MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Fifth Session
May 14, 2009

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 9:25 a.m. on Thursday, May 14, 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 James Ohrenschall
Assemblywoman Bonnie Parnell

COMMITTEE MEMBERS ABSENT:

Assemblyman John C. Carpenter (excused)
Assemblyman Harry Mortenson (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

John P. Fowler, Member, Executive Committee, Business Law Section, State Bar of Nevada, Reno, Nevada
Scott W. Anderson, Deputy Secretary for Commercial Recordings, Office of the Secretary of State
Jason Frierson, Clark County Public Defender's Office, Las Vegas, Nevada
Lora Myles, representing Carson and Rural Elder Law Program, Carson City, Nevada

Chairman Anderson:
[Roll called. Protocol on testifying before the Committee.]

I will open the hearing on Senate Bill 350 (1st Reprint).

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

John P. Fowler, Member, Executive Committee, Business Law Section, State Bar of Nevada, Reno, Nevada:
I am going to closely follow the memo that you have before you (Exhibit C). I will begin with a short recitation on each of the subjects, which begins on page 2 of that memo. The first item deals with sections 1, 81, and 82 of the bill. Those provisions help preserve the attorney-client privilege. A session or so ago, the Division of Financial Institutions supported a bill which provided that resident agents must inform the Division if they learn that the activities of their clients, the companies they represent, might be those of check cashing services—Chapter 604 of the *Nevada Revised Statutes* (NRS)—and lending with installment loans—Chapter 675 of NRS. The legislation said that, if you are a resident agent and you find that your corporation is doing those two businesses

without getting a license, you must inform the Division. We realized that it means we, as lawyers, would have to breach the attorney-client privilege. That puts the lawyer between a rock and a hard place, the rock being the Division and the hard place being the attorney-client privilege that we owe to the client. If we tell the Division, the client could sue us for malpractice.

As lawyers, we really did not like that idea all that much. Thus we offer the amendments that are contained in sections 1, 81, and 82 of the bill. Those provisions leave the underlying statutes in place but say that, if telling the Division of Financial Institutions would be a breach of the attorney-client privilege, you do not have to tell the Division that these people are unlicensed and acting as either check cashing services or installment loan lenders.

The next thing in the memo deals with a number of sections that conforms the language of the affected sections to the language used in other sections of the *Nevada Revised Statutes*. In many respects I guess you could say this is minor stuff, but it is minor stuff that spawns lawsuits. When terminology is used inconsistently in the statutes, we try to correct it and make it consistent. That long list of sections—2, 3, 4, 5, 6.5, 9, 10, 11, 13, 14, 55, 56, and 79—of this bill are all ones to make the language in the various sections in Title 7 of NRS both accurate and consistent. For instance, some of the statutes talk about the managing partner of a partnership. Most partnerships really do not have a managing partner. It is not a statutory term except in a very few of the statutes. We just change that to "general partner" instead of "managing partner." Because no one knows what exactly a managing partner is, at some point someone might ask, "Well, what is a managing partner?" Or they do not reveal the name of the managing partner, saying that the managing partner is not a general partner. Those kinds of distinctions can cause problems down the line.

The next part is of interest to those from Carson City. There are provisions throughout Title 7 of NRS which have provided in the past that, when there is a certain dispute, it will be resolved in the court in Carson City. However, Washoe County and Clark County both have business courts now, which are set up specifically to handle business disputes. The Business Law Section felt that a statute which provides that the venue for those kinds of business disputes in these sections of the bill—sections 7, 8, 15, 15.3, 19, 21, and 22—if their registered agents are in Washoe County or Clark County, that the cases should end up in the business courts in those counties. That is why we suggested that we change the venue from what the statutes call for, Carson City, to the venue where the resident agent is, which is Washoe County or Clark County in many cases.

Chairman Anderson:
What happens if the resident agent is located in a county that does not have a business court? I was under the impression that the importance of this was so there would be a single court that might have the expertise that might be required for this kind of dealing, and by concentrating it at a central location, there would be a consistency of calendaring and the opportunity to utilize a court that would be well versed in the intricacies of this particular business problem. So now you are in Pershing County...

John Fowler:
If your resident agent is in Pershing County, under the bill the case would go to the county where the resident agent resides. Experience tells us that, given where the population is in the state, most of the resident agents are going to be in Clark County, and to a lesser extent in Washoe County.

By saying that it goes to the place where the resident agent is, you at least put the dispute in the court which has the greatest connection with the corporation. The default rule goes to the county where the resident agent is, but experience tells us most of the registered agents are in Clark County or Washoe County.

There are a couple of statutes that basically state, most prominently in the dissenter's rights statutes, that certain statutes do not apply to a company when it is a publically traded company. Dissenter's rights are triggered when a merger is proposed and there is a minority that opposes the merger. The minority might not like the merger consideration offered them. If they vote against the merger but are outvoted, if the company is privately held, they have the option of becoming a dissenter and having a court tell them what the value of their stock is. That is paid to them in cash by the resulting entity from the merger. This is a long-standing principle of corporate law. But, there has also been a long-standing exception that if you are a public company you do not get that right. The thinking is you can always sell the stock because you have a market for the stock. We have found the definition of what a public company is in our statutes is outmoded. What we have done is borrowed the definition that has been worked out by the American Bar Association (ABA) Business Law Section in their Model Business Corporation Act. For instance, section 67 of the bill uses the definition worked out by the ABA Business Law Section in their model statutes. Our statutes referred to the old definition that was outmoded a number of years ago with the advent of electronic markets. What you see in section 67 is sort of the latest combined wisdom of corporate lawyers for a good definition of what exactly a public corporation is that is exempted from the dissenter's rights statutes.

Section 16 clarifies in Chapter 80 of NRS that the failure of a foreign corporation to qualify to do business does not impair the validity of any contract that the corporation might have. That is important to clarify because it was unclear before and there were some claims that, if you missed your qualification in the state and you got involved in a lawsuit, your contract might be invalid. There is some case law from other jurisdictions that suggests that. That does not mean that foreign corporations who fail to qualify in Nevada do not get tapped on the wrist for failing to do that. They cannot file or defend a lawsuit in the state until they qualify. If they do not qualify, they are subject to a fine of not less than $5,000. The hammer is there to get them to qualify to do business in Nevada, but we felt that any suggestion that the failure to qualify would void a contract is probably going too far and we wanted to make sure that suggestion was scratched.

As you may remember, section 17 is the statute in Chapter 80 of NRS that requires foreign corporations do a publication in a newspaper of general circulation in Nevada once a year. The change in section 17 of the bill deletes a requirement that the company state its assets and liabilities in that publication. The reason is that most of the companies that qualify to do business in Nevada are usually small private companies and they do not really want to publish their assets and liabilities and there really is no requirement anywhere else that they do so, except in this one place. The publication requires they show their name, address, and other information. We thought it was going too far to require them to set forth their assets and liabilities in the newspaper. So we deleted those two lines in NRS 80.190.

The next set of sections discussed in the memo—sections 17.8, 18, 20, 23, 24, and 83—frankly correct some errors. For instance, NRS 82.183 requires a nonprofit corporation to keep a list of its owners. Well, there are not any owners of nonprofit corporations. The reason that language appears is because in the past someone took a statute from the for-profit corporation act, copied it, and put it in Chapter 82. We did not catch the fact that there are no owners of a nonprofit. *Nevada Revised Statutes* (NRS) 82.206 empowers committees to appoint officers rather than only permitting boards to appoint officers. It is a subtle change but obvious. The electronic notice provisions are brought into Chapter 82 of NRS for the first time.

The next sections were suggested to us by some practitioners of estate planning. There are a number of sections of the bill that talk about limited-liability companies and limited partnerships. These are often vehicles used in estate planning by estate planning lawyers to reduce the liability of an estate for federal estate taxes. They have found that there is a statute to which you can opt-in which prevents the family limited-liability company (LLC) or

family limited partnership from paying any kind of dividends or profits for ten years. That means that there is a substantial discount on the value of the property owned by those entities for the purposes of the estate tax. If an estate planner and his clients wish to opt-in and become one of these restricted LLCs, money is not paid for ten years which gets them that discount on the value of the property attributable to the estate by the estate tax.

The next set of sections adopt some rules that fix Chapter 86 of NRS concerning limited-liability companies. Our limited-liability company statute is purposely quite short. There are not a lot of default rules set forth in Chapter 86 of NRS on limited-liability companies because limited-liability companies are structured in different ways. Setting forth a lot of rules in the statutes restricts the ability of people to make the deal that they want to make with respect to LLCs. We have had experience with LLCs for a good long time. We have found there is a need for a few default rules where, if the operating agreement does not cover the subject matter or if you do not have a written LLC agreement, at least you have a few default rules in critical areas to govern the relations between the owners at least until you agree in writing to something different. That is what the amendments to sections 28, 29, 33, 35, and 36 are.

The bill adopts rules allowing members to inspect the financial records of the LLC. This is a pretty basic rule. An owner should know what is going on with the operation of an LLC. Most operating agreements contain something about that. Now we have a backup rule that the parties can use to insist that owners and managers can inspect the financial records of the company.

There is a section that governs the admission of members if they do not have a rule to the contrary. It also allows lenders to have veto power over amending the operating agreement. A lot of these LLCs are used by lenders and they require that the borrower put the property in a limited-liability company. Not only does the lender get the property owned by the LLC as security for its loan, but the lender will also have certain rights to step in and do certain things if things get really bad. It has been written into a lot of LLC operating agreements for many years and it keeps lenders happy, which of course means the loan is made. This bill clarifies that you can write into the operating agreements that lenders have this power. That makes lenders feel more comfortable, which means more loans will be made more easily.

There are also some minimum fiduciary duties between managers and members. We think that is also important. Usually there are some rules written into operating agreements but often there are not. When there are not, we need

some basic rules about fiduciary duties between members and managers to govern the LLCs. We have done that in section 35 of the bill.

The next set of amendments in sections 33, 34, 42, 43, and 51 clarify and make uniform the kind of information that all the entities are required to keep. A session or two ago, it was thought that information about the ownership of these entities would be made available to the Secretary of State and any investigative body. They are required to keep the information, but it is not public. It can be presented upon demand by the Secretary of State's office. We just wanted to make that uniform throughout the chapters.

Then we have two foreign limited partnership statutes and two limited partnership statutes. We wanted to harmonize the requirements in those statutes for qualifying foreign limited partnerships to do business in the State of Nevada.

The next set of sections, 57 and 58, allow professional entities in Nevada to be owned by non-Nevada lawyers as long as one owner is a Nevada State Bar member.

We did make some changes to the dissenter's rights statutes. They are based on the Model Business Corporation Act. That act is recommended by the American Bar Association Business Law Section. It had been modernized to make it operate better, to make it read more coherently, and we brought ours up-to-date with the latest from the ABA Business Law Section's suggestions on dissenter's rights statutes.

Finally, unless those entities who are general partners have to qualify under the statutes in other chapters of the NRS in Title 7, and unless those statutes require the entities who are partners on a fictitious firm name statement to qualify to do business, the fictitious firm name statement change no longer requires all partners to file a fictitious firm name statement if they use a fictitious name to describe their partnership. *Nevada Revised Statute* 602.020 will not require those entities to qualify to do business. For instance, if you have a partnership made up of foreign entities from all over the world, only one of which is actually going to do business here in Nevada, requiring all the others to come and qualify is needless expense. It is not required in the chapters that deal with foreign entities because they are not doing business here, just the managing general partner is. So have the managing general partner qualify and require only them to file a fictitious name statement.

Chairman Anderson:
The purpose of the bill is to clarify the professional responsibility and ethical standards for attorneys who deal in business law so that they are not in conflict with their clients' privileges and the responsibility to report. It clarifies and updates the language of the Secretary of State's office to bring it technically correct with the model language of the Model Business Corporation Act. We also updated our language on fiduciary responsibilities so we can use technological changes, and we updated our language so it is consistent throughout. It also deals with some clarification needed in the limited-liability corporations to do what needed to be accomplished. It clarifies dissenter's rights and the overall corporate structure in takeovers.

John Fowler:
I just wanted to briefly state that there are some amendments suggested by the Secretary of State's office with regard to the new provisions that would allow a fine to be imposed of not less than $5,000 for a corporation if it purports to be a corporation and is not. The amendments are excellent and we support that effort. Having it at not less than $5,000 might be something that the district attorneys and Attorney General will be interested in pursuing in the future. At $500, which was the old limit, it just did not pay to go after them.

Assemblyman Segerblom:
My only concern is on the $5,000 fine. In previous testimony, it was stated that if you went into default you could be fined and it was up to the Secretary of State to determine whether he wanted to. Do you share that same opinion?

John Fowler:
I believe that the amendments take care of any concern that the inadvertent failure to file a list is going to trigger a $5,000-or-greater fine. We had this discussion with Scott Anderson of the Secretary of State's office. Maybe I can have Scott amplify that a little bit.

Chairman Anderson:
I think he was looking for your opinion on those provisions.

John Fowler:
In our opinion, the amendments removed the possibility that you are going to see $5,000-or-greater fines for an inadvertent failure to file an annual list.

Chairman Anderson:
There seems to be some consternation about that. Maybe we will wait for Mr. Anderson's presentation on his amendment before we move forward.

Assemblyman Hambrick:
In the beginning of your testimony, you expressed concern about a possible violation of the attorney-client privilege for reporting a client's activity in certain businesses. You said "if" it violated attorney-client privilege. Can you give me an example where it would not violate attorney-client privilege?

John Fowler:
The attorney-client privilege protects communications between the client and the attorney. If the information did not come from the client—for instance, there was a Dallas newspaper article that said there is a company in Las Vegas doing business as an installment loan company that does not have a license—that would not be the product of a communication between the client and the lawyer. If that piece of paper were in the file that the lawyer held as resident agent, then the lawyer would have to decide whether it is covered by the privilege, and a judge might claim that it is not. In that case the newspaper article would, upon proper legal process sent out by the investigative agency, have to be revealed. It would not necessarily be covered by the attorney-client privilege because it was published in the newspaper. It did not come from a communication between the lawyer and the client. But if, for instance, the company was talking with a lawyer and said, "We just discovered we have been doing this, and we just read this chapter in the NRS, we need to go get a license," that would be a communication between a client and a lawyer, and the lawyer would not have to report that under this bill.

Assemblyman Cobb:
The plain language here, even with the amendment, seems to suggest that if you neglect to file with the state, you would be subject to at least a $5,000 fine. I am wondering how you interpret that to suggest that inadvertence is not a neglectful failure.

John Fowler:
We have determined the statute operates as follows: if you are purporting to be a corporation and you are doing business in Nevada, but you have not filed articles of incorporation anywhere, you are subject to the $5,000 fine. You are purporting to be a corporation when you are not. Now, if you are a corporation with articles on file but you fail to file your annual list of officers and directors one year, there is no longer any danger that the statute says you are going to be subject to a fine of $5,000 because you failed to file your annual list. It is only if you have failed to file your articles at all.

Assemblyman Cobb:
Am I missing something? It says "who fails or neglects to file." How are you saying that if you have failed to file it is not in this bill? I do not understand.

John Fowler:
In the proposal that was circulated to us by the Secretary of State's office, the new section 1.5 provides that "Every person, other than a corporation organized and existing pursuant to the laws of another state...who fails or neglects to" file articles of incorporation with the Secretary of State "is subject to a fine of not less than $5,000." But it does not say you are subject to a fine if you fail to file an annual list.

Scott W. Anderson, Deputy Secretary for Commercial Recordings, Office of the Secretary of State:
As presented in the previous hearing, there were some amendments that were included. The purpose of the amendments is to go after those business entities that purport to be Nevada corporations, who are doing business in Nevada, without being properly registered with the Secretary of State and paying those fees and complying with the statutes and filing requirements as other Nevada entities are required now to do. This amendment is based upon language out of Chapter 80 of NRS that requires foreign corporations to qualify with the state, and if they do not they are subject to a penalty.

To answer Mr. Segerblom's and Mr. Cobb's concerns, for example, in the addendum (Exhibit D), in section 27.5, the section states that "Every person, other than a foreign limited-liability company, who is purporting to do business in this State as a limited-liability company and who fails or neglects to file articles of organization with the Secretary of State is subject to a fine of not less than $5,000, to be recovered in a court of competent jurisdiction." Contrary to my answer to Mr. Segerblom in the previous hearing, this really would not apply to those that simply go into default. As Mr. Fowler stated, the simple failure to file your annual list in one year does not trigger this fine. But if we have an indication that you are setting up shop in Las Vegas as ABC Corporation and there is no ABC Corporation on file with the state, then that would trigger us to look into this and potentially ask the Attorney General to take action.

Assemblyman Cobb:
It is your interpretation, and I guess certainly our legislative intent, that failure to file an annual update of your documents is not going to trigger a $5,000 minimum fine?

Scott Anderson:
That is correct, especially in regards to a default. There was discussion that if you were to go into a revoked status, where your right to do business in this state had been revoked, which means you had not filed your annual list for more than a year, your right to do business in this state is terminated. However, the way that the language was changed in response to some suggestions of the Bar Association, it appears that the language would be only if you did not file your articles of incorporation or other articles of organization. We do have other hammers to go after these entities because there are reinstatement fees that are required to bring those entities back into good standing.

Assemblyman Cobb:
I think that $5,000 as a minimum is just going to be too exorbitant. Why is this fine not discretionary between $500 and $5,000?

Scott Anderson:
The reason we raised this from $500 to $5,000 is there was indication from the Attorney General's office and from the district attorneys that there would be no reason for them to go after a $500 fine and that a larger fee would be more of a hammer. It would be, for one thing, a deterrent for these entities to fail to file with us, but would also encourage compliance if we were to notify them that a $5,000 fine may be applicable. Then they may choose to file the documents that are necessary with our office. There are other states, such as Connecticut, that have a $10,000 minimum on this, and they are aggressively going after these entities. We felt that going to the $5,000 fine is the hammer we needed to get these entities to comply. We would be open to a different range if that is the will of this Committee. However, I am not sure if that would spur the Attorney General's office or the district attorneys to go after these entities.

Assemblyman Cobb:
I am pleased that you mentioned the idea of maybe taking a step back and having that range and discretion between $500 and $5,000 because, as you described, you could send out that message and say, "You may be subject to a $5,000 fine if you do not comply with all the rules and regulations." That is the exact phrase that you used, that you "may" be. I think that would achieve that goal by having a range between $500 and $5,000. In terms of encouraging the district attorneys' offices and the Attorney General to actually bring these suits, you already have mandatory attorneys' fees and costs in the bill. I would think that would be encouragement for the district attorneys and the Attorney General to bring these suits in the first place because it will not cost them anything. It is mandatory that those costs and fees be paid for. The $5,000 on top of it, in my opinion, would simply be punitive.

Scott Anderson:
I believe that would be an acceptable alternative. However, I am wondering if we would go for a range up to $10,000 because the minimum is $5,000 and that would give the opportunity to go after those corporations that have been doing business for a number of years without being registered with us to pay a higher penalty.

Chairman Anderson:
I have a certain level of comfort in the event it is a knowing failure. It is a knowing failure in several of the provisions throughout the proposed amendment. It is not consistently there, but it is there in most instances that it is not going to be a fine threshold without it being a knowing violation. That means it must be a purposeful act and that is the implication here. I would presume that if someone purposely chose not to file, knowing they were going to be out of compliance, that you would want to hit them with a large fine, large enough to get their attention for not complying with you. I believe that was the purpose of your statement.

Scott Anderson:
You are correct.

Assemblyman Cobb:
I did not see any language that says "knowingly fails to comply." The language used is "fails or neglects." It specifically lowers it to a level of simple negligence.

Chairman Anderson:
I see in section 17.6 of Mr. Anderson's amendment (Exhibit E), at line 11, and again at section 16, "...in the event of a knowing failure is subject to a fine of not less than $5,000," and it would change NRS 80.055, and again in section 36.1, which deals with the responsibility of the office. While I do not see it consistent, and that was what my indication was...

John Fowler:
I can explain the seeming inconsistency. The way the statutes are written, it boils down to this: if you are purporting to be a Nevada corporation, or you are not on file anywhere and you are doing business in Clark County and purporting to be a corporation of any kind, you are subject to a fine of not less than $5,000 without the district attorney or Attorney General having to prove that you did so knowingly. It is pretty hard to claim that you were not knowingly doing it anyway. But if you are a foreign entity, you have filed articles someplace, but you come into the State of Nevada and start doing business here without qualifying to do business under our statutes, that is when the

district attorney or Attorney General has to prove that you knowingly did so. The reason for the difference is at least with the foreign entities that have articles of incorporation or articles of organization on file somewhere, you are at least an entity, you are what you purport to be, you just have not qualified.

Assemblyman Cobb:
I kind of follow your argument, except from Nevada's perspective, we want to have these corporations filing their papers with us because we want them subject to our regulations, our courts, and so forth. If you have already filed documentation in another jurisdiction, you know the rules about filing more than an individual who might be selling cookies who does not realize he needs to go out and file papers with the state.

John Fowler:
That is true, except you know the rules that you have to file articles to be a corporation, but you do not necessarily know that you are now in Nevada and you have to qualify to do business. That is perhaps a bit more technical than the fact that you have to have articles on file someplace. The basic thinking was, for those people, at least they are a corporation filed somewhere. They are not purporting to be a corporation when they are not. It is just that they have not qualified in Nevada. We thought maybe it is fairer to impose the requirement that the district attorney or Attorney General must prove that they have done so knowingly before you recover a $5,000 fine.

Assemblyman Cobb:
I appreciate the comments that were given, but I disagree. I think if we are going to be encouraging the district attorneys and the Attorney General to bring these suits, that is what the attorneys' fees and costs are for. It will cost them nothing to bring these suits, so the $5,000 fine is just a punitive measure in my opinion. It does not necessarily force compliance. As was testified to by the Secretary of State's office, all they are trying to do is coerce people into filing with the state by saying that they may be subject to these fines and making it discretionary within the court to fine between $500 and $5,000 or $10,000—if we want to raise it to that level—depending on the level of culpability of the actor. I hope people understand that there are a lot of real small businesses, or people who own multiple corporations, who may make a mistake with their filings or not file and start doing business. They may only make $10,000 a year, and after taxes net $7,000. Suddenly the state is taking another $5,000 because they "fail or neglect" to file the right papers. That is my concern.

Chairman Anderson:
Let me close the hearing on S.B. 350 (R1). If I understood the Secretary of State correctly, he was amenable to a range if we raise the floor sufficient to get the attention of the prosecuting attorneys. I appreciate that. I was going to take an Amend and Do Pass motion on the legislation as presented, but if you were looking to find another line that you were going to suggest, Mr. Cobb, I was trying to give you that opportunity.

Assemblyman Cobb:
If you were looking for a consensual amendment, I say that we make the language uniform in terms of knowingly not filing the paperwork so that there is no confusion over "neglect" or "failure" and to make it a discretionary fine of between $500 and $5,000.

Chairman Anderson:
I would suggest the bottom figure be a little higher because I want to make sure that it captures attention. Apparently $500 is not capturing the attention of businesses.

Nicolas Anthony, Committee Counsel:
Certainly, whatever the pleasure of the Committee is: we can put this in conceptually if you would like it to be a knowing standard throughout, and also, whatever dollar amount the Committee settles on would be fine.

Chairman Anderson:
We will now move to our work session. Let us turn to Senate Bill 34.

Senate Bill 34: Makes certain changes concerning the use of court reporters in certain court proceedings. (BDR 14-397)

Jennifer M. Chisel, Committee Policy Analyst:
[Work session document (Exhibit F)] Senate Bill 34 authorizes a justice court to use sound recording equipment in preliminary hearings except in death penalty cases where a court reporter is required. The Certified Court Reporters Board proposed an amendment to require that court reporters in preliminary hearings be used in cases where a category B felony or higher is charged.

Chairman Anderson:
We tried to deal with various frameworks of language in the proposed amendment. When you come down to fighting over the brass tacks, I think what we are trying to clarify is what our initial intent was—that you get to use this equipment regardless of where you are. The level of sophistication is dependent on the court where you are located. We want to make sure, in all

cases, that people are properly recorded either by a professional stenographer or the electronic equipment. If that is what the court chooses to utilize, it should have that opportunity. The Chair suggests we take a Do Pass motion on the original bill and send it forth in that fashion, without regard to whether it is a death penalty case or trying to define what level of crime is involved. Someone is harmed regardless of where they are in the judicial process by its very nature. In addition, it is my understanding that this discussion is going to be continued on by the court. I have a letter from the Chief Justice of the Nevada Supreme Court indicating his intention to add this to the workload of another group.

ASSEMBLYMAN COBB MOVED TO DO PASS SENATE BILL 34.

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN CARPENTER AND MORTENSON WERE ABSENT FOR THE VOTE.)

Let us turn to Senate Bill 82 (1st Reprint).

Senate Bill 82 (1st Reprint): Makes various changes relating to technological crime and the seizure of certain funds associated with prepaid or stored value cards. (BDR 14-266)

Jennifer M. Chisel, Committee Policy Analyst:
Senate Bill 82 (R1) was brought by the Attorney General's office. This bill relates to technological crime and proceeds on prepaid or stored value cards. At the last work session, the Committee considered the first amendment which is to delete sections 2 and 14 from the bill to retain existing law instead of adopting a portion of the federal Patriot Act.

Additional concerns were raised by the Committee members, and the Attorney General's office proposed additional amendments for the Committee to consider. Amendment 2 in your work session document (Exhibit G) deletes the provisions of the bill authorizing law enforcement to freeze an account balance associated with prepaid or stored value cards used in the commission of a crime. Additionally the amendment deletes the provisions related to the seizure of funds on those prepaid or stored value cards. Amendments 1 and 2 are both reflected in the deleted language of the attached mock-up that the Research Division prepared.

Assemblyman Segerblom:
I just wanted to commend the Attorney General's office for working with us on this bill. I think the need for the full bill was not shown, but this would give us two years to see what is out there and they could come back here. If they show the need to be able to freeze and seize, maybe we could do that. At this point, all we are talking about is reading the cards, which I think even the American Civil Liberties Union (ACLU) would hopefully support.

Chairman Anderson:
The Chair would accept an Amend and Do Pass motion taking amendments 1 and 2 in the work session document.

> ASSEMBLYMAN HAMBRICK MOVED TO AMEND AND DO PASS SENATE BILL 82 (1st REPRINT) WITH AMENDMENTS NUMBERED 1 AND 2.
>
> ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN CARPENTER AND MORTENSON WERE ABSENT FOR THE VOTE.)

We will now turn to Senate Bill 128 (1st Reprint).

Senate Bill 128 (1st Reprint): Requires certain persons to record foreclosure sales and sales of real property under a deed of trust within a certain period of time. (BDR 9-841)

Jennifer M. Chisel, Committee Policy Analyst:
Senate Bill 128 (R1), sponsored by Senator Parks, requires deeds of trust in foreclosure sales to be recorded within 30 days of the sale. During the hearing, Teresa McKee, on behalf of the Nevada Association of Realtors, submitted an amendment to ensure the language in the bill conforms to terminology and practice in foreclosure sales. The amendment is attached to the work session document (Exhibit H). The amendment contains three primary components. First, it clarifies the time frame for recording the deed of trust if the trustee handles the sale or if there is another successful bidder besides the trustee. Second, it changes the term "beneficiary" to "successful bidder." Third, it provides that the civil fine may be assessed up to $500 instead of a flat fine of $500.

Chairman Anderson:
The Chair would indicate that we would probably want to accept all three of the suggested amendments from Ms. McKee and have Legal take a look at the language to make sure it conforms to the *Nevada Revised Statutes* (NRS).

> ASSEMBLYWOMAN PARNELL MOVED TO AMEND AND DO PASS SENATE BILL 128 (1st REPRINT).
>
> ASSEMBLYMAN MANENDO SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN CARPENTER AND MORTENSON WERE ABSENT FOR THE VOTE.)

We will now turn to Senate Bill 253 (1st Reprint).

Senate Bill 253 (1st Reprint): Makes various changes to provisions relating to common-interest communities. (BDR 10-18)

Jennifer M. Chisel, Committee Policy Analyst:
Senate Bill 253 (R1) is a common-interest community bill brought by Senator Parks. During the hearing, Committee members suggested amendments that can be found in the attached bill mock-up prepared by Mr. Anthony (Exhibit I). The first amendment for consideration was suggested by Assemblyman Manendo. It requires a board member to disclose if he has a family member employed by the association. The language for that amendment is on page 1 of the mock-up.

The second amendment provides an economic hardship exception if the maximum number of units that may be rented has already been reached. This was proposed by Assemblyman Horne and can be found on page 3 of the mock-up at subsection 5(a).

The third amendment is at the top of page 4 at paragraph (b). It provides that units owned by the declarant must not be considered when determining the maximum of units that may be rented in an association. This amendment was proposed by Assemblywoman Parnell.

At the back of the mock-up you will also find some additional comments on the bill submitted by Michael Buckley. Because the Committee was not able to hear testimony on these comments, they were not submitted and put into the work session document. However, they are there for your review.

Chairman Anderson:
Mr. Segerblom, did you have an opportunity to review the comments from Mr. Buckley?

Assemblyman Segerblom:
I did. However, because it is not in a form for an amendment I think he is basically making comments, but I do not think it is critical to our adoption of the bill.

Chairman Anderson:
The Chair will entertain an Amend and Do Pass motion which includes Amendments 1 through 3 in the work session document.

Assemblyman McArthur:
I had a problem with page 4, section 6, line 37. It looks like we are trying to dictate to homeowners' associations (HOAs) how many rental units they can have. I understand there is a problem right now with renting units out and places being foreclosed. I do not have a good solution for this unless we put a sunset clause in this, but I do have a problem with the state dictating to HOAs how many units they can rent.

Chairman Anderson:
I think that is partially what Ms. Parnell is trying to deal with: the reality that someone will be caught in a homeowners' association wishing to rent something out but cannot and trying to simultaneously protect the investment that he does not want to live in.

Assemblyman McArthur:
I agree, but I am not sure if we are the ones who should make that decision.

Chairman Anderson:
Well, I think this is an important piece of legislation. It deals with some of the fiduciary questions in front of our communities. I think we have to responsibly move forward.

Assemblyman McArthur:
I agree with you. Could we sunset this in order to get us by these bad economic times?

Assemblywoman Parnell:
I do not think we are attempting to tell an association what the number can be. We are just giving parameters as to what exceptions and what movement can be made within that number. I do not see anything in here that says an association cannot rent more than 20 units. That is an association policy, but then we are giving guidelines about that policy, which is my interpretation.

Assemblyman McArthur:
Looks like you cannot make any changes after October 1, 2009.

Assemblyman Horne:
I do not think a sunset would help. It could be the reverse. If you are going to have an argument that it is bad economic times, you would delay until times got better. I think with the amendments it is a good piece of legislation and we should move it.

Chairman Anderson:
Section 6, subsection 3 of the bill provides that the declaration may not be amended on or after October 1, 2009, or decrease that maximum number or percentage of units in the common-interest community. A sunset within that would only aggravate the situation.

Assemblyman McArthur:
I do not particularly agree with the section, but I will probably still vote yes.

Assemblyman Hambrick:
I agree with my colleague from District No. 4, but the bottom line is I would rather see a home occupied. If the owner needs to rent it to avoid foreclosure, I would still rather see it occupied than sitting empty. That has its own problems with maintenance and other things like that. I will be voting for the bill. It is a tricky situation and I think that none of us who buy property would want to turn it into a rental. We have to address the bottom line of the reality of today's markets.

> ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS SENATE BILL 253 (1st REPRINT) WITH AMENDMENTS NUMBERED 1, 2, AND 3.
>
> ASSEMBLYWOMAN PARNELL SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN CARPENTER AND MORTENSON WERE ABSENT FOR THE VOTE.)

Chairman Anderson:
Now, let us turn to 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)

Jennifer M. Chisel, Committee Policy Analyst:
Senate Bill 262 (R1) makes it illegal to grow marijuana plants except for certain medical uses. The bill outlines the penalty levels based on the number of plants grown. During the hearing, Chairman Anderson proposed the amendment outlined in the work session document as amendment 1(a) (Exhibit J). It removes the penalty from the bill for 1 to 25 plants. The penalty for 26 to 50 plants is a gross misdemeanor, 51 to 75 is a category E felony, 76 to 150 is a D felony, and more than 150 is a C felony.

The Committee also has a second option regarding the number and type of plants which was submitted by Jason Frierson with the Clark County Public Defender's Office. Mr. Frierson's amendments are attached for the Committee's reference. His proposal outlines the penalty for the number of plants as well as requires that those plants be mature marijuana plants as defined in the *Nevada Administrative Code* (NAC). Amendment option 1(b) provides that 25 to 100 mature plants is a gross misdemeanor, 101 to 150 mature plants is a category E felony, and more than 150 mature plants is a C felony. For the Committee's reference, the definition of "mature marijuana plant" is included in the special notes section of the work session document.

There is also a second amendment for the Committee's consideration which was discussed by Mr. Frierson during the hearing. Amendment 2 would add a gross misdemeanor offense for possession of marijuana in an amount between 1 ounce and 1 pound. This proposal would amend *Nevada Revised Statutes* (NRS) 453.336 and is shown on page 3 of Mr. Frierson's attachment.

Chairman Anderson:
I think that my amendment more properly addresses what the issue was portrayed to us, that they are trying to provide an opportunity relative to marijuana plants. In speaking to Legal, there was a need for a definition of the mature marijuana plant rather than buds that will not mature.

I also think we should include the definition that is in the NAC. Just hearing this bill, it was somewhat controversial. I know some of you cannot support the piece of legislation that was in front of us. There is a movement in some

parts of the United States to legalize and even tax marijuana as a moneymaking operation. Maybe if Nevada had a more hospitable agricultural climate, we would fall in that category also.

I am still of the opinion that marijuana is a gateway drug not unlike alcohol. I think we should take amendment 1(a) and include the provisions for mature marijuana plants.

Assemblyman Segerblom:
I reluctantly oppose this bill. I feel it adds nothing to the tools that law enforcement needs to prosecute something like this, particularly with the amendment if we go to the mature plants. There was testimony that it is already illegal as far as a grow house is concerned. A certain amount of marijuana in your possession is illegal. The reality is that our treatment of drugs is changing in this country. It seems to me that this bill is going in the wrong direction. We are trying to treat it as a disease or legalize it. In fact, the voters of this state have voted to indicate that marijuana is a medicinal drug, unlike tobacco which is clearly something that kills you. To make more criminal penalties on something when the country is going in the opposite direction is inappropriate, so I oppose the bill.

Assemblyman Horne:
I appreciate the sponsor bringing the bill. I appreciate the amendments, particularly amendment 1. I also like your proposed suggestion, Mr. Chairman, of adding the mature language to proposed amendment 1 and codifying the mature marijuana plant as it is in the NAC. I think this is a good compromise. I do not believe the bill goes after those medicinal users. I do not know medicinal users who grow 25 of their own mature plants. As a criminal defense attorney, I have had some pushback from some of my colleagues for cosponsoring this bill. I believe it is a good bill and I will vote for it, if you choose to move it.

Assemblywoman Parnell:
On page 2, number 2, the change in the possession language, I would like somebody to clarify for me what it would be considered if you were in possession of between 1 ounce and 1 pound. I do not know what the penalties are. Does this strengthen or lessen the penalty?

Jason Frierson, Clark County Public Defender's Office, Las Vegas, Nevada:
Currently, anything over an ounce is a category D, possession of a controlled substance, felony. This would create a gross misdemeanor category. Ms. Erickson indicates it may be a category E felony, which would be a mandatory probationable felony.

Chairman Anderson:
I understand where Mr. Frierson is trying to get to, and I do not disagree. I think that it is an admirable point to get some clarity on the overall question. However, I think we should try to deal with the plant question, which is what the purpose of the bill was, so we can keep the issues as simple as possible. In the event that we end up in a conference committee, we will know what we are going to do. If you wish to take up the other question, and if you want to use this as a vehicle, I think we need to recognize that is what we would be doing. I am not sure the primary sponsor of the bill would object to that, but I have the feeling that she would prefer to keep it as clean as possible.

The Chair will accept an Amend and Do Pass motion, including amendment 1(a) in the work session document and incorporating the definition of mature marijuana plant.

> ASSEMBLYMAN HORNE MOVED TO AMEND AND DO PASS SENATE BILL 262 (1st REPRINT).
>
> ASSEMBLYMAN MANENDO SECONDED THE MOTION.
>
> THE MOTION FAILED. (ASSEMBLYMEN COBB, GUSTAVSON, KIHUEN, OHRENSCHALL, PARNELL, AND SEGERBLOM VOTED NO. ASSEMBLYMEN CARPENTER AND MORTENSON WERE ABSENT FOR THE VOTE.)

Let us proceed to Senate Bill 313 (1st Reprint).

Senate Bill 313 (1st Reprint): Revises provisions relating to guardianships. (BDR 13-182)

Jennifer M. Chisel, Committee Policy Analyst:
Senate Bill 313 (R1), sponsored by Senator Mathews, relates to guardianships. It adopts a portion of the Uniform Adult Guardianship Act and also amends existing law. The Committee considered this bill in work session last week with the amendment to delete sections 53 and 54 of the bill regarding the exemption from jury service (Exhibit K). During the work session, Assemblyman Carpenter also raised a concern about section 50, which authorizes a guardian to sell property valued up to $10,000 without notice. The Committee may also consider an amendment to that provision as well based on the Assemblyman's concerns.

Chairman Anderson:
There are several places in the bill where the guardian has the authority to sell property under $10,000 in value. I know Mr. Carpenter was concerned about section 50. I would suggest we take out section 50 and make sure the guardian has a responsibility to continue to inform the estate holders at the current level. If we do that, will that retain that responsibility?

Lora Myles, representing Carson and Rural Elder Law Program, Carson City, Nevada:
I am the primary drafter of this bill. This is a bill we have been working on for two years with about 60 people throughout the state involved. If removing section 50 would allow the passage of the remainder of the bill, we would allow that. It is something we can discuss in the future and it is a minor issue compared to the remainder of the bill.

Chairman Anderson:
The question deals with the responsibility of guardians to make the heirs or potential heirs knowledgeable about the property in front of them. By removing that section, it does not lessen your responsibility as a guardian?

Lora Myles:
No, the guardian under other provisions within *Nevada Revised Statutes* (NRS) Chapter 159 is required to provide notice to all heirs on all matters regarding the estate and to provide reports to the court. Even though this section would not require notice, as in publication in a newspaper as required for most sales, they still would have to provide reports to the court and provide copies of those to all the heirs.

Chairman Anderson:
The Chair will entertain an Amend and Do Pass motion on the bill, the amendments being amendment 1 in the work session document and removing section 50 from the bill.

ASSEMBLYMAN HORNE MOVED TO AMEND AND DO PASS SENATE BILL 313 (1st REPRINT).

ASSEMBLYMAN GUSTAVSON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN CARPENTER AND MORTENSON WERE ABSENT FOR THE VOTE.)

Let us move to Senate Bill 277.

Senate Bill 277: Revises various provisions relating to estates. (BDR 12-657)

Assemblyman Horne:
My concerns on this bill (Exhibit L) are along the line of those people who were part of the family for an extended period of time as juveniles and then became adults and were not adopted until their eighteenth birthday. They would be precluded from this, but I believe the family treats them, and had all intentions of considering them, as part of the family with all of those inheritable rights that come with it. I would like the amendment to somehow capture that group.

I have some emails from the sponsors of Senate Bill 277 and they are willing to delete those sections dealing with adult adoption. I do not know if you wanted to address that today.

Chairman Anderson:
I think it would be okay to proceed if you think we can get the bill out.

Assemblyman Segerblom:
Are you looking for language on that? This just states that if there is no specific provision in a will, and if the person has been a part of the family, the family can acknowledge all of that. I would like to see this bill pass. Many lawyers spent a lot of time and effort on this, and it is, in my opinion, a good bill.

Assemblyman Horne:
The sections I am concerned about are sections 1, 4, and 34. Those sections would not need any additional language.

Chairman Anderson:
You are suggesting we remove sections 1, 4, and 34?

Assemblyman Horne:
Yes, Mr. Chairman.

Chairman Anderson:
The Chair will entertain an Amend and Do Pass motion on the bill, the amendments being to clarify the language on adult adoption and to remove sections 1, 4, and 34.

> ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS SENATE BILL 277.
>
> ASSEMBLYMAN HORNE SECONDED THE VOTE.
>
> THE MOTION PASSED. (ASSEMBLYMEN CARPENTER AND MORTENSON WERE ABSENT FOR THE VOTE.)

We are adjourned [at 11:24 a.m.].

RESPECTFULLY SUBMITTED:

Sean McDonald
Committee Secretary

RESPECTFULLY SUBMITTED:

Karyn Werner
Editing Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE:

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 14, 2009 Time of Meeting: 9:25 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 350	C	John P. Fowler	Memo from Robert C. Kim dated May 14, 2009.
S.B. 350	D	Scott W. Anderson	Addendum to testimony dated May 12, 2009.
S.B. 350	E	Scott W. Anderson	Written testimony dated May 11, 2009, and amendment.
S.B. 34	F	Jennifer M. Chisel	Work session document.
S.B. 82 (R1)	G	Jennifer M. Chisel	Work session document
S.B. 128 (R1)	H	Jennifer M. Chisel	Work session document.
S.B. 253 (R1)	I	Jennifer M. Chisel	Work session document.
S.B. 262 (R1)	J	Jennifer M. Chisel	Work session document.
SB 313 (R1)	K	Jennifer M. Chisel	Work session document.
S.B. 277	L	Jennifer M. Chisel	Work session document.