

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fifth Session  
March 19, 2009**

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:35 a.m. on Thursday, March 19, 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

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Committee Policy Analyst  
Kathleen Swain, Committee Secretary

**OTHERS PRESENT:**

James D. Earl, Executive Director, Technological Crime Advisory Board, Office of the Attorney General  
Tom Roberts, Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department  
Keith G. Munro, Assistant Attorney General, Office of the Attorney General  
Chris Ipsen, Chief Information Security Officer, Department of Information Technology  
James R. Elste, Director, Information Systems Security and Internal Controls, International Game Technology  
Sabra Smith-Newby, Clark County

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Peter D. Krueger, Nevada Petroleum Marketers and Convenience Store Association

CHAIR CARE:

The hearing is open on Senate Bill (S.B.) 223.

**SENATE BILL 223**: Revises the provisions relating to certain crimes involving credit cards and debit cards. (BDR 15-73)

VALERIE WIENER (Clark County Senatorial District No. 3):

I have a history of bringing legislation to our Committee relating to identity theft or technological crimes. Senate Bill 223 deals with credit and debit cards. People who can explain the bill in more detail and answer any questions the Committee might have will testify.

CHAIR CARE:

The bill replaces "identifying description" with "identifying physical or electronic description" throughout statute.

SENATOR WIENER:

That is because of technology. It is expanded to include electronic enterprises where people less likely to follow the law engage in that activity.

JAMES D. EARL (Executive Director, Technological Crime Advisory Board, Office of the Attorney General):

Senate Bill 223 should be considered as a legislative companion to Senate Bill 82. The Committee heard testimony on S.B. 82 several weeks ago.

**SENATE BILL 82**: Makes various changes relating to technological crime. (BDR 14-266)

MR. EARL:

When I testified on S.B. 82 about the criminal use of prepaid cards, I explained that electronic information contained in the magnetic strip of a card determined what that card was, particularly when used through a network or electronic scanning device.

The changes to criminal statutes contained in S.B. 223 clarify that Nevada statutes dealing with credit and debit card offenses apply to the electronic

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equivalent of issued cards. This is necessary because it is possible to take electronic information from one card and place it on a piece of plastic that may look like a credit or debit card. These changes involve minor statutory modifications.

CHAIR CARE:

Lieutenant Bob Sebby of Las Vegas Metropolitan Police Department (LVMPD) is available in Las Vegas for any questions the Committee may have.

TOM ROBERTS (Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department):  
Lieutenant Sebby in Las Vegas can handle any testimony on behalf of LVMPD.

CHAIR CARE:

Hearing no opposition to the bill, I will entertain a motion.

SENATOR AMODEI MOVED TO DO PASS S.B. 223.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:

The hearing is open on S.B. 227.

SENATE BILL 227: Revises certain provisions concerning identity theft.  
(BDR 52-72)

SENATOR WIENER:

I am an advocate for measures to protect identities. Senate Bill 227 deals with encryption that was part of legislation I brought before this body four years ago. The encryption part of an omnibus bill raised concerns. When that particular measure was before the work session in the Assembly Committee on Judiciary, I was attempting to extend the date so people and organizations could comply. The original date for compliance was January 1, 2006. It was moved to October 1, 2008. There have been concerns about addressing the compliance issue.

KEITH G. MUNRO (Assistant Attorney General, Office of the Attorney General):  
You have a letter expressing support of S.B. 227 from the Attorney General ([Exhibit C](#)). The concerns giving rise to S.B. 227 came before the Technological Crime Advisory Board chaired by the Attorney General. Senate Bill 227 is good legislation.

MR. EARL:

Only two other states, Massachusetts and Connecticut, have statutes comparable to Nevada Revised Statute (NRS) 597.970. The Nevada statute received considerable attention in the national press before its effective date of October 1, 2008, having been passed in the 2005 Session.

The Technological Crime Advisory Board first heard of the interpretation difficulties of Nevada companies seeking to comply with NRS 597.970 at its first quarter meeting last year. We formed a working group to consider how to best clarify issues related to what encryption should mean, whether criminal penalties should attach to noncompliance and whether government agencies should be held to the same standard as Nevada businesses. The working group grew to include some of the best-known technology companies in the country and several prominent trade associations, [Exhibit C](#), page 1.

This inquiry regarding possible changes in the Nevada statute came to the attention of many of these companies from a *Wall Street Journal* article describing the provisions of NRS 597.970. Senate Bill 227 represents an appropriate accommodation of interests, including the legislative interests expressed by passage of NRS 597.970 in 2005. It is important to keep in mind what S.B. 227 does and does not do.

Nevada Revised Statute 597.970 restricts transfer of personal information through electronic transmissions. It was passed in the 2005 Legislative Session before a number of national incidents involving the possible compromise of personal identifying information (PII). The physical loss of a Veterans Administration laptop containing the PII of 26 million veterans was one of those incidents. Senate Bill 227 extends the encryption requirement to data storage devices containing PII outside the control of the data collector.

Both NRS 597.970 and S.B. 227 deal only with data containing PII. Neither NRS 597.970 nor S.B. 227 deals with data at rest, which is data being stored on the servers and hard drives of computers in the control of a data collector.

The data collector could be a business or government agency. Data at rest is the principle target of data miners, whether outside criminal cyber gangs or internal criminally minded employees. Senate Bill 227 does not deal with data at rest because the conceptual issues surrounding encryption of data at rest are complex, and the possible solutions are significant and expensive.

If the Technological Crime Advisory Board addresses the issues surrounding data at rest in the next interim period, most of the companies and trade associations that participated in drafting S.B. 227 expressed a willingness to participate in considering this more difficult problem. Senate Bill 227 deals only with a portion of the problem of protecting PII through the use of encryption. It is an important step forward and gives the additional guidance necessary to implement the legislative purpose behind the Nevada statute.

CHAIR CARE:

Could PII include a social security number?

MR. EARL:

Yes, personal information is a defined term in *Nevada Revised Statutes*. Personal information is data that can identify a person—name and social security number that could be used in combination with a credit card number.

CHAIR CARE:

Section 1, subsection 2 of the bill discusses liability. There is no liability for an act of negligence. Is that correct?

MR. EARL:

That is correct. Private industry asked if criminal sanctions applied to noncompliance. The working group tried to craft a provision to encourage compliance without criminalizing conduct or involving a detailed and complex regulatory regime. We tried to structure this so the safe harbor provision referred to in Exhibit C would eliminate liability for companies involved in a data breach if they had complied with the statute and encrypted their data. We did not want to allow the use of encryption so a business or government agency could escape liability if it was grossly negligent or engaged in intentional misconduct causing the data breach. The section on liability is written to encourage voluntary compliance without the possible imposition of criminal sanctions or regulatory regime.

CHAIR CARE:

If there is an inadvertent breach, there are criminal statutes relating to identity theft and a private right of action for any damages sustained by the victim.

MR. EARL:

That is correct, but not against the data collector because the data collector has taken appropriate precautions through the use of encryption to protect the personal information.

CHRIS IPSEN (Chief Information Security Officer, Department of Information Technology):

I support S.B. 227. There was one change in this law to include data collectors rather than businesses. We should not exempt ourselves from controls required and necessary for the private sector. As a State entity, we often require citizens to provide information without consent. In the private sector, that is an option. With a State entity, personal health information is often a requirement. As such, the State of Nevada has a higher obligation to protect that data than does the private sector.

We have tried to be inclusionary in the process. It is important that private business be included. In technology, we can make things difficult to understand. That has not been our intent in this law. This law is straightforward, and with minimal understanding about technology, you can understand this law. It is enforceable and valuable. This law clarifies the requirements of businesses and State entities moving forward. This represents the minimally necessary controls required to protect the citizens' PII.

The states are the No. 1 target of information threats because they are a conduit of all information to the federal government. We need to be vigilant in protecting that data. The threats from organized crime, nation states and individuals looking to profit from stealing information are increasing on a daily basis.

SENATOR WIENER:

The most important thing of value in our lives is our identity. Our identity is attached to the decisions we make and the necessities we pursue. What is the value of my name? What does a name sell for in identity theft right now?

MR. IPSEN:

Right now, it sells for \$20 to \$50 per identity. An entity's cost is approximately \$200. If you multiply that times millions of identities, you see there is tremendous potential risk to those working with identities. This year, I have received a letter notifying me that my PII was compromised. My ten-year-old daughter's identity was on a laptop at school, and the laptop was stolen. We received a breach notification on her. Her identity is not yet established from a fiscal standpoint. I am concerned that stealing the identities of children does not manifest for 10 to 15 years. When my daughter establishes an effective identity, credit rating and ability to purchase a home, her identity peril remains with her for the rest of her life. Given those constraints and the magnitude of the challenges facing us, these minimal controls are necessary now. We must look at intelligent approaches, being mindful of the fiscal constraints of the State and other business entities. We must also understand what our business needs and responsibilities are to our constituents.

JAMES R. ELSTE (Director, Information Systems Security and Internal Controls, International Game Technology):  
I will read my written testimony ([Exhibit D](#)).

CHAIR CARE:

The Rosetta stone was more a scholarly exercise than breaking a code. That could be done at the drop of a hat today with the technology we have.

MR. ELSTE:

Computers help us translate languages without a basis. The Rosetta stone is a perfect example from encryption lore because finding that with three separate languages referencing a merchant's list of goods, people could decipher hieroglyphics. This is one of the first examples of having that reference point, which allows one to decrypt information even without the key.

Today, powerful computers can crack weak encryption. By defining the standard in S.B. 277, we are setting the bar at a reasonable level of encryption. If your PII is being transported by someone, they are not transporting using the school-yard transposition cipher with a level of one. They are using something like Advanced Encryption Standard, [Exhibit D](#), page 2, which is a high-quality cipher that can be used for encrypting government secrets. It can be used reliably as a solid encryption algorithm.

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CHAIR CARE:

Was the Enigma machine used during World War II?

MR. ELSTE:

The Enigma machine was the German encryption device that the United States captured early in World War II. They were able to decrypt German communications because they had the key.

SABRA SMITH-NEWBY (Clark County):

Senate Bill 227 repeals NRS 597.970, which specifically relates to a business. Because Senate Bill 227 relates to a data collector, it does encompass governments, particularly local governments. There is likely to be a fiscal impact for Clark County in complying with this law. I signed in as neutral, but this is a concern. Our information technology people are looking at everything from roads to health care in determining the extent to which we might transfer possible personal information. One possibility involves transfer from our outside contractor where we store our data. We will need to determine if that is in the final law. I do not have a good answer regarding the fiscal impact on Clark County.

CHAIR CARE:

There is no fiscal note on S.B. 227. When you get that information, please let us know.

PETER D. KRUEGER (Nevada Petroleum Marketers and Convenience Store Association):

We learned about this from the *Wall Street Journal* article. I have members who are very sophisticated, have information technology people and are doing this. I have members who are uninformed about this. I am not asking for changes. I am asking for help in explaining to small business what they need to do and how to do it. People who use credit cards are okay because of standards the credit card companies require. However, many members gather data for in-house accounts receivable or in-house credit on the fuel side. There are members out of compliance with this bill.

Nobody wants that information out—their own or that of their customers—let alone the liability involved with this. I want to work with anyone we can to understand this and do more to educate the members.



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CHAIR CARE:

The effective date of this bill would be October 1.

SENATOR WIENER:

Information and education are a priority for the Attorney General. Can we provide information to licensed businesses regarding the requirements, perhaps working with the Secretary of State's Office?

MR. MUNRO:

We will meet with Mr. Krueger to see if we can do that. It is your bill, Senator Wiener. If you wanted to push back the October effective date, we could consider that. We are committed to working with Mr. Krueger and anyone else to make sure the law is clear to everyone, and they are informed on how to comply.

MR. EARL:

It is appropriate for the government to make an effort in this direction. It is also important to recount that the initial problems were identified to the Technological Crime Advisory Board a year ago by a small business operating here in Nevada that provides assistance to small and large businesses alike in a variety of different areas dealing with electronic security. Ira Victor, Director of Data Clone Labs, Inc., who planned to be here today, gives periodic podcasts to private industry associated with topics of current concern.

When we were seeking industry input to draft S.B. 227, I was invited to attend a presentation given by a private sector group about NRS 597.970 regarding compliance. Government can play an appropriate part. There are small business interests in Nevada engaged in the implementation of NRS 597.970 that will be regarding S.B. 227. They have a vested interest in making information available.

CHAIR CARE:

I received an e-mail from Mr. Victor expressing support for S.B. 227, ([Exhibit E](#)).

SENATOR WIENER:

I would love to move the bill. You alluded to moving the effective date out. What is your intent? We have been moving the effective date of this bill.

MR. MUNRO:

I defer to you on the effective date. This is complicated, and we are working to make sure everyone is informed because businesses want to comply with the law. We will work with anyone to make sure they know how to comply.

SENATOR WIENER:

That is my intent as well. What effective date would make sense?

MR. MUNRO:

I would like to see if there is an informational program the Committee would be comfortable with. Maybe October 1 is the appropriate date. If we need to think about moving the date, we will.

SENATOR PARKS:

When I read the bill, two terms jumped out at me—data collector and what personal information entails. They are satisfactorily covered in statute. They do appear as definitions in NRS 603A.

SENATOR AMODEI:

I have no objection if the bill's sponsor wants to move the effective date. We have testimony indicating this will involve some expense and effort, and I am comfortable giving deference to that fact. If we move the date back and someone wants to get into compliance beforehand, that is their prerogative.

SENATOR WIENER:

I am also concerned about that. Could you get back to us with a suggested date? We want it to be meaningful and functional.

MR. MUNRO:

We would be comfortable leaving it the same. It will not make much difference whether the date is October 1 or December 31. We are trying to do what is best for Nevada. We recognize this will take expense and effort. We are happy to move the bill today. We think this is a good bill and should be moved.

CHAIR CARE:

Let us not overlook the fact there is no opposition to this bill. We are talking about the education issue and the effective date.

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SENATOR WIENER:

Let us move the date and continue to do the work. We will address the date as you learn more.

CHAIR CARE:

There is enough on the record. The hearing is closed on S.B. 227, and I will entertain a motion.

SENATOR AMODEI MOVED TO AMEND AND DO PASS S.B. 227 AS AMENDED WITH THE EFFECTIVE DATE DECEMBER 31.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:

I have Bill Draft Request (BDR) 7-1004 dealing with corporations sole. This says you can no longer incorporate as a corporation sole after July 1. This is from the registered agents.

**BILL DRAFT REQUEST 7-1004**: Eliminates the formation of new corporations sole. (Later introduced as [Senate Bill 334](#).)

SENATOR WIENER MOVED TO INTRODUCE BDR 7-1004.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:

I have another request for a Committee introduction on BDR 9-865. This came from the Real Estate Section of the Nevada State Bar.

**BILL DRAFT REQUEST 9-865**: Makes various changes relating to real property. (Later introduced as [Senate Bill 333](#).)

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SENATOR WIENER MOVED TO INTRODUCE BDR 9-865.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:

There being nothing further to come before the Committee, we are adjourned at 9:30 a.m.

RESPECTFULLY SUBMITTED:

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Kathleen Swain,  
Committee Secretary

APPROVED BY:

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Senator Terry Care, Chair

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