

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fifth Session  
February 11, 2009**

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:36 a.m. on Wednesday, February 11, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Terry Care, Chair  
Senator Valerie Wiener, Vice Chair  
Senator David R. Parks  
Senator Allison Copening  
Senator Mike McGinness  
Senator Maurice E. Washington  
Senator Mark E. Amodei

**GUEST LEGISLATORS PRESENT:**

Senator Warren B. Hardy II, Clark County Senatorial District No. 12  
Senator John J. Lee, Clark County Senatorial District No. 1

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Committee Policy Analyst  
Bradley A. Wilkinson, Chief Deputy Legislative Counsel  
Judith Anker-Nissen, Committee Secretary

**OTHERS PRESENT:**

Phil Bevins, Scout Executive, Boy Scouts of America, Las Vegas Area Council  
Jeff Shaw, President, Boy Scouts of America, Las Vegas Area Council; Chief  
Executive Officer, Southwest Gas Corporation  
Howard Bulloch, Boy Scouts of America, Las Vegas Area Council  
Patricia S. Miller, Girl Scouts of America, Las Vegas

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Matthew Sharp, Nevada Justice Association  
Graham Galloway, Nevada Justice Association  
Scott W. Anderson, Deputy-Commercial Recordings, Office of the Secretary of State  
Matthew Taylor, Nevada Registered Agent Association  
Carolyn Ellsworth, Chief of Enforcement, Securities Division, Office of the Secretary of State  
Nicole Lamboley, Chief Deputy, Office of the Secretary of State

CHAIR CARE:

We will open the hearing with Senate Bill (S.B.) 107.

[SENATE BILL 107](#): Limits the liability of certain nonprofit organizations and their agents, employees and volunteers under certain circumstances. (BDR 3-650)

SENATOR JOHN J. LEE (Clark County Senatorial District No. 1):

There are 33,500 Boy Scouts in Las Vegas and 14,000 in Reno. Our goal is to teach young men good values and virtues and work with them. At our two scout camps we are creating an atmosphere where these young people can learn the Boy Scout Oath and law and live by those precepts.

We are a civic-minded organization and offer programs for merit badges for citizenship in the community, the nation and the world. We work with our communities, teaching these young men. We had 350 youths do community service to get their Eagle Scout rank last year.

Members of our executive board have different areas of expertise. One area is risk management. Everything we do, we make sure we are protecting these young men and their leaders.

SENATOR WARREN B. HARDY II (Clark County Senatorial District No. 12):

Senate Standing Rule No. 23 requires me to disclose that I, along with Senator Lee, am a member of the Boy Scouts of America, Las Vegas Area Council, Board of Directors.

I appreciate the opportunity to bring S.B. 107 back to the Committee for consideration. I introduced a similar piece of legislation last Session.

We are attempting to limit the liability of certain nonprofit organizations, under certain circumstances, to \$100,000. We are living in a much more litigious society than in the past. The Boy Scouts of America and other organizations are not immune to the economic downturn. As the economy worsens, opportunities to provide young people recreation and similar endeavors are limited.

It is important for groups like Boy Scouts of America to survive. A lawsuit against the Boy Scouts is damaging, even crippling, to their ability to fulfill their mission.

We have tried to narrow S.B. 107 both in scope and applicability. The bill is simple and straightforward and attempts to limit the damages awarded in certain civil actions to \$100,000.

Section 1, lines 8 through 10 of the bill say the tort has to occur "in the course of an activity carried on to accomplish directly the religious, charitable or educational purpose of the nonprofit corporation, association or organization ... ." There was concern last Session this would apply if there was a child endangerment case or a molestation case during the mission of the organization. We further tried to limit and be specific on the types of organizations S.B. 107 applied to in section 1, lines 27 through 36.

As used in this section, "nonprofit corporation, association or organization which is created for religious, charitable or educational purposes" does not include any nonprofit corporation, association or organization which is created to carry out, further or represent the interests of its members for: any political, partisan or campaign purposes; any purposes relating to public advocacy of legal, social or political issues; or any financial, industrial, agricultural, commercial, trade or business purposes.

This would not apply to trade associations and those kinds of nonprofit organizations. We attempted to limit the scope and would be more than willing to consider other language that would narrow it further.

I should also indicate that section 1, lines 19 and 23 also limit it to activity not commercial in nature. If there is a fund-raising event, even one to further the mission, the limits do not apply.

I will be happy to answer any questions. We have representatives of the Boy Scouts in Las Vegas who can speak to the practical application of S.B. 107.

CHAIR CARE:

This comes down to balancing the remedies for somebody who has a good faith claim against a nonprofit. Last Session, we discussed sovereign immunity and the caps on \$100,000, and now it is \$100,000.

SENATOR COPENING:

Senator Hardy, was there a particular lawsuit situation that brought this about?

SENATOR HARDY:

The Boy Scouts requested that I bring the bill forward. I am not aware of any individual event that caused this. To my knowledge there were none. Perhaps Mr. Bevin or Mr. Shaw can address that in their testimony.

SENATOR COPENING:

If a Boy Scout volunteer taking children to camp was driving a bus while intoxicated, got into an accident and killed someone, would this limit the liability to the Boy Scouts? What limit would apply to another injured party on the road?

SENATOR HARDY:

What we are trying to address here is not cases of blatant negligence, but actual accidents where a tire blows out when the child or scout is in the care of the scout leaders. That is the kind of situation we would be looking to limit.

PHIL BEVINS (Scout Executive, Boy Scouts of America, Las Vegas Area Council):

To answer your earlier question, there was no event or lawsuit that caused us to ask for this limitation. Driving our concern is the people who volunteer in scouting, church, and other nonprofit, charitable work who may be limited because of a fear that their good deeds would be punished if something were to go wrong.

We commend the writers of this legislation to limit it to civil and not extend it to criminal liability. We also commend you for limiting the coverage to when you are actually performing the charitable purposes of the organization. That provides appropriate safeguards for people who are doing good work in their community but also holds accountability for those acts that might be done outside the scope of that charity work.

JEFF SHAW (President, Boy Scouts of America, Las Vegas Area Council; Chief Executive Officer, Southwest Gas Corporation):

In my role at Southwest Gas, I encourage service by our management members. We have members who serve in the Girl Scouts, the Big Brothers Big Sisters of Nevada, Salvation Army and the American Red Cross. We encourage them to serve. Without exception, all these groups face real challenges. In particular, it is difficult to raise the necessary funds to deliver our services.

We are all trying to raise money and at the same time limit unnecessary costs. The United Way has cut funding to all of the organizations that received it in the past. Donations that used to be a few hundred thousand dollars are now down to \$32,000. Most casinos have limited the funding that they used to give to the Boy Scouts.

We are on our own trying to raise money. We think this bill is a good attempt at trying something for the right reasons. Anybody serving these organizations is trying to help youth. We are up against a challenge to raise money. To limit unnecessary expenditures for lawsuits that may not have merit makes good sense.

CHAIR CARE:

Do you know of the other nonprofit organizations being sued on a theory of tort?

MR. SHAW:

I cannot name any today. I do know the Executive Director of the Girl Scouts is here. She may be able to name something.

CHAIR CARE:

Mr. Bevens, what sort of insurance policy does the organization carry, and what policy limitations are in place? You do not have to answer that specifically if you do not want to. I am assuming there is a carrier to cover the activities contemplated here?

MR. BEVINS:

The Las Vegas Area Council of the Boy Scouts is fortunate to be able to purchase rather expensive liability insurance.

HOWARD BULLOCH (Boy Scouts of America, Las Vegas Area Council):

This is really important in the long-term viability of so many nonprofits in our community. They provide services and much effort to the community. We have been told there are liability limits for various municipalities, such as the county and city, who provide services to the community.

We are asking for parity of liability limits for nonprofits that also provide these valuable services. The Boy Scouts, Girl Scouts, Opportunity Village, United Way, Red Cross and others would benefit from this legislation, not just our organization. We ask for your support and effort in considering and passing this legislation.

PATRICIA S. MILLER (Girl Scouts of America, Las Vegas):

I concur with the gentleman who just spoke. We are in the same situation as all of the nonprofits. Anything that would help us minimize our costs to provide the services to the youth in this community would be helpful.

I have been here for over 20 years and there have been no lawsuits for our organization during that time.

CHAIR CARE:

Anyone else wanting to testify as a proponent of S.B. 107? Do those opposed to S.B. 107 wish to testify?

MATTHEW SHARP (Nevada Justice Association):

We oppose S.B. 107. I am in the awkward position of opposing fine organizations like the Boy Scouts and the Red Cross. We do not disagree that they serve a purpose. One of the important functions of our civil justice system is the same concept of accountability and responsibility that the Boy Scouts teach. Our concept of accountability and responsibility is premised upon: You fix what you broke, and you do not get a break just because you are a good person.

If a doctor, who saved five or six lives in a day, got drunk, drove a vehicle and killed a family, we would not give the doctor a free pass. We would say to the

doctor: You should not have done what you did, and you must pay the full price for what you did. That is the concept of our civil justice system.

Let us say a United Way driver runs a red light, runs over a five-year-old boy and renders him brain-damaged. You are telling the family that now has to care for this young boy their claim is worth \$100,000. It really boils down to a principle of equity and the concept of responsibility and accountability.

I do not hear any pressing need for this bill. None of the proponents can identify an instance where they have even been sued for a crisis of any sort.

This Committee should think long and hard about this concept of providing immunity to nonprofits. Respectfully, they should reject this bill. The specifics of the bill are beyond my simple example.

CHAIR CARE:

The policy issue is if we do not have a liability cap, we stand to lose the activities we all benefit from the nonprofits. The intention was they would even draw the bill narrower than it is now. I do not know if you would even consider that, or if you even think that possible ...

MR. SHARP:

We are willing to discuss with Senator Hardy whatever proposal he has. It is not proper to provide limitations on liability for a nonprofit simply because they are a nonprofit. In 2003, there was a much different issue before the Legislature. Many of these so-called nonprofits are wealthy, functional institutions. I am not saying that the Boy Scouts necessarily are, but there are many out there. It seems to me it is not right to penalize the innocent party who has a valid liability claim.

SENATOR AMODEI:

You said you will discuss Senator Care's ideas. Is it fair to categorize your ideas as—we just want you to say no?

MR. SHARP:

I am not saying that. I am telling you what our feelings are, and our feeling is that this is a bad policy.

GRAHAM GALLOWAY (Nevada Justice Association):

I echo Mr. Sharp's comments about accountability and responsibility. That is the whole thrust of our position: everybody should be accountable and responsible. We do not think this bill is fair and reasonable.

About Mr. Sharp's example about a five-year-old being run down. What happens if that five-year-old does not have health insurance, and he now has \$1 million worth of future medical expenses? He gets \$100,000 from the nonprofit organization, and now there is a \$900,000 deficit. Where does the \$900,000 come from? It comes from the State. Why should the State pick up the tab when the nonprofits are in a position to purchase insurance?

It is an unfortunate part of doing business, but purchasing liability coverage is appropriate. I have not heard anything today that justifies allowing them to avoid that responsibility.

I think donations are down because of the economy, not particularly because of lawsuits. There is nothing that ties litigation lawsuits to a downturn in donations. These organizations are here before you today, asking you for this legislation, when they have not been the subject of litigation.

This is not a fair or appropriate bill. It is arbitrary and capricious. Senator Amodei brought up the issue of caps. It is our position that caps are a dangerous process. I am not sure where the \$100,000 figure comes from, other than it ties with the governmental immunity statute. Why \$100,000, why any cap? Why should a nonprofit organization escape full responsibility and accountability for their actions?

Mr. Sharp's example uses the five-year-old with \$1 million in medical expense, but he is only allowed to sue for \$100,000. If you flip those facts around and it is the five-year-old's father who is driving a car, and father runs down a volunteer for a nonprofit organization or a Boy Scout. The Boy Scout has \$1 million in damages; the Boy Scout is allowed to sue for that full \$1 million. He is not capped at a \$100,000. Why set up two classes like that? There is not a compelling State interest; there is not enough information to justify setting up these two different classes as proposed in this legislation.



The term "tort" is a broad term. It includes intentional acts. Our position is that this is not a necessary piece of legislation. It is not appropriate; it is not fair, not just.

SENATOR WASHINGTON:

Can you explain to me how the Good Samaritan law works? How would you differentiate between nonprofit organizations such as Boy Scouts, Girl Scouts or religious organizations that are doing some nonprofit activities in the community? Unfortunately, something takes place where they need a cap on liability?

MR. GALLOWAY:

Last Session I was questioned on that statute. The Good Samaritan statute applies where there has been an accident and you go to the rescue. It decreases a person's accountability, but there is still accountability. My recollection applies in an emergency situation, as opposed to what we are talking about now. The Boy Scouts are doing fund-raising drives, day-to-day business and volunteer work. There is a big distinction between the Good Samaritan situation and a nonprofit in the normal course of business.

SENATOR WASHINGTON:

The Good Samaritan statute provides protection for emergency situations. I suspect a nonprofit organization engaged in raising funds for whatever activity would probably be using those funds or articles or activities for emergency situations, such as is a destitute family or a child who needs a coat.

MR. GALLOWAY:

If the Boy Scouts come upon a bus accident and they volunteer, the Good Samaritan statute would apply to them. But it would not if they are just gathering coats for needy people, like for the victims of Katrina. The immediate aftermath of a situation like that would be an emergency situation. Months down the line, if they were going to help Habitat for Humanity put up a house and they drive over somebody in a crosswalk along the way, that is not an emergency. The Good Samaritan law should not apply there.

It is a matter of perspective. I understand that the nonprofits look at it from one perspective, but we look at it from the other end of it, the victims of the tort and the victims of the car accident who go uncompensated. Why should that occur?

SENATOR WASHINGTON:

This bill does not say that they will be uncompensated; it puts a cap on the compensation.

MR. GALLOWAY:

I agree with that. You are right. It does provide for a cap, but it is a limited amount and to us, that \$100,000 is arbitrary and capricious. If an individual has \$1 million worth of damages, why should they only be allowed to collect a \$100,000 regardless of who the actor is? I go back to the point raised earlier; these organizations are in a position to purchase liability insurance, so there is not a need for this provision.

SENATOR WASHINGTON:

Let us say there is an incident that involved the Boy Scouts. Is the cap placed on the incident or is the cap placed on each individual that may be a participant of that incident?

MR. GALLOWAY:

It is not clear in the proposed legislation. I assume the cap would apply to each individual. If there were three people in a crosswalk, and a Boy Scout ran them over, each would be limited to \$100,000, not necessarily \$100,000 to all three. That is just my interpretation of an ambiguous provision.

SENATOR COPENING:

You said they are in a position to purchase liability insurance. I have served as a volunteer and on the board of many nonprofits and currently do. We have always carried insurance. Do you know if it is a requirement for nonprofits to carry liability insurance?

MR. GALLOWAY:

I do not know that. I suspect that it is not. I am not aware of any mandatory insurance laws for most businesses, and I am not aware of any that apply to nonprofits. That would be interesting to address, and someone might want to sponsor legislation requiring nonprofits to carry liability insurance. We would not be opposed to that.

SENATOR COPENING:

This might be something for Staff. I would like to have a better understanding of what the coverage is on some of the nonprofits that were mentioned—Boy Scouts, Red Cross and United Way. I agree with you Mr. Galloway, it would probably be a good idea for nonprofits to carry some sort of insurance.

Someone mentioned they were having a difficult time obtaining volunteers for nonprofit organizations. I have not had that personal experience in all of my nonprofit work. Most volunteers probably do not ask whether a nonprofit carries that type of insurance.

CHAIR CARE:

Mr. Wilkinson, if we are going to make the request, that information would be available only if those organizations want to provide it.

On Senator Washington's question, we have case law on the doctrine of charitable immunity; please get that information to Senator Washington and copy all of us.

CHAIR CARE:

Is there anyone else to testify on the bill?

SENATOR HARDY:

Regrettably, I have not had a conversation with those who oppose the bill. They did try to reach me early this morning, but we were not able to connect.

I do not want us to lose sight of what we are talking about. The words "arbitrary and capricious" kept coming up. I am not an attorney, but I do know what arbitrary and capricious mean. I also know that the use of liability caps is well established in statute and case law. We are not looking for anything new or different.

The Boy Scouts of America are in the business of providing a service. If we cannot provide it, it is going to have to be provided by the government. The government has caps on liability, and the government is able to purchase cheaper insurance because they have caps on liability. We do not have access to the discounts that are associated with that. We are talking about bringing us on par with our competition. We are trying to limit the services of government and get nonprofit volunteer organizations to provide these services for our

youth. It is not arbitrary or capricious for us to come forward and ask that we be on a level playing field with the government that also endeavors to provide these services to our youth.

What we are asking for are the same caps that exist in statute elsewhere. I understand the policy question to be whether the service being provided is in the public good. I do not think anybody would argue the services Boy Scouts and Girl Scouts and other organizations provide are not in the public good.

SENATOR PARKS:

I need to disclose that I serve on the board of five different nonprofit organizations. I have dealt with this issue on at least two of these boards.

Something I want is to get a sense of is what the cost difference would be. The organizations I am associated with do special event fund-raisers. Each time they do a fund-raiser, whether it is the venue where they have the fund-raiser or just to be safe for the organization, they get a special insurance policy specifically for that event. We have a walk every year and we have our insurance carrier get us a specific policy for that particular event. My question is to find out from the insurance industry how the costs might vary.

SENATOR WASHINGTON:

I run a nonprofit called a church. We hold several events away from the church, and we carry liability insurance because we have a building. We obtain a rider on our insurance policy at no extra cost. We forward the rider to whomever the property belongs to so they know we are insured. If anything takes place, our insurance company becomes the first in line.

CHAIR CARE:

With that we will close the hearing on S.B. 107. We will open the hearing on S.B. 55.

**SENATE BILL 55**: Makes various changes concerning commercial recordings.  
(BDR 7-413)

SCOTT W. ANDERSON (Deputy-Commercial Recordings, Office of the Secretary of State):

It is my pleasure to be here this morning to present testimony on behalf of Secretary of State Ross Miller on S.B. 55. I will read from my testimony ([Exhibit C](#)). I have proposed an amendment ([Exhibit D](#)) to S.B. 55.

CHAIR CARE:

For the benefit of the Committee and Senator Copening, late last Session we adopted the Model Registered Agents Act (MoRAA). Some of that is in this bill. We used to call them resident agents, but now in all 50 states, we say registered agent.

MR. ANDERSON:

That is correct.

CHAIR CARE:

And the reason that I point that out is that there was a lot of work that went into that. It was a progressive bill. Frequently, you hear the expression "the Delaware of the West." Much work went into the drafting of the MoRAA, which I think is the Canadian counterpart of filing agents, as well as secretary of state organizations in this country. Are these provisions already adopted in Delaware or other states? I am not talking about section 55 but throughout—the dissolution and being a registered agent.

MR. ANDERSON:

The dissolution section was not part of the MoRAA. However, the naming of the registered agent was part of the MoRAA. It was decided last Session to keep Nevada's provision that a registered agent accept their appointment as registered agent to ensure that someone does not go out and name a registered agent without their knowledge. A registered agent would have to go out, search the Secretary of State sites and then resign as that registered agent, or be removed as the registered agent of that entity.

We feel this is acceptable. Especially with increased tension at the federal level requiring that registered agents keep certain information and make that information available to the Secretary of State, we need to have that acceptance and make sure there is the required registered agent as stated in statute.

CHAIR CARE:

As to section 55, subsection 2 comes out altogether? The reason I circled section 55 is it only applies to a Nevada entity and a business license right?

MR. ANDERSON:

Yes, currently ...

CHAIR CARE:

Currently, the law is if you are a foreign business entity, you can still have a registered agent in Nevada. That does not constitute doing business in Nevada?

MR. ANDERSON:

This does change it. In the 2003 Session, the intent was the State business license was put into place, and all entities doing business in Nevada or registered with the Secretary of State's Office would be included in the State business license. There have been Department of Taxation, Nevada Tax Commission rulings that say no, if you are not doing business in Nevada, that does not apply.

It is our office's opinion, if you are registered with the Secretary of State, taking advantage of the laws of the State of Nevada that benefit those businesses on a number of levels, that is considered doing business for the purposes of the state business license. Nevada entities in this State are already required to comply with and have a presence in this state, but this would also include those entities that may be outside the State. Their only presence is maintaining a registered agent and benefiting from the statutes of Nevada.

CHAIR CARE:

That would constitute doing business in Nevada?

MR. ANDERSON:

For the purposes of the business license fee, yes.

CHAIR CARE:

But only that.

MR. ANDERSON:

Only for the purpose of the business license fee.

CHAIR CARE:

You said on the record there may be additional amendatory language proposed for this bill?

MR. ANDERSON:

There is legislation. Assembly Bill (A.B.) 146 is a Nevada State business portal we are proposing. There are provisions that would affect the language in Nevada Revised Statute 360 regarding the business license fee. We are working with the registered agents on a couple of other issues that might require us to amend.

ASSEMBLY BILL 146: Provides for the establishment of a state business portal.  
(BDR 7-972)

CHAIR CARE:

We have not yet scheduled a work session for this Committee. I was intending the first work session to include S.B. 55. Are we going to see additional language proposed for S.B. 55?

MR. ANDERSON:

Let me discuss this with the Secretary and our chief to see if we would go forward without any additional amendments.

SENATOR WASHINGTON:

In the Legislative Counsel's Digest on S.B. 55, sections 5 through 52 says the Secretary of State can request certain information concerning its owners of record. Can you give me an example of what information you would request of an owner or of the owners?

MR. ANDERSON:

The information that is required of those sections is about the beneficial owners of an entity regarding a criminal investigation. If law enforcement comes to the Secretary of State and wants to find out who the principals are, not just the officers but who actually has control of the corporation, we can go to the registered agent, get that information and provide it to law enforcement.

CHAIR CARE:

Does anyone else want to testify on S.B. 55?

MATTHEW TAYLOR (Nevada Registered Agent Association):

I want to verify that we give our full support to S.B. 55 with the amendments proposed. We also want to thank Mr. Anderson for his ongoing relationship with the Nevada Registered Agent Association, making sure we continue to improve the business climate here in Nevada.

CHAIR CARE:

We will close the hearing on S.B. 55. We will open the hearing on S.B. 101.

[SENATE BILL 101](#): Makes various changes relating to securities. (BDR 7-416)

CAROLYN ELLSWORTH (Chief of Enforcement, Securities Division, Office of the Secretary of State):

I am here to offer testimony on S.B. 101. With me in Las Vegas via our teleconferencing abilities are the Securities Administrator Gary Abraham and our Chief of Registration, Robert Bevill. They are standing by to answer any questions the Committee may have. I will read from my testimony ([Exhibit E](#)).

CHAIR CARE:

The language in section 5, subsection 2, "without previous notice ... within or without this State" already exists in subsection 1. That is not new, but I understand the additional subsection is. How does that normally work? Would an investigation start in this State? Does that mean physically going to another jurisdiction to see the records?

MS. ELLSWORTH:

That can be done. If we have a licensee selling to investors in Nevada with a registered agent representative in Nevada, the firm has an obligation to supervise and train the representative. The firm's home office, with all its records, may be in another state. We can inspect in another state. The firm is aware of that, and it is not an unusual occurrence. They would expect that to happen if the need should arise. They would be required to pay the cost of sending our State investigators to another jurisdiction.

Most of the time, that is not the case; the inspection takes place here. The records are examined in the offices, and there is generally a rotation so that every firm or branch office is inspected. Records are looked at to make sure they are in compliance with all of the rules and regulations for securities in the State. That is done here in the firm's branch office or the principal office here.



We are suggesting there is not a need to give oversight to the Attorney General for transfer agents. There are approximately eight transfer agents currently licensed in the State. Oversight is unnecessary and usurps the duties of the Securities Administrator. His primary duty is to determine whether there should be an inspection of an office.

CHAIR CARE:

Do you mean current law requires you to issue the subpoena upon the holder of the account and hope that within ten days the holder of the account will produce the records that you want? If that does not happen you go to the financial institution?

MS. ELLSWORTH:

No. You have to serve the account holder a copy of the subpoena you are going to serve on the financial institution. Then you have to wait ten days, which gives them the opportunity to file a motion to quash in court. After the ten-day waiting period is up, you go to the financial institution and show them that you have served the account holder. Then they comply with producing those records.

Oftentimes, it takes weeks for the bank to produce the records. Many times we are looking at two to three year's worth of records. We need to see every check that was written, every deposit and every wire transfer in order to determine what was done with the money.

CHAIR CARE:

If you can demonstrate to the bank that there has been no response, no motion filed by the holders, then you have done what you need to do. But in those ten days, the holder can do just about anything.

MS. ELLSWORTH:

Yes. Unless we already had sufficient evidence to freeze the account by seizing the money through a search warrant. We oftentimes do not. I do not want to mislead the Committee that there is no other alternative. We can go to court and ask for an ex parte order so there is no notification to the account holder. That is only good for 30 days. We have to renew it. There are limits on that. We cannot just keep doing it. Oftentimes, it takes a long time to get those records.

SENATOR WIENER:

I saw zero on the fiscal note. Is there a fiscal note that we are not aware of?

MS. ELLSWORTH:

There is no fiscal note.

SENATOR WIENER:

I note that the effectiveness for section 11 all hinges on federal Real ID. Do we have any time lines there?

MS. ELLSWORTH:

As far as when ...

SENATOR WIENER:

Your effective date on section 11 depends on Real ID. Do you have any news that we do not?

MS. ELLSWORTH:

No. The request would be when federal Real ID goes into effect, it would go along with that.

There could be some confusion on the fiscal note as it relates to the amendment. I was concerned about one section that we had originally written for S.B. 101 and asked that it be removed ([Exhibit F](#)). That could have had a negative fiscal impact, and we do not want any negative fiscal impacts.

SENATOR WIENER:

Unless a fiscal note is revised, it would be on the bill.

NICOLE LAMBOLEY (Chief Deputy, Office of the Secretary of State):

In our discussions with Legislative Counsel Bureau Fiscal Division, the reason it was listed as a possible impact to the State is because of the increase of going to court. If we are allowed to recoup costs, there would be a positive impact, but we cannot surmise what the court may award as a cost-recovery piece. If we are allowed to change the civil penalties, that would be a positive impact to the fiscal account. We cannot guarantee what those costs may be. All of the other activities we currently do in the Division would be absorbed by existing resources. There is no impact under the current process.

SENATOR WIENER:

I was also looking at those recoveries you cannot estimate. When we do see this, it could be positive impact.

SENATOR PARKS:

My question goes to section 7. There appears that there is potential penalty of \$25,000 increased from \$2,500. Would that constitute a two-thirds majority vote for consideration since it is ...

CHAIR CARE:

I can have Staff look into that. I want to share my experience last Session. The revised Uniform Unclaimed Property Act came back with a two-thirds vote requirement. I called the Governor's Office and was told that the bill would be vetoed because of the two-thirds vote requirement. I investigated further, and it turns out it said it required a two-thirds vote because it meant additional revenue for the State. It is not, when you see two-thirds, that it means taxes; it means more revenue coming in. I had to explain that to the staff; it was fine after that.

BRADLEY A. WILKINSON (Chief Deputy Legislative Counsel):

When we are drafting these bills we do not include a two-thirds requirement for new civil penalties or increase in civil penalties. Similarly, we do not include those for criminal fines. The reason, as Ms. Lamboley testified, is wholly speculative as to whether anyone would be convicted under a criminal statute or would be subject to a civil fine or penalty. Therefore, we do not believe it is necessary to have a two-thirds vote under the Constitution.

CHAIR CARE:

We will close the hearing on S.B. 101.

CHAIR CARE:

Ms. Ellsworth, you talked about the Uniform Securities Act of 1987. There is actually a revised Uniform Securities Act. It has met with some resistance in other jurisdictions by the insurance companies because there is discussion whether an annuity is a security. I do not know if you have ever had a chance to look at it, but before the Session is over, you could go through it. Maybe it is something you want to consider next Session.

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MS. ELLSWORTH:

Since we adopted the Uniform Securities Act in 1987, there have been two additional versions we have chosen not to adopt, and we are not recommending those changes. As far as annuities, there is some resistance in the insurance industry, and there has been quite a bit of discussion as to whether annuities are securities.

The Committee is adjourned at 10:05 a.m.

RESPECTFULLY SUBMITTED:

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Judith Anker-Nissen,  
Committee Secretary

APPROVED BY:

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Senator Terry Care, Chair

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