

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

**Seventy-Fifth Session
May 12, 2009**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:06 a.m. on Tuesday, May 12, 2009, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced 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/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblyman Tick Segerblom, Vice Chair
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 Harry Mortenson
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

COMMITTEE MEMBERS ABSENT:

Assemblyman John C. Carpenter (excused)

GUEST LEGISLATORS PRESENT:

Senator Allison Copening, Clark County Senatorial District No. 6

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:

Scott Scherer, representing Nevada Registered Agents Association,
Carson City, Nevada
Scott Anderson, Deputy for Commercial Recordings, Office of the
Secretary of State
John Cracchiolo, Executive Director, Nevada Catholic Conference,
Reno, Nevada
Tim O'Callaghan, Henderson, Nevada, representing Diocese of Las Vegas,
Las Vegas, Nevada, and Nevada Catholic Conference,
Reno, Nevada
Robert Compan, Public Affairs Chairman, March of Dimes Foundation,
Las Vegas, Nevada
Michelle Gorelow, Director of Program Services, March of Dimes Nevada
Chapter, Las Vegas, Nevada
Josh Martinez, Officer, Office of Intergovernmental Services, Las Vegas
Metropolitan Police Department, Las Vegas, Nevada
Chuck Callaway, representing the Las Vegas Metropolitan Police
Department, Las Vegas, Nevada
Matt Alberto, Captain, Deputy Chief, Investigations Division, Department
of Public Safety
Kristin Erickson, representing Nevada District Attorneys Association,
Reno, Nevada
Tom Roberts, Lieutenant, Director, Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department, Las Vegas, Nevada
Jason Frierson, Chief Deputy Public Defender, Clark County Public
Defender's Office, Las Vegas, Nevada
Orrin J. H. Johnson, Deputy Public Defender, Washoe County Public
Defender's Office, Reno, Nevada
Rebecca Gasca, Public Advocate, American Civil Liberties Union of
Nevada, Reno, Nevada
Michael McAuliffe, representing Nevada National Organization for the
Reform of Marijuana Laws, Las Vegas, Nevada

Chairman Anderson:

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

Let us begin with Senate Bill 334 (1st Reprint).

Senate Bill 334 (1st Reprint): Eliminates the formation of new corporations sole. (BDR 7-1004)

Scott Scherer, representing Nevada Registered Agents Association, Carson City, Nevada:

I am here to present S.B. 334 (R1). This was a Senate Judiciary Committee bill. Chairman Care was kind enough to assist us with this bill, and we are here to give you a brief overview of it. This bill would limit the ability to create a new corporation sole in the State of Nevada. A corporation sole is so named because it is different from a corporation aggregate. Originally in Nevada, a corporation had to be an aggregation of more than one individual. In fact, if you go back in time, it used to require three incorporators and three directors to form a corporation in Nevada. Now you only need one director and one officer. The distinction between the corporation sole and corporations has disappeared somewhat, even for a nonprofit corporation. Today, you can form a nonprofit corporation with a single officer and a single director. The history of corporations sole is they were originally created under canon law and were creatures of the church, not of the state. When the Church of England split off, corporations sole became creatures of the English Common Law, which descended down to the United States. The statutory requirements governing corporations now supersede the common law, but their history of being creatures of the church, then creatures of common law, is what has led to many false claims and scams used by promoters.

I have a packet of information ([Exhibit C](#)), including an amendment. The packet begins with "Corporations Division promotes crackdown on fraud." This is from the Washington Secretary of State in the state of Washington. They are proposing to prohibit the creation of new corporations sole for the very reasons we are proposing that on behalf of the Nevada Registered Agents. On the second page, and the next couple of pages, is a news release from the Internal Revenue Service (IRS) warning of the corporation sole tax scam. Using a corporation sole, declaring your family or business as a church, and claiming that you practice religion within your family or business has become a way of trying to avoid taxes. It has been listed on the IRS' dirty dozen list of tax scams, and I have included information about these promoters and what they are saying about corporations sole.

Scott Anderson can tell you about the pressure that the federal government has been putting on the states that still allow corporations sole. This is an attempt on our part to clean up Nevada's corporate code. We, as the Nevada Registered Agents Association, want Nevada to be a good place to do legitimate business but not to have a reputation as a place where you can perpetrate scams on the public or the government. That is the purpose of the bill.

We had some concern about the bill by the Catholic Church. We met with their representatives yesterday. We worked on a proposed amendment and we have come up with one. The proposed amendment would allow the creation of new corporations sole as long as they were affiliated with, and subordinate to, a current corporation sole. This would allow the Roman Catholic Diocese of Las Vegas (Dioceses) to still create its parishes as corporations sole under it. It would require an attestation of the actual affiliation between the current corporation sole and the new corporation sole—being able to confirm the relationship to allow that new corporation sole to be created—to assist the Secretary of State's Office in understanding the relationship. It would allow that up until July 1, 2011. It would then sunset and need to be revisited in the next session if there was a need to continue creating new corporations sole.

We think this would be a very positive step in the right direction to eliminate these entities that the IRS has had so much trouble with and get Nevada off the list of states that allow these scams to be perpetrated. The problem is that many corporations sole are legitimate and are used for religious purposes, but there have been people who are taking advantage and using them for scams. As I mentioned earlier, the presiding bishop or the presiding authority of the church can be the sole officer and director of a nonprofit corporation to achieve the same legitimate ends that the church wants to accomplish. That is why we brought this bill forward.

Chairman Anderson:

Do you have a list of how many states still allow the traditional corporation sole?

Scott Scherer:

I do not know the exact number; I think it is less than ten now.

Scott Anderson, Deputy for Commercial Recordings, Office of the Secretary of State:

The Secretary of State supports the efforts to minimize the use of Nevada entities for illegal purposes. As you may recall, in November 2006, our office participated in hearings before the U.S. Senate Permanent Subcommittee on Investigations of Homeland Security. During that hearing, representatives of the

IRS and the Treasury reported that Nevada corporations sole were being used to evade taxes and other federal requirements. Also, the National Association of State Charity Officials has reported similar abuses and scams involving bogus charities being fronted by corporations sole. This bill would limit the creation of corporations sole, and we support that. The sunset would allow those that are currently trying to put together their parishes under corporation sole law to do so, and then, if necessary, they could go ahead and extend that sunset next session. Again, we are supportive of this bill.

Scott Scherer:

I missed one point on the amendment. The other thing the amendment does is put back the ability to reinstate a revoked corporation sole, so that if for some reason an existing corporation sole missed a deadline and the corporation was revoked, it can now be reinstated. The original bill did not allow for the reinstatement of a revoked corporation sole.

Chairman Anderson:

This section is going to have its own sunset on it?

Scott Scherer:

There will be a sunset just on the ability to create a new corporation sole, not on the ability to reinstate a revoked corporation sole. That will be a permanent law until the Legislature decides to change it.

Assemblyman Segerblom:

Why would the resident agents be bringing forward a proposed law dealing with corporations?

Scott Scherer:

The registered agents care about creating new business entities in the State of Nevada and acting as registered agents for those entities. They want Nevada's business laws to be friendly, to encourage more companies to incorporate or form here. But there is a line, and they believe strongly that we need to make sure Nevada is friendly but does not cross the line, and that it is not a place where it is easy to perpetrate scams. Their concern in bringing this forward is simply to try and strengthen Nevada's corporate laws and its reputation as a good place to do business but not a good place to do things illegally.

John Cracchiolo, Executive Director, Nevada Catholic Conference, Reno, Nevada:

We are in support of the bill as amended. We had the opportunity to work with Mr. Scherer, and we are satisfied with the bill. It gives the Diocese an

opportunity to make evaluations at the parish level, which is exactly what we were looking for. We are in support of the bill.

Tim O'Callaghan, Henderson, Nevada, representing Diocese of Las Vegas, Nevada, and Nevada Catholic Conference, Reno, Nevada:

I am here on behalf of the Diocese representing Bishop Pepe. I, too, am here to support the bill with the amendments. I spoke to members of the Committee, and we think the sunset provision will give us ample time to explore and fully understand the effects of S.B. 334 (R1) on the Diocese.

Assemblyman Cobb:

I am still trying to understand if you are in favor of this bill or just in favor of the amendment that you feel gives leniency or preference to the Catholic Church?

Tim O'Callaghan:

In its present form, I would be opposed to the bill. According to canon law, the current law fits what we do. It allows the bishop to have full control of property and temporal property as well. I have spoken with Secretary of State Ross Miller, Scott Anderson, and Derek Rowley of the Resident Agent Association, and it is not that we do not want to get Nevada out of the shadow, but we need to be concerned about how it is going to affect the church. We only found out about this bill six weeks ago when it passed the Senate. All of the parishes in the Diocese of Stockton are formed under corporation sole. We would like the opportunity to explore that. That is why we opposed the bill in the beginning. But with the amendments proposed by the Association, and through Mr. Cracchiolo's and Mr. Scherer's work, we think we can accomplish that exploration by the 2011 Session.

Chairman Anderson:

The concern raised by the IRS regarding the use of shell programs to avoid income tax is not a new question that the church deals with.

Tim O'Callaghan:

I now understand the need for this legislation, and I believe the bishop does, too. We need that time to get our house in order.

Assemblyman Gustavson:

How many denominations or churches other than the Catholic Church might be affected by changing this corporation sole law?

John Cracchiolo:

I do not know. I believe there are about 500 of these organizations that exist in Nevada. I cannot give you an exact breakdown of the denominations.

Assemblyman Gustavson:

That is close enough.

Scott Scherer:

This amendment would allow all denominations to continue to create new corporations sole as long as they are related to an existing corporation sole. This is not an amendment that just applies to the Catholic Church; it applies to any corporation sole that currently and legitimately exists.

Assemblyman Gustavson:

I see in the amendment that it allows any existing relationship to continue as a corporation sole through 2011, at least, but what I am concerned about is any new independent churches that are started. If this is passed with the amendment as it is now, would they be able to start corporations sole?

Scott Scherer:

They would not be able to create new corporations sole, but they could still create a nonprofit corporation with a single director and a single officer under Nevada's nonprofit corporation law. The changes in nonprofit corporation law have made the corporation sole unnecessary. The Catholic Church has a long tradition and history of it under canon law. For new churches, there really is no need to create a corporation sole because Nevada's nonprofit corporation laws allow them to do all of the same things.

Some of the states that have eliminated corporations sole have required an automatic conversion to nonprofit corporations. We are not aware of any issues or problems with the conversions.

Assemblyman Cobb:

That last point is what we are concerned about. Since everyone is not required to switch over—especially religious denominations—we are treading on the First Amendment. If all denominations were required to make the change, I could understand that, but you seem to be getting dangerously close to infringing on First Amendment rights.

Scott Scherer:

The bill as amended, if the amendment is accepted, would simply allow existing corporations sole to create new subordinate corporations sole. It would not allow anyone who is not currently a corporation sole to create a new corporation sole, so it treats everyone equally in that regard. It allows them to build within their existing organization, and it sunsets to allow time for those who have other units they want to incorporate as corporations sole, if that is the form they have chosen.

Assemblyman Cobb:

But, at the exclusion of other religions that come along. That is the point I am making.

Scott Scherer:

I understand. It would prohibit the creation of new corporations sole. Originally, corporation sole was a creature of canon law, but it is now a creature of the state and statute. The Supreme Court has said that the states can put limits on what corporations can do. For example, the limits put on political contributions by corporations have been upheld against First Amendment challenges.

Chairman Anderson:

We will close the hearing on S.B. 334 (R1).

Mr. Cobb has some concerns about the bill in terms of its constitutionality. With the amendment, I think we can move forward with the bill. The Chair will entertain a motion.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS
SENATE BILL 334 (1st REPRINT).

ASSEMBLYWOMAN PARNELL SECONDED THE MOTION.

THE MOTION FAILED. (ASSEMBLYMEN COBB, GUSTAVSON,
AND MCARTHUR VOTED NO. ASSEMBLYMEN CARPENTER,
HAMBRICK, HORNE, AND MORTENSON WERE ABSENT FOR THE
VOTE.)

The next bill on the agenda is Senate Bill 350 (1st Reprint).

[Senate Bill 350 \(1st Reprint\)](#): Makes various changes relating to business.
(BDR 7-1118)

We will open the hearing on S.B. 350 (R1). The State Bar apparently is not able to make it today, so we can look at their bill with the handout that has come with potential amendments ([Exhibit D](#)). We are going to try to do it from this memo that Mr. Kim has sent. I am sure the date on it is supposed to be May 12, 2009, and not April 12, 2009. There is a one-page cover and the larger document is going to explain the bill. Does the Secretary of State want to go through this?

Scott Anderson, Deputy for Commercial Recordings, Office of the Secretary of State:

I will be here to answer any questions you may have related to the filing of documents with our office. I do not have the overall knowledge of the bill and the legal ramifications nor the authority to speak on behalf of the State Bar Association. I can only speak to the amendment and the filing requirements.

Jennifer Chisel, Committee Policy Analyst:

I am not advocating on the bill. What I can do is walk you through the bill based on the memo ([Exhibit D](#)). Mr. Kim has it set out by sections, so we can start with sections 1, 81, and 82. There is an increased information and disclosure burden on registered agents and a potential conflict with duties and privileges of attorneys. Because of that, the Executive Committee of the State Bar has recommended certain revisions to several statutes. If the registered agent is an attorney, he would not have to notify the Commissioner of the Division of Financial Institutions. If there were privileged communications between an attorney who is a registered agent and a client, those communications would not have to be disclosed.

Then we move on to sections 1.5, 15.7, 17, 17.4, 27.5, 36.4, 36.6, 39.3, 39.5, 41.5, 49.4, 49.6, 52.5, 56.2, and 56.6. These are amendments that were proposed by the Secretary of State's Office. They deal with penalties for failure to organize as an entity. The focus is to increase the fines to not less than \$5,000, instead of \$500. This would be for persons claiming to be a Nevada entity without having filed the appropriate documents.

Chairman Anderson:

Mr. Anderson, is there something in this bill that you think the Secretary of State's Office needs?

Scott Anderson:

There are amendments that we have proposed ([Exhibit E](#)), and this morning I brought in an addendum to those amendments ([Exhibit F](#)) due to some concerns that were brought up after the delivery of the amendments.

We feel that the bill is a good bill. We are supportive of the Bar Association's efforts to enhance the business-friendly statutes of the state. It is unfortunate that they are not with us this morning, because I feel it strengthens a lot of language and makes clarifications. Again, I do not have the overall knowledge of exactly what they are trying to do so that I could present it on their behalf.

As far as our amendment is concerned, there were provisions that we felt were necessary for the Secretary of State. There are entities in the state, both foreign and domestic, that are not qualified to do business in the state but are doing business anyway. There are also those purporting to be a corporation, or other business entity, doing business in the state without being registered with our office. Currently, when the Secretary of State is made aware of these types of entities, he notifies the Governor, and the Governor notifies the Attorney General, who might take action. This addendum takes the Governor's Office out of the loop and allows the Secretary of State to go directly to the Attorney General or the district attorney and ask that action be taken against those entities. Although the document that you have in front of you looks quite voluminous, it is basically a revision of the same provisions throughout the different chapters of Title 7 of the *Nevada Revised Statutes* (NRS).

Assemblyman Segerblom:

The penalty that you are requesting—not less than \$5,000—does not apply if you let your articles of incorporation or your registration lapse. It applies if you act like you are a Nevada corporation but have never filed articles of incorporation. Is that correct?

Scott Anderson:

Yes, that is correct. However, it could potentially be used when an entity goes into revocation and its right to do business has been forfeited in this state. The intent is to go after those who are putting up a shingle in this state and not properly registering with the Office of the Secretary of State. If they do not register, there is no record on file of their registered agent or their officers and directors.

Chairman Anderson:

Did you say there was an additional handout besides the amendment?

Scott Anderson:

Yes. There is an addendum ([Exhibit F](#)) dated May 12, 2009, entitled "Addendum." It makes a change to subsection 1 of each of these sections to fine the entity that has not filed articles of organization, or other articles, with our office. There was some specific language that related directly to certain NRS citations, but the Bar Association was uncomfortable with them. They felt that a simple mistake could trigger the fine, and that is not the intent. The intent is to fine those who have not filed with our office.

Assemblyman Segerblom:

How would you determine whether the \$5,000 fine is going to apply to a corporation that has just lapsed as opposed to someone who never filed to begin with?

Scott Anderson:

It would be based upon the information received. Generally, this type of action would be triggered by a complainant who has done business with an entity in this state that is not on file. It is also possible to do business with an entity whose right to do business in this state has been forfeited or revoked. It would all depend on the facts before us, and who our deputy attorney general wants to go after. We do not expect to go after a tremendous amount of entities, but this gives us the opportunity to get them into compliance.

Chairman Anderson:

A minimum \$5,000 fine is a pretty high amount. We are not talking about a maximum fine.

Scott Anderson:

The reason is that the initial amount was \$500, and neither the Attorney General nor the district attorney is going to take any type of action for \$500. We looked at a number of other states, and Connecticut had recently enacted the same type of statute. Their minimum fine is \$10,000 and all back-filing fees. It could be more substantial. The intent here is to go after those who will not comply and who are doing business in contravention of Nevada's statutes. We felt that it was necessary to have that hammer.

Chairman Anderson:

It is still a pretty heavy step.

We will close the hearing on S.B. 350 (R1) and bring it back to Committee.

Let us turn our attention to Senate Bill 383 (1st Reprint).

[Senate Bill 383 \(1st Reprint\)](#): Requires certain warnings regarding the use of certain tobacco products. (BDR 40-1104)

**Robert Compan, Public Affairs Chairman, March of Dimes Foundation,
Las Vegas, Nevada:**

I would like to turn our attention to southern Nevada for our Director of Program Services, Michelle Gorelow, to explain the bill.

Michelle Gorelow, Director of Program Services, March of Dimes Nevada Chapter, Las Vegas, Nevada:

I am here today in support of S.B. 383 (R1), which would require smoking-cessation signs at the point of sale of tobacco retailers. In Nevada, 14.4 percent of babies are born preterm. That ranks us 42 compared to other states and translates to about 5,700 babies that are born preterm. We feel that a sign at the point of sale of tobacco, warning pregnant women not to smoke, will help educate them and family members and encourage them not to smoke, so that, hopefully, their babies will be born full term.

In 2007, 18.8 percent of women in Nevada, between the ages of 18 and 44, reported smoking. One of the most encouraging times of a woman's life to quit smoking is when she is pregnant. Smoking is known to be one of the leading causes of premature birth. In 2001, the Surgeon General reported that smokers are more likely than nonsmokers to have babies who are born premature, experience low birth weight—which is less than 5.5 pounds—are stillborn, or die because of sudden infant death syndrome (SIDS).

[Read from written testimony ([Exhibit G](#)).]

Assemblyman Horne:

The problem I have is that the pack of cigarettes that I borrowed already has the Surgeon General's warning on it, which says that it may complicate pregnancy. Additionally, does not the sign at the point-of-sale target the person who is already a smoker? The first-time smoker is not going to walk into a convenience store, purchase a pack of cigarettes, see a sign, and say, "Oh, wait a minute." The person who reads the sign has probably already started smoking, is already addicted to smoking, and has already seen the labels that are on the cigarettes—which are federally mandated. I do not know if having a sign will necessarily target the person you want to educate. What data do you have that shows that signage actually targets pregnant women who are not smoking, but may start?

Michelle Gorelow:

You are correct. There is a health warning on tobacco packaging; however, a sign posted at the point of sale would educate more than just the woman. It would educate her family, and that is the support system to help encourage her to stop smoking while she is pregnant. I do not have any data to show how many women who smoked before pregnancy have stopped, because that information is not available. Nevada does not participate in the Pregnancy Risk Assessment Monitoring System (PRAMS). That program talks to women before they become pregnant, during pregnancy, and after pregnancy to find out if they were smoking beforehand and if they were able to quit. A sign would not

only educate her, give her an incentive to quit smoking, and remind her how it can be detrimental to the health of her baby, but it can also educate her family members who can encourage her to quit while she is pregnant.

Assemblyman Horne:

Over time, we have discovered the various risks that occur with smoking, and it is mind-boggling today that people do not already know these risks exist. I do not know if it is redundant to put up a sign. It is like debating seatbelt laws when we have a 90-percent-compliance rate. Are there people who really still need to be educated about the risks of smoking?

Michelle Gorelow:

In my opinion, yes, there are people who still need to be educated. Again, this sign would also remind the occasional smoker, many of whom may be teenagers or in college, that smoking during pregnancy can cause birth defects. I agree that there are some people who are addicted and will not stop just because they are pregnant. I get phone calls and meet people who are smoking, and I talk to them about smoking during pregnancy. I am proud to say that I helped one pregnant woman, who came to our office; quit smoking by educating her on the birth defects that may result from smoking.

Robert Compan:

I want to go on record to say that the bill was amended. Ms. Gorelow mentioned point-of-sale during her testimony, but we worked with the opponents of the bill in the original House on an amendment to correctly reflect the language in section 1 of the bill.

I also want to address one of Assemblyman Horne's questions. The current signage is going to be placed in retail establishments under the alcohol warning. If we can prevent one or two women in the State of Nevada, or their significant others, from smoking during pregnancy, it is worth it. It will not cost the retailer anything.

Chairman Anderson:

We will close the hearing on S.B. 383 (R1).

I have to agree with Mr. Horne that it may not do much good, but if it prevents even one pregnant woman from smoking, then it is worthwhile.

The Chair will entertain a Do Pass motion.

ASSEMBLYMAN SEGERBLOM MOVED TO DO PASS
SENATE BILL 383 (1st REPRINT).

ASSEMBLYMAN MANENDO SECONDED THE MOTION.

THE MOTION FAILED. (ASSEMBLYMEN COBB, GUSTAVSON, HAMBRICK, HORNE, AND MCARTHUR VOTED NO. ASSEMBLYMEN CARPENTER AND MORTENSON WERE ABSENT.)

Assemblyman Gustavson:

I do not think the law is needed.

Chairman Anderson:

Let us turn to the last bill of the day, Senate Bill 262 (1st Reprint).

Senate Bill 262 (1st Reprint): Prescribes penalties for the cultivation of marijuana in greater amounts than is allowable for medical use. (BDR 40-1107)

Senator Allison Copenig, Clark County Senatorial District No. 6:

The purpose of S.B. 262 (R1) is to put provisions in place for people who are cultivating marijuana for profit. As Officer Josh Martinez will explain, individuals are targeting Nevada to cultivate their marijuana within the state due to the lack of laws to prosecute. Senate Bill 262 (1st Reprint) was brought to me by the Las Vegas Metropolitan Police Department (Metro), and Josh Martinez will walk you through the specifics of the bill.

When this bill was first presented in the Senate Judiciary Committee, I received emails from a few people who were concerned that this bill was going to take away the rights of patients to grow marijuana for medical purposes. I assure you it is not. In fact, I purposely included in the bill a stipulation that medical-marijuana patients would not be affected. I am a cancer survivor myself, and, although I did not use marijuana during my chemotherapy treatments, I know how important this is for some people for pain-management purposes. With that, I will tell you that a few people in opposition to this bill are the very people who have been arrested on more than one occasion for growing large amounts of marijuana claiming that they are growing it for medical purposes, but in fact were believed to be distributing on the streets.

This bill does not necessarily target this category of people as much as it is aimed at gangs and drug cartels that have moved into Nevada due to the lack of cultivation laws in our state. These people use abandoned homes or rental homes in which to grow their marijuana. They cultivate their crops in a swift manner, destroying the homes as well as creating a health risk to the public.

I believe that pictures have been distributed to you ([Exhibit H](#)). Officer Martinez will speak to that. We also have Chuck Callaway here to answer any questions.

Josh Martinez, Officer, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department, Las Vegas, Nevada:

In reference to S.B. 262 (R1), during the interim between 2007 and now, Metro, as well as other law enforcement in southern Nevada, has experienced an increase in marijuana grow operations. Marijuana has become a lucrative product on the streets as well as around the country. Just to give you an idea, it goes for roughly \$4,500 a pound. Each plant can generate different amounts of marijuana, depending on the size. It is like growing any other crops, like corn, it depends on the season that you have.

I am going to move to the bill. We do not feel the current *Nevada Revised Statutes* applies to cultivation of marijuana. We have possession, simple possession, controlled substance marijuana, possession with intent to sell, and trafficking in marijuana—which is over 100 pounds. Currently, we use possession with intent to sell, but individuals who are using rental homes to grow the marijuana are not selling out of their residences. They do not want to sell out of the house that they are using to grow the marijuana because they do not want people to know where their crop is. That could lead to home invasions or other violence. You will see from some of the pictures ([Exhibit H](#)) that have been distributed that they will booby-trap the homes just in case they have invaders or a confrontation around that residence.

For the bill, we went around the country looking at other states that had cultivation laws. The state of Kentucky referenced marijuana plants specifically. We felt that would get at the actual growing of the plants—the possession of plants being grown for cultivation purposes—since that is what we are trying to do.

We worked on the Senate side with Jason Frierson as well as others who had issues with the original bill. In section 1, subsection 2, paragraph (a), we went from 1 to 25 marijuana plants as a gross misdemeanor. Originally, we started with a category E felony; however, after compromising, we felt that gross misdemeanor was an appropriate place to start. In that way, we do not move into the felony classifications immediately. We understand, as Senator Copening stated, that people may need medicinal marijuana. We feel this bill gets at the cultivation.

Assemblyman Kihuen:

What is the current punishment for someone who is caught with this amount of marijuana under the current statutes?

Josh Martinez:

As I stated earlier, the way we would charge now depends on the weight of the plants. We would do a possession-of-a-controlled-substance marijuana charge. The problem with that is that an individual, who has more than one ounce of finished-marijuana product, would be charged with a felony if caught on a regular patrol or other type of law enforcement activity. In the case of cultivation, if they had more than one ounce, they would also be charged with a felony. The problem is that individuals, having 25, 50, or 800 plants and producing and distributing all of this marijuana in our communities, are being charged at the same rate as someone with possession of over one ounce of finished product.

Vice Chair Segerblom:

My understanding is if you charge someone with possession, you have to look at the marijuana, take out the stems and things, and deal with the actual buds of the marijuana. Is that correct?

Josh Martinez:

We do use the actual marijuana, which is easier to test, but if we have a cultivation that is being grown anywhere in Nevada, we would have to test the actual plant in a lab for tetrahydrocannabinol (THC). The leaves will not test in the field test that we use when we book someone. It would have to be tested at a lab. The finished product, since it is dried and natural, will register in the field-testing kit that we use.

Vice Chair Segerblom:

Is possession of marijuana anything that has THC in it, or does it have to contain a certain percentage?

Josh Martinez:

Under the NRS definition, the whole plant is the actual marijuana, including the stem and everything.

Vice Chair Segerblom:

With respect to a charge of possession, why do you take out the stems and things and not weigh the whole plant?

Josh Martinez:

We do weigh the entire plant.

We feel that this law gets to the physical cultivation, the actual growing of the plant. Prior to 1999, speaking with district attorneys in southern Nevada, we did charge for manufacturing or cultivation. In 1999, when the manufacturing

of methamphetamine statute was created, it included everything regarding manufacturing, except marijuana. It removed the marijuana criteria for manufacturing. In 2001, the Nevada District Attorneys Association came to the Legislature to put back into NRS what had been removed, which would get at the manufacture and cultivation of marijuana. That bill did not pass out of the Legislature, so we looked at the minutes and did extensive research to draft something more applicable to the actual cultivation, which would make the Legislature more comfortable with the way the bill is written. This bill is directed at the plants and starts at a gross misdemeanor, while the 2001 bill started immediately at a felony.

Vice Chair Segerblom:

My understanding is that a plant that is an inch high and one that is four feet tall would be treated the same. I do not see anything in here that deals with growing with the intent to sell as opposed to the intent to personally use.

Josh Martinez:

Sales would be covered under the current NRS: possession of a controlled substance with intent to sell. Personal use is not in this bill, but it is in NRS Chapter 453 the way we crafted it. *Nevada Revised Statutes* Chapter 453A is the medical marijuana chapter that specifically outlines what laws a person seeking medical marijuana in our state has to abide by. We are not here to trample on the wishes of the voters of the state, and we are not here to undo the medical marijuana statute that exists. The bill is to get at the individuals, gangs, organized crime, or Mexican nationals that the Department of Public Safety is encountering. Law enforcement will be better able to address the grow operations that they are experiencing throughout the state.

Vice Chair Segerblom:

It is my understanding that if I have less than an ounce of marijuana, it is a misdemeanor. But if I want to grow one marijuana plant, it is a gross misdemeanor?

Josh Martinez:

If this bill were to pass, it would be a gross misdemeanor; however, I know Mr. Frierson and Chuck Calloway will be proposing an amendment to the bill.

I want to put some numbers on the record. In 2007, the number of marijuana-grow operations in our jurisdiction of Las Vegas Metro was 47, marijuana seized was 1,407 pounds, marijuana plants were 4,761, firearms seized were 31, and money seized was \$5,791. A year later, in 2008, marijuana-grow operations increased to 89, with marijuana seized at

1,494 pounds, marijuana plants were 6,941, firearms seized were 97, and money seized was \$65,159.

Chairman Anderson:

That does not correspond to the handout that you gave us, but it is close. Is the "Hydroponic Store Locations & Marijuana Grows" ([Exhibit H](#)) significant?

Josh Martinez:

I would say that the map gives your Committee, as well as the public, a good idea of what we are experiencing.

Chairman Anderson:

That is the point. These seem to be spread throughout the community. I was trying to determine why you put the hydroponic stores on here since there are other uses for hydroponics.

Josh Martinez:

That is correct. We put those on there to show where individuals may go for their indoor-growing products. However, you can get these products at Lowe's, Home Depot, or any other hardware store. In rural areas, you have greenhouses and other types of agriculture that may use the same products. I like the map for the statistics regarding the grow operations that we have seen; the stores are just there to show the types of industry that may be arising from increased grows.

Assemblyman Horne:

I want to question you on the 2007 and 2008 numbers that you quoted. First, your 2008 numbers starkly increase from 2007, but I do not know if there was a large bust that skewed the numbers. It is not a great picture when you are looking at only a two-year window. It could be, for example, that in 2007, you had average busts, and then in 2008, you had a really big bust with cars full of cash and drugs, so the numbers were skewed. Also, what is the average yield of one marijuana plant?

Josh Martinez:

You could be correct. I could go back and work with our analyst, who compiles these numbers, and break down each individual arrest and grow operation that they encountered. We all know with statistics you may have an outlying figure that would increase the amount. Please repeat your second question.

Assemblyman Horne:

What is the average yield of an average plant? You have an average plant that is dried and made into product, does it make one ounce, five ounces, or what?

Josh Martinez:

The average amount—and I am not an expert—from what I am told by our officers who work daily in the field, is between one ounce and one pound. It depends on how big the plant is and how good the cultivator is at growing it.

Assemblyman Horne:

I am under the impression—and I am not an expert either—that there is an optimal amount of time for cultivating and harvesting the plant; that you do not want to do it too soon or wait for it to grow too large before you gather the yield. That is why I was asking. When someone makes the decision that the plant is good for picking and making the product, how many ounces do you get out of that plant? The one-ounce-to-a-pound range does not really sound accurate. I am not saying you are incorrect, because I do not know myself, but it seems incorrect.

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

It is my understanding that a full-size plant on average will yield anywhere from one to two or two and a half pounds of marijuana. That is what I have been told by our narcotics investigators. That would be a full-sized plant that is ready for cultivation or processing.

Matt Alberto, Captain, Deputy Chief, Investigations Division, Department of Public Safety:

We are here in support of this bill for a couple of specific reasons. First of all, this gives us the opportunity to target the individuals who are specializing in cultivation. We have encountered grow operations throughout the state, in a lot of the rural areas, that sometimes produce hundreds to thousands of plants. Several of the ones that we encountered last year were operated by Mexican nationals tied to criminal organizations that were also involved in other types of drug distribution. The marijuana that is being produced is being used as another avenue of their criminal enterprise and for-profit business.

Not only does growing marijuana create the obvious problems, it also creates a health problem. According to Occupational Safety and Health Administration (OSHA) standards, indoor marijuana grow sites are considered hazardous-material sites. The indoor operation produces a high-yield humidity mixed with the chemicals in the plants themselves to produce a mold and fungus that is causing a health hazard to the detectives and the people in that area. We have had officers who have suffered from these effects, so now we have to wear protective gear when dealing with these indoor grows. The site itself has to be considered a hazardous-waste site, and it costs a lot to clean up

a house, especially if someone is renting it. Part of this proposed bill allows us to go after some of the costs of cleaning up these locations.

The outdoor marijuana cultivation that we see during the growing season here in Nevada creates substantial damage to the infrastructure of the land itself. In one particular instance in Esmeralda County, the subjects managed to start a fire in their camp that burned half of the canyon they were growing in. That kind of damage can be long-term.

Our reason for supporting the bill is that it gives us another avenue to target these individuals who are specifically cultivating for profit. We agree that the intent of the bill is not to target individuals who are using marijuana for medical purposes.

For the record, in the late 70s and early 80s, there were three different studies done on cultivation of marijuana, two conducted in Canada and one in the United States. In each one of these studies, the average yield of a marijuana plant was between 3.3 and 3.8 pounds per plant. That was back then. With the new hydroponics and new minerals and vitamins and techniques that are used, that yield would be considerably higher. Because we are cops and not mathematicians we try to be conservative, and we estimate that one plant will produce at least one pound of marijuana when it is mature and ready to harvest. It is easier to figure the numbers that way.

Kristin Erickson, representing Nevada District Attorneys Association, Reno, Nevada:

We are in support of this bill. What this bill does is fill a gap in the law. Currently, if someone has a grow operation of 50 to 100 marijuana plants, and those plants are immature, all we have are leaves and stocks and stems and we do not have a prosecutable case. So this would fill that gap and enable us to prosecute people with a serious grow operation.

Assemblyman Horne:

The testimony has been that we are not going after those who use it for medicinal purposes so, if an individual came before you who had one plant, how would you prosecute that?

Kristin Erickson:

Each case depends on its own unique facts and circumstances. We would evaluate all the surrounding facts. Do they have a medical problem? Do they have issues? Do they have a medical marijuana card? But one plant would not be charged as a felony.

Assemblyman Horne:

Of course not because this law says it is a gross misdemeanor. My concern is that if one person in Washoe County has a plant in his home that he uses for himself and another person in Clark County has one, what stance would each county take and what would they do? Is it going to be a hard-line stance, "I know it is for you and it is only one plant, but it is a gross misdemeanor"?

Kristin Erickson:

We would evaluate the case in its entirety, listen to any defenses and reasons why they have the plant—including medical—and consider prosecution and resource issues. I cannot really say. We would have a policy on how to treat it. We would look at the big picture and try to make the best decision we can.

Assemblywoman Parnell:

I think we all understand the intent of the bill. We want to look at those who are cultivating to sell and who are involved in crime versus some of the situations that you have heard my colleagues speak to. Do we know the typical number of plants someone growing to distribute would have? Is it 100 plants or 1,000 plants? Can someone give me a better idea about that?

**Tom Roberts, Lieutenant, Director, Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department, Las Vegas, Nevada:**

I worked in narcotics for several years and some other undercover assignments, and I ran into a lot of these grow-type operations. Generally, they will convert one or two bedrooms in a small house. The average grow is between 50 and 200 plants. You will come across some of the larger ones like these pictures depict, and sometimes they will be up to 200 to 1,000 plants. Generally, they are fairly large. If you are going to go to the trouble to do the hydroponic tubs with the chemicals and all of that, you are going to do 50 to 100 plants per tub.

Assemblywoman Parnell:

My concern would be section 1, subsection 2, paragraph (a), where it talks about 1 to 25 plants. I do not know about that; it gives me some discomfort.

Assemblyman Horne:

Senator Copening, have there been discussions on the 1 to 25 plants? I know it went to a gross misdemeanor, but would you be amenable to changing it to 3 to 25 for the gross, or something like that? I know the testimony was that it was a pound or more of marijuana from one plant, but the one-plant issue concerns some people.

Senator Copening:

We did have discussions. I do not know if we will hear from anyone from the public defender's office. In the first draft of the bill, the penalties were harsher. We brought those down, but they still felt that this might be a little bit too strong. I am open to changing that. I will defer to Metro and their best judgment, but as we have discussed, it is not designed to target the college kid who might be growing a plant in his room for his own purposes, although it is illegal. I can see that having 1 to 25 marijuana plants be a gross misdemeanor would put that person into that category. So, doing 3 to 25 would be all right, and from what I am told by our Metro narcotics representative, 3 to 25 would be all right with them as well. Keep in mind that medical marijuana laws allow a patient to grow from one to seven plants as long as he is registered and has his identification card. So those who are growing for medicinal purposes are exempted from the bill as long as they comply with all requirements.

In answer to your question, the short answer is, yes, we would be open to changing that.

Chairman Anderson:

Let me turn to those who are against the bill.

Jason Frierson, Chief Deputy Public Defender, Clark County Public Defender's Office, Las Vegas, Nevada:

We are in opposition to S.B. 262 (R1). We had discussions with the sponsors of the bill to come up with language that would help focus more on the targeted individuals, the mass cultivators. The bill started with one plant as a felony, but the presentation was about the mass growers of hundreds of plants. We felt that the low level was going to encompass the casual user—the student or young person who has a plant or two in his backyard or garage—albeit not legal conduct under existing law. Under existing law, possession of a controlled substance is a felony. If it is less than an ounce of marijuana, it is a misdemeanor; more than an ounce starts felony treatment.

There was testimony today and on the other side that a plant can yield up to one or two pounds of marijuana, and that would clearly be felony treatment under current possession statutes. As the conversation progressed on S.B. 262 (R1) on the other side, we came up with suggestions that were ultimately not adopted. However, the bill was amended to take into consideration some of our concerns, most of which have been expressed already by members of the Committee. What we suggested was to start with 25 plants—not that 1 to 25 plants is legal conduct—and 25 to 50 plants would be treated as a gross misdemeanor, 51 to 75 plants would be treated as a category E felony, 76 to 100 plants would be treated as a category D felony,

and so on. We had also proposed that NRS Chapter 453 be amended to provide that anything from an ounce to a pound be treated as a gross misdemeanor and from a pound up be treated as a felony. We believe this is going to encompass a great number of individuals on the low end of the amounts, since currently an ounce or less is a misdemeanor, and anything over an ounce is a felony. That is, in some ways, to offset the increase in the cultivation arrests and convictions that are going to take place and to avoid some of the overlap.

It appears to me that if someone is growing 25 plants, he could be found guilty of both cultivating and possession. I do not believe that was the intent of the sponsors. That is why we proposed to create a gross misdemeanor amount for possession and start with 25 plants, so we could focus on the mass growers. We should focus on the people who are renting homes solely for the purpose of growing marijuana and not the people who are growing it in their backyard for personal use. I also want to make the point that, currently, trafficking is 100 pounds. If we are talking about a plant yielding more than 2 pounds, it takes 50 plants to be in trafficking territory, which is already mandatory prison.

We potentially have three different areas of legislation, all of which could apply and ultimately land a person in prison, albeit, if it is a significant amount of drugs, maybe they deserve it. That was the prerogative of the Legislature when they set it at 100 pounds, and it is certainly something that the defense counsel and the prosecutors consider when they charge these cases. There are also other charging options in existence, including attempt language. There was testimony about the immature plants not quite yielding drugs yet, but if you have 50 plants you could be charged with attempt possession of a controlled substance or conspiracy to possess a controlled substance. Conspiracy would certainly be a gross misdemeanor. I am not sure how an attempt works, but there are options. If the Committee desires to move forward with something that targets this conduct, a more acceptable version would start with 25 plants and go up from there. It would also address the possession statutes in NRS Chapter 453, so that we do not spend our money filling jails and prison beds with the casual users but focus on the mass producers.

Lastly, there was testimony about medical marijuana. I believe there are many cases where people do have licenses, but the licenses lapsed. You essentially go from being legal one day to being charged with a felony the next day—for having the same amount of marijuana—simply because a license has lapsed. We want to raise the number of plants necessary for the bill to apply in order to take those individuals into consideration as well.

Orrin J. H. Johnson, Deputy Public Defender, Washoe County Public Defender's Office, Reno, Nevada:

I want to reiterate what Mr. Frierson said. We agree. We do not believe that there is a gap that needs to be filled; we oppose this bill as largely redundant. The kind of activity that is being discussed can already be covered by possession, trafficking, conspiracy, attempt, racketeering, and manufacturing. None of those are without their strengths. Having said that, we agree that someone having a large-scale manufacturing grow operation is a bad thing. They are bad guys, and they need to be addressed. Senator Copeney mentioned that we had discussed that one to seven plants is the amount that patients can have for medical purposes, and they worry about their licenses lapsing. If one to seven plants was merely a misdemeanor, that would prevent us from using the hammer, intended for the mass growers, on the small individual college student with a pot of marijuana in his closet. We do not think the bill is necessary, but if the bill is going to go, we prefer that it not have the gross misdemeanor 1 to 25 at all. However, if there is going to be that language, we think, at the very least, one to seven should be a misdemeanor, which will cover the medical marijuana person who forgets to renew his license or gets it done late.

Assemblyman Hambrick:

I understand where you are coming from regarding the quantity of plants, but where I have a problem is when an individual starts renting property to grow marijuana. I think whether it is one plant or half of a plant, if they are renting property in order to do this illegal activity, there is a whole different realm of intent involved. I do not care if they have a single leaf in there, if they are renting property, it is not for personal use.

Orrin J. H. Johnson:

There is already a statute that specifically addresses maintaining a property. If the property you are maintaining for manufacturing, including the growing of marijuana, happens to be your residence, it does not apply. But if you rent out another place somewhere, like a flop house, and all you are doing in it is growing marijuana, which is already a felony. We do not think there are really any gaps.

Chairman Anderson:

I do not think that this is what the bill addresses. It is not a rental question. I guess if we are going to move with this bill at all, that will remain a question.

Jason Frierson:

We also have as an option to charge possession of a controlled substance with the intent to sell, and there is no set definition of "intent to sell." If the drugs

are in two separate packages, there may be intent to sell. Sometimes if there is a scale on the premises, there is intent to sell. I would imagine if someone is renting a home solely for the purpose of manufacturing drugs, and they are not living there, there will be an addition of intent to sell, and that would be a charging option. We believe that under those circumstances we have options, and certainly felony options, which are more than ample for covering that conduct.

Assemblyman Segerblom:

That is what I was going to say. If a plant is growing two pounds, then certainly they can interpret two pounds as something that was not intended for personal use. Right?

Jason Frierson:

I believe that would depend on the circumstances. In the big scheme of things, I do not know that one plant itself would be considered enough for intent to sell. I believe the range we are talking about is plants that are from six inches to five feet.

Assemblyman Segerblom:

They have an option to prosecute that as intent to sell. Whether they are successful is another issue, but there is no definition as to how much constitutes intent to sell as opposed to personal use.

Jason Frierson:

That would be correct.

Assemblyman Segerblom:

With respect to the weight question, can they take the whole plant and weigh it, or do they have to take parts that intensively contain THC?

Jason Frierson:

I do not believe that the stocks and the nondrug portions of the plant are typically included in the weight of the actual drug. I am not 100 percent sure whether that is the law or policy, but I believe the actual drug component is what is used in weighing and not the plant itself.

Senator Copening:

I wanted to see if I could make the process a little bit easier. In talking with Lieutenant Roberts, we would be very open to going with the suggested amendment by Mr. Johnson: 1 to 7 plants would be a misdemeanor, 8 to 25 would be a gross misdemeanor, and so forth.

Chairman Anderson:

I do not think that is where we are going to go, but I could be wrong.

Senator Copening:

I just want you to know that the spirit of the bill is to get the large cultivator, so we want to offer that in case it helps.

Chairman Anderson:

It is to try to get to the large cultivator, and I am trying to get to that question, but we are not there yet.

Rebecca Gasca, Public Advocate, American Civil Liberties Union of Nevada, Reno, Nevada:

The American Civil Liberties Union (ACLU) is opposed to this bill for many of the reasons already articulated this morning. I want to follow up on Assemblywoman Parnell's question about the average number of plants in a grow house. If you take the average of the numbers presented by Las Vegas law enforcement, you would find that each of the houses had approximately 80 plants. Clearly, that is well above the 1 to 25 plants that have been articulated here for a gross misdemeanor. We certainly appreciate the comments made by Assemblyman Segerblom and Assemblyman Horne, noting the difference between having one plant for your own personal use versus having an ounce or a pound of marijuana that you purchased on the black market.

One of the glaring issues in this bill is there is no intent to sell here, which has already been mentioned. This is actually in direct contrast with the intent that has been put forward on the record. The individuals testifying on behalf of the bill said that they are trying to address the issues presented by the large grow houses around the state and those individuals who are growing for profit. Unfortunately, without any intent to sell in this bill, were this bill to pass, it would not accomplish what is intended.

The last comment I want to make is that this Committee probably knows better than any other committee in this Legislature that we are experiencing excess incarceration rates. For example, a gross misdemeanor could end with a year in jail and several thousand dollars worth of fines. The cost is \$22,000 for an individual to be incarcerated for a year. Multiply that by the number of individuals who could potentially be prosecuted under this law, and that adds up quite quickly. We would like you to take into consideration the testimony that was delivered by Dr. Austin, a consultant to the Advisory Commission on the Administration of Justice, who said that these types of laws are those that result in excess incarceration. Incredible amounts of money are being spent by

this state for nonviolent offenders. These are small crimes in the relative scheme of things, and we hope you take that into consideration.

Michael McAuliffe, representing Nevada National Organization for the Reform of Marijuana Laws, Las Vegas, Nevada:

I have some prepared remarks, but before I start, I would like to clear up some confusion. We have heard numbers of 1 ounce to 3.8 pounds per plant yield. Part of that problem is because of the way the statute is written. Law enforcement is supposed to weigh the plant as soon as practical after seizure. Typically, they will weigh it with the root ball, with the hydroponic cube if it has one, and they get a greater weight than is a typical yield. In drying the marijuana, it loses approximately two-thirds of its weight due to water evaporation. That is one reason there is a large disparity in the numbers of how much a plant yields. I would say that outdoor plants that can grow to 20 feet in a season might be able to yield two or three pounds. Nothing that grows indoors under artificial light is going to be able to achieve that kind of density or yield.

[Read from written statement ([Exhibit I](#)).]

Michael McAuliffe:

I submitted a copy of my notes as well as state and Clark County monthly usage figures ([Exhibit J](#)). The sheets with the monthly marijuana use are based solely on government figures, which is where I get the 13,000 pounds a month.

Chairman Anderson:

I am closing the hearing on S.B. 262 (R1).

We have attempted to deal with this issue in the past. I felt the 1 to 25 for an opening statement was just too low. If we are going to move with the bill, we are going to have to come up with something that clearly states the intended purpose: to reach that group of people who are producing a large number of plants. I realize that there are many people who believe that we should not even move into this area, but I have always perceived this drug as a gateway drug. I know that concept has become passé in this day and age of acceptance of marijuana and many others. I am also concerned, however, about the incarceration rate; that is an important part. A possible place to start might be to eliminate line 10 on page 2 of the bill, and start with 25 plants, and I would have no problem with lowering the high number to 75. It seems to me we could do 25 to 100 for a category E, 100 to 150 for a category D, and higher for the category C. The reason I am suggesting that as a solution is it may keep the Ways and Means Committee from stopping the bill in its entirety. I think they will be concerned about the potential fiscal cost of putting people in jail.

I am not sure that it will lessen the blow at all, but their concerns are not going away. Oh, there is no fiscal note on the bill. That amazes me.

Assemblyman Segerblom:

I respectfully disagree with your comments. I think the testimony has been pretty clear that there are ample remedies for abuses of producing and selling marijuana. Marijuana is a widely used drug, and last week Governor Schwarzenegger proposed that it be legalized and taxed in California. When you have such a large percentage of the population who do not think it should be illegal to begin with, I do not think we need to increase penalties or try to do anything further to make it illegal in Nevada. I think the trend is going the other direction; there are plenty of laws on the books right now. I would oppose the bill.

Assemblyman McArthur:

I have no problem with the bill the way it is written.

Chairman Anderson:

I am trying to find out whether the Committee wants to put it into a work session. I do not want us to put something into a work session that is going to go nowhere between now and Friday.

Assemblyman Hambrick:

I am in favor of the bill as written, but to avoid having it die, I would go along with your amendment. I think this is an important piece of legislation, and we need to do something about the individuals who are growing marijuana commercially and not for self-use. I would vote for your amendment, but I do not think this bill deserves to die.

Assemblyman Gustavson:

I agree with Mr. McArthur, Mr. Hambrick, and you. I would like to see the bill amended and processed, because I would not like to see it die.

Assemblyman Manendo:

The Senators have worked very hard on this piece of legislation, and we know there is some compromise ground. There is not a lot of time, but I think the Chairman does not want to see the bill die, either. Perhaps they could come back with a compromise, and if we cannot move it then, so be it. I think we should give them an opportunity to come up with something.

Assemblywoman Dondero Loop:

I, too, would like to see the amendment put into writing, since there has been discussion of 1 to 25, 1 to 7, and 7 to this. I have lost track of where we are.

I need some clarification, but I do agree that the Senator has worked hard. I would like to know exactly what we are talking about.

Assemblyman Ohrenschall:

I, too, could live with an amendment that deleted line 10, as you suggested, and perhaps changed the penalties for categories B, C, and D on page 2. I could live with that amendment.

Chairman Anderson:

Let me ask our researcher to put this into a work session. I think Mr. Hambrick also needs some clarification. Ms. Chisel and Mr. Anthony, will you identify for us the statutes that relate to the renting of property for the growing of marijuana? I think it might be part of the meth questions that we dealt with in past sessions.

Let me close the hearing on this bill. I am going to put it on the board and see if we can come up with some language for Ms. Chisel by the end of the day so we can move the bill on Thursday or Friday of this week.

Let us do a short work session. Ms. Chisel, there is an issue left over from last Friday. We will look at the issue of domestic partnerships now that Mr. Mortenson and Mr. Horne have returned.

Let us take a five-minute recess.

Chairman Anderson:

Let us bring the Assembly Judiciary Committee back together.

One of the bills that we took up on Friday was Senate Bill 283 (1st Reprint). We did not vote during the work session. I have asked Ms. Chisel to prepare this work session document ([Exhibit K](#)) for us, which includes the amendments that were considered and the mock-up.

Senate Bill 283 (1st Reprint): Revises provisions governing domestic relations contracts. (BDR 11-1100)

Jennifer Chisel, Committee Policy Analyst:

Senate Bill 283 (1st Reprint) is the domestic partnership bill that was heard in the Committee on Friday. During the hearing, Senator Parks presented a mock-up for the Committee to consider.

There are four amendments to the mock-up. The first is to amend section 6, which is on page 2 of the mock-up. This clarifies the procedures for the

Office of the Secretary of State to account for the fees collected in order to register a domestic partnership. Page 4 of the mock-up deals with health care benefits, and the amendment clarifies that neither a private nor a public employer is required to provide health care benefits to the domestic partner of an employee. The third amendment deals with legal unions formed in another state. It amends section 10, on page 5 of the mock-up. For a legal union formed in another state to be recognized in Nevada, the domestic partners must register the partnership with the Nevada Secretary of State. The amendment on page 5, section 12, provides that a ceremony is not required in order to enter into a binding domestic-partnership contract.

Chairman Anderson:

I know several of you are concerned about different parts of the bill, and it is very difficult to agree on certain parts of the issue. To me, it is a straightforward question. It does not violate the intent of the bill drafter. This is not a marriage license, and it does not meet those requirements. According to the Secretary of State, it does not represent a new fee, but rather it is exactly the same as fees for other kinds of paperwork, which is all that this is.

The Chair will entertain a motion.

ASSEMBLYMAN MANENDO MOVED TO AMEND AND DO PASS
SENATE BILL 283 (1st REPRINT).

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

Assemblyman Cobb:

In examining exactly what this bill is going to do, I agree with your interpretation that this does not conflict directly with the language of the constitutional amendment that was enacted in 2002. I do believe, though, that it does conflict with the intent of the people who voted on that amendment, even though it does not create any type of "marriage" outside of what is described in the constitutional provision. There are certain rights, responsibilities, and duties that are listed in this bill which are to be imposed in exactly the same fashion as if the individuals were married. In questioning the need for this bill, I did hear some good arguments about certain rights and abilities of individuals to contract, but I did not hear why individuals cannot contract to agree to those rights in a private fashion. This body has dealt with some of those issues, such as the right to be with an individual in a hospital. We have specific provisions in the statute that allow for that. There are individual contractual rights for inheritance and ownership of property, which

may be costly—which was one of the arguments—but the government is not in the business of creating special relationships to get around the cost of private business.

I also believe that we have a lot of unintended consequences when we create special rights and duties that are a kin to marriage, which is what this bill does. For example, this would now exempt domestic partners from the real property transfer tax, which is reserved for married couples. The bill also changes the spousal privilege in our evidentiary rules regarding testifying against your spouse. This was reserved for married couples as codified in the 2002 constitutional provision. It is for those reasons and others that I will be voting against the bill.

Assemblyman Gustavson:

I agree with Mr. Cobb's assessment of this piece of legislation. While reading through this bill, the only difference that I see between a marriage and a domestic partnership is the words "marriage" and "domestic partnership." Otherwise, everything else applies the same. You stated that the fee that is created by the Secretary of State is not a new fee, but I question that. Whenever you introduce a new license plate, it is not a new fee, it is the same as for all other license plates, but it is an additional fee, and that requires a two-thirds vote. So, I wonder why this does not require a two-thirds vote. It is creating another fee.

Nicolas Anthony, Committee Counsel:

Yes, I believe our office looked at this question. When the bill originally came forward, we were told that the bill would be revenue neutral. Thus it is not a revenue generating fee or tax, so the constitutional provision does not apply to this particular bill.

Assemblyman Segerblom:

I will be voting for the bill for the reason that we are creating something similar to marriage. We ought to encourage people in our society who want to commit to each other. I cannot believe that this legislative body does not support people who use the law to help their relationships. That is all we want to do. Most of the problems that this Committee sees are the result of families breaking down, so encouraging family relationships is very positive. I strongly support the bill.

Assemblyman Horne:

I, too, am going to support the bill. I recall the debate on changing our *Constitution* to recognize marriage as being between a man and a woman. I remember various arguments that, if people wanted these protections, there

were other ways to do it such as contracts, attorneys, and all of that. This bill appears to do just that. It provides for anyone who chooses not to have a solemnization ceremony—marriage or whatever—to enter into a domestic partnership. I do not believe this has anything to do with same-sex marriage. It is a civil recognition of a relationship between two persons.

I am looking for the section in the bill, that Mr. Cobb referred to, which states that domestic partners are going to have the spousal-communications evidentiary rule apply to them in a court of law, and I do not see it. If you would share exactly where it is, I would appreciate it.

Assemblyman Cobb:

Section 7, subsection 1, paragraph (a) says, "Domestic partners have the same rights, protections and benefits, and are subject to the same responsibilities, obligations and duties under law, whether derived from statutes, administrative regulations, court rules, government policies, common law or any other provisions or sources of law, as are granted to and imposed upon spouses."

THE MOTION PASSED. (ASSEMBLYMEN COBB, GUSTAVSON, HAMBRICK, AND MCARTHUR VOTED NO. ASSEMBLYMAN HAMBRICK RESERVED THE RIGHT TO CHANGE HIS VOTE ON THE FLOOR.)

Chairman Anderson:

Mr. Carpenter, who is absent, had indicated to me his desire to vote in opposition to this bill. I want the record to clearly reflect his desire.

We are adjourned [at 10:59 a.m.].

RESPECTFULLY SUBMITTED:

Karyn Werner
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 12, 2009

Time of Meeting: 8:06 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 334 (R1)	C	Scott Scherer	Packet of information on corporation sole
S.B. 350 (R1)	D	Assemblyman Anderson	Memo from Robert Kim of the State Bar dated April 12, 2009, and proposed amendments
S.B. 350 (R1)	E	Scott Anderson	Letter dated May 11, 2009, written testimony on behalf of the Secretary of State, and proposed amendments
S.B. 350 (R1)	F	Scott Anderson	Addendum to testimony and amendment on behalf of the Secretary of State dated May 12, 2009
S.B. 383 (R1)	G	Michelle Gorelow	Testimony on behalf of the March of Dimes dated May 12, 2009
S.B. 262 (R1)	H	Josh Martinez	Pictures and a map of Hydroponic Store Locations & Marijuana Grows
S.B. 262 (R1)	I	Michael McAuliffe	Written testimony
S.B. 262 (R1)	J	Michael McAuliffe	Statistics on State and Clark County Monthly Marijuana Use
S.B. 283 (R1)	K	Jennifer Chisel	Work session document