. We felt our processes were very similar to those exempted processes in the bill.

**Chairman Anderson:**

I hesitate to think of the long list of groups that might perceive themselves as having a special need for an exemption. You are putting yourself at the front of the pack in section 1, if this were to pass, and in a separate category.

**Sabra Smith-Newby:**

I understand your concern, and we would be happy to go to the back of the pack after triage and other things. Ultimately, this technology is used on 100 percent of the baggage that goes through McCarran Airport. We cannot process bags without it, so we feel that it is essential.

**Chairman Anderson:**

I am trying to see why you are not included.

**Assemblyman Horne:**

What will happen if you are not excluded in this bill?

**Sabra Smith-Newby:**

My understanding is that we need to give the disclosure to travelers that their bags will be tagged with their personal information, and that would be very difficult to do for the many millions of passengers that go through McCarran every year. We were looking at it from an operational standpoint. Most folks may not know that the tag on their baggage has RFID in it. To disclose that slows up the process. We all know what it is like to go through the airport with the lines and delays that you can experience. We are trying to speed up that process; explaining it will add more time.

**Chairman Anderson:**

If I come from one of the major hotels in Las Vegas and trust you with my bag, do you assume any liability when you pick it up at the door? Do you ensure that it is going to get to the plane?

**Sabra Smith-Newby:**

I imagine that we assume the same liability that we assume when you drop off your luggage at the airport.

**Chairman Anderson:**

You regularly inform the passengers at the airport that if they leave their bag unattended you will confiscate it. You also warn individuals carrying bags onto planes that they must go through a screening check system. Why would you not be able to tell people that their bags are going to have an identifying code on them? Would that not be reassuring to them to know that it might arrive with them?

**Sabra Smith-Newby:**

I do not recall if they still give the whole "has this been with you the whole time" speech, now that everything goes through the x-ray machines. I think that has already been streamlined, and this would be going backwards.

**Chairman Anderson:**

If you are offering to pick up an individual's bag at his room so he does not have to carry it, are you going to deliver it at the other end, too?

**Sabra Smith-Newby:**

I am not sure what the procedures are in the casinos. I only know that you can check bags at that location. I do not know if someone comes to your room to pick them up. I image that, for our purposes, we have an entirely closed system whereby other folks, who are not certified with the proper security clearance, would not be in charge of getting the bags to the airport. This is a benefit to customers, and I assume they would be happy to have the RFID technology on their bags. It is a great service that takes a lot off of their minds and allows them to do other things.

This bill deals with those folks who might not know the tag contains information on it. For us, this is a technical amendment that we would like to propose.

**Lee Rowland:**

The original draft of the bill simply provided that "a person shall not knowingly or intentionally...." At that point, we offered the exemptions because it was clear that the bill would prohibit use by law enforcement, medical triage, and all of these other things because these uses are with someone's knowledge or consent. A later version of the bill added the intent requirement: "for the purpose of committing fraud, identification theft, or any unlawful act." The intent requirement makes all of the exemptions redundant. I understand why Ms. Smith-Newby came forward, because of the other exemptions, but I think now those exemptions are unnecessary because of the way the bill has progressed.

**Chairman Anderson:**

We could do away with all of the exemptions because of the intent, which is very clear. No exemptions would make the bill shorter.

**Sabra Smith-Newby:**

I concur with Ms. Rowland's comments. Clearly, there is intent.

**Assemblyman Hambrick:**

I believe Senator Parks is concerned about someone going into a grocery store and possibly having his credit card data scanned. What is the source for the information on airport tags? Is it information that we as passengers put on a form, or where does your information come from?

**Sabra Smith-Newby:**

The information on the tags would come from the passenger when he books the flight. It would be his name, the airport he started from, the flight number, the

airline carrier, his destination, and things that are necessary to move the baggage from one place to another: information about your travel plans.

**Assemblyman Hambrick:**

So that would not include any credit information?

**Sabra Smith-Newby:**

No. To my knowledge it would not include any credit card information, the social security number, or anything of that sort.

**Assemblyman Cobb:**

I was hoping to get a definition of the term "identity theft."

**Nicolas Anthony, Committee Counsel:**

On page 3, subsection 6, starting at line 16 of the bill, it defines identity theft as "a violation of the provisions of [*Nevada Revised Statutes*] NRS 205.463, 205.464, or 205.465." I think it is clearly spelled out in those three sections.

**Assemblyman Gustavson:**

How does a concerned individual find out what information is on one of these RFID chips—whether it is in a luggage tag or credit card—without acquiring one of these card readers? Is there any way we can verify what information is actually on them?

**Senator Parks:**

The issue is that the technology has not advanced enough, so a variety of protocols could determine how it is encrypted, if it is encrypted. A good example is our identification card that was issued by the Legislative Counsel Bureau (LCB). This is called a "passive card," and there is information in the card that says, "He is a good guy, let the doors open to let him in." There could be a variety of other information on a credit card: the credit card number, expiration date, and all of the required account data.

The bottom line is that this is a rapidly-developing technology, and there is a need for protection until such time as all of the RFID cards are properly encrypted, so no one can unscramble it or use it for fraudulent purposes.

I do not know that one can find this out short of contacting the issuer and asking what specific data can be drawn from a credit card by an RFID.

**Chairman Anderson:**

I think it would depend on what the issuing agency has in mind and what information they already have on you.



**Assemblyman Cobb:**

I just wanted to double check the definition of "identity theft." Every section referenced here on identity theft, including page 3, line 17 of the bill, requires an unlawful act or some type of attempt to create a false status, so I do not see why any of these exemptions would be necessary. I will leave that up to the Legal Division.

**Chairman Anderson:**

We will close the hearing on S.B. 125 (R1). We will check with the Legal Division to see if we can remove the exemption language from the bill now that we have made it clear that this is an intent question.

Now we will open the hearing on Senate Bill 169.

**Senate Bill 169: Enacts the Revised Uniform Unincorporated Nonprofit Association Act of 2008. (BDR 7-674)**

**Senator Terry Care, Clark County Senatorial District No. 7:**

Senate Bill 169 is another Uniform Act. This is the Revised Uniform Unincorporated Nonprofit Association Act of 2008 ([Exhibit F](#)). I would tell the Committee that the original act was promulgated in 1996. There are now 12 states that have enacted the original act and the revised act.

We have for-profit entities, corporations, limited liability companies, all manner of partnerships, and we have nonprofit entities. When you speak of a nonprofit entity, what comes to mind is a nonprofit corporation, and there is a chapter in the NRS that governs nonprofit corporations. But if you are not organized as a nonprofit corporation, and you have two or more members, then you are what is called an "unincorporated nonprofit association." There is no NRS chapter that governs these unincorporated nonprofit associations. You are either a nonprofit corporation or, by default, you are an unincorporated nonprofit association. If you are for profit, but you are not organized, and there are two or more of you, then by default, you are a partnership.

The Uniform Law Conference created a drafting committee to develop a uniform act that would include a statutory scheme to govern unincorporated nonprofit associations. Without a statutory scheme, you are left only with case law.

This bill does not create anything; there are thousands of unincorporated nonprofit associations throughout the state and throughout the country. They are quilting clubs, investment clubs, bridge clubs, and all other groups of people who get together to do things. They might rent an exhibit hall for a display or

put on a fund-raising activity and enter into contracts, but what is not clear is whether an individual from the association is acting on behalf of the association or in his own capacity. That is the type of thing that this bill would give comfort and organization to the associations if those questions ever arise.

Again, this does not ask any of these unincorporated nonprofit associations to do anything. We are trying to place the rules in statute as opposed to taking bits of case law from here and there when an issue comes up. These entities are free to keep operating the way they are. Sometimes issues arise, and then the question is how they are going to be treated under the law. That is the purpose behind this Uniform Act.

There are basically six components to the bill. Sections 2 through 10 go to the definition of one of these unincorporated nonprofit associations. I would focus on section 10, which points out there is a list of items that this does not include because there is already a statute or case law that governs it; for example, a trust, a marriage, a domestic partnership, common law domestic relationships, civil union, joint tenancy, tenancy in common, tenancy by the entireties, or an organization formed under any other statute that governs it. This is to make it clear that we are talking about an informal arrangement between two or more people, not including all of those entities that are listed as subsections in section 10.

Section 11 goes to the relation of this act to other existing law. For example, section 11 says in subsection 1, "Unless displaced by particular provisions of sections 2 to 40, inclusive, of this act, the principles of law and equity supplement the provisions of sections 2 to 40, inclusive, of this act." That simply means that this bill would not disturb any existing principles of law or equity dealing with contract, fraud, or agency. All of that remains the same. This act is not intended to affect that fact. As it says here, it is simply supplemented. Subsection 2 of section 11 says, "A statute governing a specific type of unincorporated nonprofit association prevails over an inconsistent provision in sections 2 to 40, inclusive, of this act, to the extent of the inconsistency." For example, if you have a statute that governs a specific type of nonprofit, perhaps a church, and there is a conflict, the other statutes prevail. This does not disturb the application of any existing law. Subsection 3 of section 11 says, "The provisions of sections 2 to 40, inclusive, of this act supplement the laws of this State that apply to nonprofit associations operating in this State." For example, if there is an ordinance that regulates permits for fund-raising activities, it would not be disturbed in any way or take second position; in fact, in the event of any conflicts with this act, it would prevail.

Sections 13 through 15 deal with recognition of the unincorporated nonprofit association as a legal entity and the legal implications flowing from that status. In section 13, we make a distinction between the entity itself, the members, and the managers. That is just common sense, and that is the way it is for corporations and limited liability corporations (LLC); it just clarifies it in statute. If you are a member of a club and you are asked to sign a contract to rent an exhibition hall, this makes it clear that you are doing that on behalf of the association, not on behalf of yourself, personally. Subsection 2 says, "perpetual duration unless the governing principles specify otherwise." That is the same for a nonprofit corporation. Subsection 3 says, "an unincorporated nonprofit association has the same powers as an individual to do all things necessary or convenient to carry on its purposes." Subsection 4 talks about "profit-making activities," or fundraising activities, "but profits from any activities must be used or set aside for the association's nonprofit purposes." This makes sense since it is a nonprofit association.

Section 14 spells out that "an unincorporated nonprofit association may acquire, hold, encumber or transfer in its name an interest in real or personal property."

Section 15 addresses the creation of a document called "a statement of authority," which can be recorded and demonstrates that this is a person who is authorized to act on behalf of the unincorporated nonprofit association if it transfers real property. One of the reasons that this bill requires a two-thirds vote of the members is contained in section 15, subsection 4: a county recorder may require a fee to be paid if a statement of authority is recorded.

Sections 16 through 21 address the contract and tort liability of an unincorporated nonprofit association and its members and managers. Again, that is the same for a nonprofit corporation. You are making a distinction between an act by a member as opposed to an act by the nonprofit association. Section 19 is optional. If one of these entities wishes to do so, it may appoint a registered agent. That is the other reason that there is a two-thirds vote requirement. There would be a fee if the association wanted to file and have a registered agent on record. It does not have to have a registered agent on record. What happens if it does not have a registered agent and the association is going to be sued? Subsection 2 of section 19 spells out that in an action or a proceeding against an unincorporated nonprofit association, any process, notice, or demand may be served on the registered agent, if there is one, on the manager of the association, or in any other manner authorized by law. Section 20 states that any "action or proceeding against an unincorporated nonprofit association does not abate merely because of a change in its members or managers."

Sections 22 through 34 go to internal governance, fiduciary duties, and agency authority. For example, in section 22, "a member is not an agent of the association solely by reason of being a member." Section 25 spells out that "A member does not have a fiduciary duty to an unincorporated nonprofit association or to another member solely by being a member." That is to be contrasted with section 30, subsection 1, which says, "A manager owes to the unincorporated nonprofit association and to its members the fiduciary duties of loyalty and care." Again, going into the internal governance, in section 31 there are notice and quorum requirements for meetings.

Section 32, subsection 1, states, "On reasonable notice, a member or manager of an unincorporated nonprofit association may inspect and copy during the regular operating hours of the unincorporated nonprofit association...any record..." These would be the association's books. That is true in any other entity recognized in statute, but I want to point out in section 32 there is no requirement that an association keep books. Many of them are not going to do that since, oftentimes, they operate informally.

Section 33 says, "may not pay dividends," which makes sense since this is a nonprofit association.

Section 34, subsection 1, states, "Except as otherwise provided in the governing principles, an unincorporated nonprofit association shall reimburse a member or manager for authorized expenses reasonably incurred in the course of the member's or manager's activities on behalf of the association." That language usually applies to all other business entities as well.

Sections 35 through 37 contain provisions for dissolution of an unincorporated nonprofit association. In section 36, termination is much like existing law for nonprofit corporations. Section 37 is the section that deals with merging. If an unincorporated nonprofit association is going to merge with another unincorporated nonprofit association, the language in section 37 is consistent with our merger and conversion statutes in NRS Chapter 92A.

That is it. I do not represent any of these unincorporated nonprofit associations. I want this Committee to understand that this bill does not require any of those associations to do anything differently than what they are doing now. It is simply to say that if an issue ever arises, and there is some question about the association as an entity and an individual acting in his capacity, there is some clarity in statute for the courts to review.

**Assemblyman Horne:**

Do unincorporated nonprofit associations register with the Secretary of State's Office?

**Senator Care:**

They are not required to do that. In section 19, if they want to have a registered agent for purposes of service of process, they may do that. It is like general partnerships; they do not have to register either. I think we amended the Uniform Partnership Act in 2005 to make that an option if partnerships wanted to register, but there is no requirement.

**Assemblyman Horne:**

If they are getting the same recognition as a legal entity to sue or be sued, how does one go about suing them if you cannot find all of the supporting details about whom to sue?

**Senator Care:**

Before the hearing I was approached with that question by a couple of members of the Committee. Section 19, subsection 2 points out that you can go to the registered agent, but what else is there if there is no registered agent? Subsection 2 of section 19 says, "on a manager of the association," but you would have to know who that is, or "in any other manner authorized by law." The reality is, if an unincorporated nonprofit association is doing business or has done something, the plaintiff is in all likelihood going to know who that is. They are usually small, informal organizations.

**Assemblyman Gustavson:**

Can you explain section 40 and why that is in there?

**Senator Care:**

The Uniform Law Commission determined, some years ago, that every uniform act needs to have this language in it. It is boilerplate; I could not begin to explain it. You will find it in every single uniform act.

**Assemblyman Gustavson:**

I did not understand. It says, "The provisions of sections 2 to 40, inclusive, of this act modify, limit and supersede the federal Electronic Signatures in Global and National Commerce Act...." I just do not understand whether it does or does not modify the signature.

**Senator Care:**

I think this has something to do with all of the business that is done over the Internet, like eCommerce, but I can get an explanation for you.

**Assemblyman Gustavson:**

It says the act modifies, limits, and supersedes, so it does not make sense. Is it modifying it or not?

**Senator Care:**

State law cannot modify federal law, so it does not modify.

**Chairman Anderson:**

Do you think that the language in section 40, at line 4, "do not modify," merely recognizes the existence of this federal statute and restates that federal legislation supersedes state legislation?

[Chairman Anderson left the room.]

**Senator Care:**

I agree with that. I just pulled out the Uniform Act with comments from the drafters, and the comment to this section is, "This section responds to specific language of the Electronic Signatures and Global and National Commerce Act and is designed to avoid preemption of state law under that federal legislation."

**Vice Chair Segerblom:**

We will close the hearing on S.B. 169 and bring it back to the Committee.

We will begin the hearing on Senate Bill 353.

**Senate Bill 353:** Revises certain provisions relating to sealed records concerning criminal proceedings. (BDR 14-193)

**Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association, Mesquite, Nevada:**

This bill was brought through the Committee on Judiciary in the Senate as a result of issues we have in law enforcement dealing with background investigations on law-enforcement-officer applicants. The bill does a couple of things. First, under NRS 179.303, it allows us to become one of the agencies permitted to look at and inspect sealed records. Second, it also allows the agencies, once they have looked at the records, to use that information in the determination of whether this individual is qualified to become a law enforcement officer. Third, it requires the individual to disclose the arrest, conviction, dismissal, or acquittal that was the subject of these sealed records.

We in law enforcement strive to hire the best applicants possible, and we do that on behalf of the public and you, the Legislators, because you have entrusted us with a tremendous responsibility. We take very seriously the

magnitude of the powers that you have given us. We want to hire the best individuals possible, so we want to look at applicants' backgrounds. The best indicator of future performance is prior behavior, so we want to look at that prior behavior.

I will give you a very quick example from the situations we have dealt with in the past. We had an agency that hired an individual who had a sealed record for embezzlement. Currently, he is not required to report that. Later on, the agency had an embezzlement problem with this individual. There are other examples of individuals who do not think they have to report sealed-record information, usually individuals that we would not hire as law-enforcement officers if we knew about that information.

**Assemblyman Horne:**

When I first read this, I wondered why there is a need for this bill. I recall that when I applied for my law license, we had to sign a disclosure release. We could have had information sealed by the United States Supreme Court and it would still have been available. If we had not signed the release, we would not have received our license. I do not understand why that is not being done now; why cannot law enforcement do the same thing? You could tell the applicant that part of the application process is voluntarily letting us have permission to access all relevant information, including sealed records.

**Frank Adams:**

We do that in the normal course, but under NRS 179.301, we are not specifically authorized to ask for those records to be unsealed. That is what we are looking for because of the issues we have had in the past. The individual believes, if his record is sealed, he does not have to report it. That is one of the conflicts. If an applicant is asked if he has ever been arrested, and he has had his record sealed, he believes he does not have to disclose that he has been.

**Assemblyman Horne:**

I understand that, and I believe that is correct. You do not have to disclose. But, at the same time that I knew I did not have to sign a full-disclosure release, I also knew that if I did not sign it, I was not going to get my license. It was clearly understood that I was signing this disclosure in order to get my license. It was part of our character and fitness background check. While they may not be required by law to disclose it, applicants could easily be made to understand that the likelihood of getting employment with that department is slim-to-none without it. You are not going to hire anyone about whom you cannot do a full and complete background check. The individual can make that decision.

I do not think that there needs to be a law that says you have to disclose, particularly when there is no penalty for nondisclosure in this bill. If you hire him and later find out that he was convicted of embezzlement, you are going to fire him anyway, or prosecute him for the crime he committed under the color of authority. I do not understand the need for the bill. I do not know why another mechanism has not been utilized.

**Chuck Callaway, Las Vegas, Nevada, representing the Las Vegas Metropolitan Police Department, Las Vegas, Nevada:**

I talked to our new-hire background investigators. They explained why this bill would be beneficial by telling me about one of the cases they had. This was a case where an applicant had a sealed record, and he told the background investigator, "Oh, I got a driving under the influence (DUI) 10 years ago, and I had that record sealed." Then later, an ex-spouse or someone came forward and told the investigator that the applicant did not have a DUI; he was arrested for vehicular manslaughter. We would not hire a person because of that particular crime, but if he had a misdemeanor traffic offense that had been several years prior, he might still be hired. So the ability to unseal that record and see that person's actual conviction would be important to the background investigator, especially when the applicant is claiming one thing and someone else is claiming something else.

**Assemblyman Horne:**

Why not require the person to voluntarily release his records in the application process instead of making a law? I do not think you are precluded from doing that.

**Frank Adams:**

I think you are correct, but what this allows us to do, under NRS 179.301, is to unseal the record and look at it when we discover a sealed record that has not been disclosed in the course of our investigation. We can then use it as part of our determination in the selection process. It would require a person to let us know of all sealed records. Right now, it is not required, and many people believe that they are not required to disclose a sealed record on their application.

**Steven Silva, Senior Law Enforcement Specialist, Division of State Parks, Department of Conservation and Natural Resources:**

Maybe I can help clarify this. A few years ago, a candidate, who had prior convictions, did not disclose them since he thought that his record was sealed and inaccessible in another state. As part of the investigation, we determined that this conviction existed. The nature of the conviction was such that the individual could not be licensed as a peace officer in this state. Had that



disclosure been made and the process to access the sealed records been easier, it would have allowed us to make a fully-informed decision on hiring this individual. If we had not gotten that information, we would have hired someone whom we could not legally license as a peace officer in Nevada. We consider this an important issue, although it is not something that a small agency runs into very regularly. We have had experience with this issue and believe that being able to go to the holder of the record, the courts, and elsewhere to get full disclosure of prior conduct allows us to make a very important hiring decision.

**Vice Chair Segerblom:**

Does this bill limit the types of jobs you are able to inquire about? Will you have this right with anyone who wants to work for law enforcement or just for a person who is going to be a peace officer?

**Frank Adams:**

The bill says an applicant for employment with a law enforcement agency, so that would include everyone who works for that agency. It is important for us to know the type and character of the applicant because of the sensitive nature of the issues we deal with in law enforcement.

**Vice Chair Segerblom:**

So, hypothetically, that would be a secretary, dispatcher, or anyone?

**Frank Adams:**

That is correct. But again, the understanding is these individuals have access to record information regarding very sensitive types of situations.

**Chuck Callaway:**

I have nothing further to add, except that we support this bill.

**Assemblyman Carpenter:**

As I look at this, there are two parts to it: one gives you the authority to do it, and the other section says that anyone who applies for employment needs to disclose everything that has happened, if it was sealed. You do not think that the second part takes care of it? You want to be able to look at it even after they have disclosed it? How will that work?

**Frank Adams:**

In the course of our investigation, if we find information that would lead us to believe there is a sealed record not disclosed to us, we would be able to open the record and get the information. We would confront the applicant about the

nondisclosure and remind him that the law says he has to disclose all sealed records.

**Vice Chair Segerblom:**

Assuming there was something sealed, would there be a public record somewhere that you would run into when you did the background check?

**Frank Adams:**

On occasion, we find the record of the arrest, but there is no disposition. The agency where the arrest took place may know that it was sealed. It could be in the criminal repository in another state where an arrest without a disposition may show on a listing. We need to have the ability to go in and look at that sealed record.

**Vice Chair Segerblom:**

This law just applies to law enforcement. Does it clarify to which law enforcement agencies it applies in Nevada?

**Frank Adams:**

Under section 1, subsection 3, it says, "As used in this section, 'law enforcement agency' has the meaning ascribed to in NRS 277.035." I believe that is a laundry list of the law enforcement agencies which are included.

**Vice Chair Segerblom:**

I will close the hearing on S.B. 353 and bring it back to Committee.

We are adjourned [at 9:30 a.m.].

RESPECTFULLY SUBMITTED:

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Karyn Werner  
Committee Secretary

APPROVED BY:

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Assemblyman Bernie Anderson, Chairman

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

**EXHIBITS**

**Committee Name:** Committee on Judiciary

**Date:** May 4, 2009

**Time of Meeting:** 8:09 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
S.B. 125 (R1)	C	Senator David Parks	Written testimony
S.B. 125 (R1)	D	Senator David Parks	Handout on radio frequency identification devices
S.B. 125 (R1)	E	Sabra Smith-Newby	Proposed amendment
S.B. 169	F	Senator Terry Care	Uniform Unincorporated Nonprofit Associations Act of 2008