

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

**Seventy-Sixth Session
May 18, 2011**

The Committee on Judiciary was called to order by Chairman William C. Horne at 9:05 a.m. on Wednesday, May 18, 2011, 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 if applicable, 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/76th2011/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 William C. Horne, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Steven Brooks
Assemblyman Richard Carrillo
Assemblyman Richard (Skip) Daly
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Jason Frierson
Assemblyman Scott Hammond
Assemblyman Ira Hansen
Assemblyman Kelly Kite
Assemblyman Richard McArthur
Assemblyman Tick Segerblom
Assemblyman Mark Sherwood

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Elizabeth Halseth, Clark County Senatorial District No. 9

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Karyn Werner, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

William Anton, Private Citizen, North Las Vegas, Nevada
Chuck Callaway, Director of Intergovernmental Services, Las Vegas
Metropolitan Police Department
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties
Union of Nevada

Chairman Horne:

[Roll was taken.] We have one bill on the agenda this morning, a bill that is familiar to us. We have heard it before. Senator Halseth is here, so we will open the hearing on Senate Bill 356 (1st Reprint).

Senate Bill 356 (1st Reprint): Establishes the crime of stolen valor.
(BDR 15-999)

Senator Elizabeth Halseth, Clark County Senatorial District No. 9:

It is my pleasure to present Senate Bill 356 (1st Reprint). This is a bill that will establish the crime of stolen valor in our state. In 2006, Congress passed, and the President signed, the Stolen Valor Act of 2005, which made it a federal crime to lie about receiving medals or decorations from the United States military. Unfortunately, the Ninth Circuit Court of Appeals in California recently ruled the Stolen Valor Act unconstitutional citing that it violated the First Amendment of the *United States Constitution*. Circuit Court Judge Smith found that if the Court upheld the act, there would be no constitutional bar for criminalizing lying about one's height, weight, age, or financial status on Match.com or Facebook. Whether you agree with Judge Smith's logic on this issue or not, I hope you will agree with me that lying about receiving military honors does a disservice to the brave men and women in uniform who have actually earned their decorations. It is important that we take steps to protect the honor of Nevada's heroes. Their accomplishments and sacrifices should not be diluted by others' false claims. I hope that you will also agree with me that

we cannot stand by idly while individuals lie about fake accomplishments and false actions for personal gain. It is important that charlatans and liars not obtain things of monetary value through the kind of misrepresentation and fraud that cheapens the valor of our military men and women.

On a positive note, a ray of hope did come from the Ninth Circuit Court's ruling. The Court suggested, while the way the Act was currently drafted restricts free speech rights, the statute could be modified into a constitutional, anti-fraud statute. It was with this suggestion in mind that I sponsored Senate Bill 356 (1st Reprint). Nevada currently has a law that prohibits a person from willfully wearing the badge, button, insignia, or rosette of any military order, or any secret order or society, or from using any such item to obtain aid, assistance, or any other benefit or advantage if the person is not entitled to wear or use any such item. This bill repeals that existing provision, and in its place, S.B. 356 (R1) provides that a person commits the crime of stolen valor if the person knowingly with the intent to mislead or defraud, and with the intent to obtain something of benefit or something of monetary value, misleads or defrauds another person by committing various acts concerning the false representation of himself or herself with relation to military service. In general, this bill provides that a person who knowingly and with the intent to mislead or to defraud commits the crime of stolen valor is guilty of a misdemeanor. However, forgery and counterfeiting would carry the increased penalty of a gross misdemeanor. Additionally, a person who wears or falsely represents himself or herself to have been awarded certain medals would be guilty of a gross misdemeanor. Those medals include the Distinguished Service Cross, Navy Cross, Air Force Cross, Silver Star, and Purple Heart. Finally, a person who wears or falsely represents himself or herself to have been awarded a Medal of Honor, the highest military decoration awarded by the United States government, would be guilty of a category E felony. I firmly believe this is the kind of anti-fraud statute that the Ninth Circuit Court had in mind.

In closing, I would just like to remind the members of this Committee of the old saying that, "Good policy will always survive." I hope you will agree with me that Senate Bill 356 (1st Reprint) represents good policy and I urge your support of this measure. Thank you for allowing me to present the bill to you today.

Chairman Horne:

Thank you, Senator. As you know, Mr. Hammond had this very same bill in this body before it went to the Senate side. We made amendments here. I know the proponents of the bill that solicited Mr. Hammond to carry the measure were not happy with the amendments that this Committee made to it. I am uncertain whether the Committee is willing to depart from those amendments

and go back to its original version at this time. How would you like us to proceed, to pass it as is?

Senator Halseth:

In the Senate, we had amended a similar bill to Assemblyman Hammond's Assembly Bill 379. My bill now reads "monetary value" instead of just "value." We believe that this is the intent that our veterans had in mind.

Chairman Horne:

We had, in Mr. Hammond's bill, amended it to be the "value" as well. We mirrored the fraud statutes.

Senator Halseth:

I have Lieutenant Colonel Bill Anton in Las Vegas who would also like to testify.

Chairman Horne:

We changed it to ". . . obtain something of value if the amount of the loss caused by a violation is less than \$2,500, the person who committed the violation is guilty of a gross misdemeanor." Then we changed it to, "If the loss is more than \$2,500, the person who committed the violation is guilty of a category E felony." We changed to "misleads or defrauds," and "obtains something of value." That was what we did in our amendments. Now your suggested changes still have the provisions in there on the types of medals, which this Committee rejected. I see you have the "knowingly intend to mislead" and "value," but that was one of the sticking points for this Committee. I will open up for questions if the Committee has any questions on the bill for the bill sponsor. I see none.

Good morning, sir. Do you have some statements that you would like to put on the record?

William Anton, Private Citizen, North Las Vegas, Nevada:

My name is Lieutenant Colonel William T. Anton, and I am here to support Senate Bill 356 (1st Reprint). We looked at everything that was in S.B. 356 (R1) and the veterans that I have talked to throughout the state had no problem with the addition of "monetary value." However, when we looked at A.B. 379, we were in a quandary because it makes us less than a normal citizen. We cannot understand why A.B. 379 was gutted in that way, and we are greatly distressed and dismayed at the amendments that were made. You have taken out the awards and decorations, which is also in contravention with *United States Code*, Title 18, which is already law and has been stated to be constitutional. This gives us an unusual bar to jump and is discriminatory and anti-veteran in its language. We feel that the *Nevada Revised Statutes* (NRS)

should be the guidelines for all: misdemeanors, gross misdemeanors, and felonies. We support Senate Bill 356 (1st Reprint) with the amendment to add "monetary value."

Chairman Horne:

Are there any questions for Lieutenant Colonel Anton?

Assemblyman Hammond:

Is it true that there are some monetary awards given out for some of the medals that were brought up, like the Medal of Honor? I have heard it said that some veterans who have been awarded the Medal can show it to the airlines and get a free airline ticket. Is that correct?

William Anton:

It is my understanding that it is correct. Each Medal of Honor recipient receives a stipend from the government. It is small, less than \$500 a month, but it is monetary value. The other thing that distresses us is we have had so many people forging documents to get jobs, even with the Las Vegas Metropolitan Police Department. People will claim to have medals and awards, but cannot prove it, or they provide false documentation, and they still receive the preference points given to veterans towards being hired. This will give a "phony" a better chance for a job rather than a legitimate veteran.

Assemblyman Ohrenschall:

Under current law, do veterans have a problem with either law enforcement or the district attorneys in terms of pursuing criminals when decorations and medals have been stolen? Have you had an inadequate response from them?

William Anton:

The answer is, "Yes." We have a problem with the courts, and even the federal court. They have put up an unusual bar of \$70,000. We had a case in Las Vegas on fraud and, in a state court, they were convicted, but according to the federal court, unless there is \$70,000 involved, they will not look at it because of their caseload. What we find is selective prosecution. What we want is for the judge to make his decision based on value. That is why they are judges, because they have common sense, a great background, and experience. We want it on the record that we do not want people making false claims. There may be freedom of speech to say, "Yes, I did this and I did that," but when it transcends into fraud and receiving something of monetary value, that is where they have crossed the line.

Assemblyman Daly:

I reviewed what we did under A.B. 379, and if I am reading this correctly, it says that you only have to receive something of value. I was listening to the testimony of our witness, so if you receive anything of value from \$0 up to \$2,500, I believe we increased the penalty, so it would be fraud. From \$0 to \$650 is currently a misdemeanor, and now we have it that from \$0 to \$2,500 is a gross misdemeanor, so I think we increased the penalty. I do not think we dishonored any military veterans. I actually think we created a higher standard. Am I reading that correctly, Mr. Anthony?

Chairman Horne:

We can have Mr. Anthony give his legal take on this. That is why he is here.

Nick Anthony, Committee Counsel:

I believe you are referencing A.B. 379 and the monetary threshold that was placed in that bill. It was a \$2,500 threshold. Anything below \$2,500 would be a gross misdemeanor under that bill as amended.

Chairman Horne:

Anything under.

Assemblyman Daly:

If you were in any other situation and you performed fraud, the threshold for misdemeanors, if our bill goes through as amended, is \$250 or will move up to \$650. This is so gross misdemeanors will have a higher penalty. If you are impersonating the military to gain anything of value from \$0 to \$2,500, it is a gross misdemeanor rather than having the \$650 cutoff. Is that correct?

Nick Anthony:

Yes, that is correct.

Assemblyman Frierson:

I am struggling with the fact that we have existing laws that cover the theft aspect of what we are trying to do here. It was my impression with both Mr. Hammond's bill as well as this one, that aside from the monetary value, the concern is the act of stolen valor. I am looking at NRS 205.380, and I do not recall this being covered, where obtaining money under false pretense is already a category B felony if the value is over \$250. Anyone who knowingly by any false pretense obtains from any other person any chosen action—I am not entirely sure what that means—money, goods, wares, chattels, effects or other valuable thing . . . , if it is over \$250, is already a category B felony. We are discussing value when it seems to me that we have a law to cover the damage of the value, and how we treat the value. It is the act of stolen valor that we

are treating separately in these bills. I think there has been plenty of testimony, and I agree that it is an extremely offensive act, but it is separate from the value. I am trying to avoid duplicating existing law when we have a category B felony, which is a one to six year felony and a fine of up to \$10,000. Maybe we can focus on the valor part of it and focus on the act of misleading someone regarding these medals.

Senator Halseth:

I met with Chairman Horne to discuss this issue and he mentioned that duplication of law was a concern of this Committee. I went back and spoke with Legal and asked them that question. I asked them, "Do any provisions of S.B. 356 duplicate existing law?" Their response was:

This is a difficult question to answer because there are numerous crimes relating to different types of fraud, which may conceivably be committed by a person and which may conceivably involve some aspect of misrepresentation concerning military service. Subsection 1 of section 1 involves a false misrepresentation of military service. Subsection 1 of NRS 205.380, which involves obtaining money, property, rent, or labor by false pretenses, is a crime that could, theoretically, be committed in conjunction with a false claim of military service.

It goes on through the different subsections, and I could read all of this to you, but this directly answers your question about that NRS statute.

Assemblyman Frierson:

I want to make sure I am clear because that response does not really address my question. I am not asking if stolen valor is already in law. I support the notion that we treat that as a distinct crime. Talking about the value of it, as we are discussing now, it seems not only duplicative, but it seems to give an option to treat it less harshly under these provisions than existing law. Right now, if someone steals something of value, they get a benefit or a discount. If it is valued over \$250, it can be treated as a category B felony. What we are now saying is that we can treat it as a gross misdemeanor. It actually says to me that we are giving an option to treat it less harshly in the name of making a statement. I support the notion of creating law to deal with stolen valor, and I do not think that currently exists in law. I am talking about that independent of the value. It seems to me that we could create a provision that makes it a misdemeanor or a gross misdemeanor for the act of impersonating, or falsely representing, and still treat it the same if it is over \$250. I guess I want to be clear. I think existing law is actually a stronger penalty than what we have been proposing in both bills.

Assemblyman Brooks:

I support your efforts on stolen valor. It is interesting what my colleague was just saying. This question may need to be addressed to Mr. Anthony. Does this bill modify our *Nevada Constitution* and the anti-fraud statute as written? I know there have been some problems with it being unconstitutional. By putting a certain value on it, does this make it an anti-fraud statute?

Nick Anthony:

Yes, I believe the intent of this bill when drafted was that they look at the court cases and attempt to specifically address the judges' concerns and make it an anti-fraud bill.

Assemblyman Brooks:

So, it is an anti-fraud bill. Has the court actually asked for it to be this specific, that you would make it a misdemeanor, a gross misdemeanor, or a felony based on the type of offense? For instance, the Senator's bill says for the Medal of Honor you would be guilty of a category E felony. If you fraudulently have a Service Cross or Navy Cross, it is a gross misdemeanor. Do we need to be this specific, or is my colleague correct that current law actually addresses this more harshly than what we have before us?

Nick Anthony:

On your first question, in terms of the case law, I do not believe the case specifically set out what type of penalties. That, of course, is a policy decision that this body can make, what level of penalty you want to set for a specific crime. As far as going forward or backwards in terms of penalties, again, that is a policy discussion, something that can be entered into and be discussed with law enforcement in terms of charging under current law versus charging under this particular bill, which attempts to codify certain criminal acts related to the crime of stolen valor.

Assemblyman Brooks:

Let me be more specific. By basically charging a misdemeanor or gross misdemeanor for someone who committed one of these crimes, does it give more teeth than giving discretion to a judge if the crime was over \$250? What I am asking is if this gives it more teeth? In other words, wearing a Service Cross may not exceed the \$250 threshold, but under this bill, it would be classified as a gross misdemeanor. Does this give the current law more teeth?

Nick Anthony:

I believe this bill will make it a specific crime, such as you indicated. If you wear a certain medal, that act can become actionable as a crime to the level

that you stated. Currently, in the NRS, as Mr. Frierson referenced, there are crimes such as obtaining money, property, rent, or labor by false pretenses, and certain fraud crimes that, if you were to use misrepresentation to obtain goods, you can be prosecuted under those particular statutes. Whether or not you meet the elements of those statutes would be a factual determination for the district attorney, and then be presented to a court of law to determine if you are guilty of that particular act. With that said, this bill does have several different provisions such that section 1 is making any false representation, and then other sections deal with how you verbally or in writing, such as in subsection 4, with intent to mislead, so there are different crimes within the subset of stolen valor that may be prosecuted under this bill.

Chairman Horne:

I see no other questions. I have one other person signed in to testify in favor, Chuck Callaway.

Chuck Callaway, Director of Intergovernmental Services, Las Vegas Metropolitan Police Department:

We support Senate Bill 356 (1st Reprint). As stated by the Colonel, we do hire a lot of folks that have military background, and we do provide preference points for those folks. We have, on occasion, had people lie about their history in the military to get those points.

Chairman Horne:

When that occurred, did those persons become police officers, or did you find out about their fraudulent statements?

Chuck Callaway:

It is my understanding that in the majority of those cases, we discovered it prior to hiring the person. Their employment was denied, and we did not pursue criminal charges against them for that.

Regarding the question that Assemblyman Frierson raised, and the discussion that was had by the Committee, it is my understanding from a law enforcement perspective for an officer in the field putting this law practically into use, this would actually be an enhancement. If the average person committed the crime of obtaining property or money under false pretenses, they would be charged with that crime only. If someone pretended to have some type of military background to obtain property or money under false pretenses, he could be charged with the crime of obtaining money or property under false pretenses, but in addition, he could also be charged with the stolen valor crime, whether it would be at the misdemeanor or gross misdemeanor level, or rise to the level of a felony. That is the way that I understand this. It would actually be

an enhancement to the current crime that exists for those folks who pretend to be ex-military to obtain property or money under false pretenses.

Chairman Horne:

Are there any questions for Mr. Callaway?

Assemblyman Sherwood:

In the case where someone is hired, and you do not find out about their lying about their military experience until later, how difficult is it to let that person go once they have been working for a while?

Chuck Callaway:

If we could show that they lied on their application, it would not be difficult to start the termination process. We would investigate and once we determined that they did, in fact, lie, we would go through the termination process.

Assemblyman Sherwood:

And then you are stuck with the expense of your investment in him?

Chuck Callaway:

That is correct.

Assemblyman Kite:

I am a two-tour veteran of Vietnam. This is not as much about what you get from the police officers, county sheriffs, or even from the Veterans Administration (VA). I have full benefits through the VA. I go to the VA Hospital on a regular basis, but I had to take my form DD-214 in to show them and have it verified through the repository. This is not really what the issue is here.

Two years ago, there was a man in Douglas County who was presenting himself as having more awards and medals than Audie Murphy had. The local sheriff did a background check and found that he was never in the military. This is the person we are talking about here. It is tough for a veteran to sit through these discussions and find out that certain medals or awards are illegal. I look around and see people with insignias on their caps. They wear camouflage, and it is downright insulting. I have sat through two hearings and a work session, and sat here and kept my mouth shut because I did not want to get personal about it. But this is personal. I would like to see one or the other of these bills go through because, not only is it important to me, it is important to every veteran who ever put the uniform on. I do not care if they were a mail clerk or they received the Medal of Honor, it is important to all of us.

Chairman Horne:

Thank you, Mr. Kite. I believe that we have done that with the last bill. It was processed. I thought that was a good compromise and sent that message.

I see no other questions. I have no one else signed in to testify in favor. I will move to the opposition. Is there anyone here opposed to S.B. 356 (R1)?

Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada:

I will make my remarks brief because the record for the other bill already contains our position. We believe the bill that passed out of the Committee as amended is sufficient, and would certainly not engender any sort of constitutional challenges. We understand the inherent emotion attached to such disrespectful and distasteful acts, but the bottom line is that the Ninth Circuit Court of Appeals and the United States Supreme Court both ruled that distasteful speech is protected speech, and it has to be tied to specific palpable harm. We believe that the bill that passed out of this Committee earlier this session does just that.

I want to note for the Committee that Assembly Bill 379 (1st Reprint) did just pass out of the Senate Committee on Judiciary this morning with an addition of the word "monetary." I believe they did not take out any provisions that this Committee put in.

Chairman Horne:

Are there any questions for Ms. Gasca? I see none. Is there anyone else opposed to this bill? I see none, so we will move to the neutral position. I see no one. Senator Halseth, I will allow you a closing remark.

Senator Halseth:

I want to respond quickly that there has been some confusion. Again, this bill does not violate the *United States Constitution*. We are not talking about free speech; we are talking about committing the act of fraud. That being said, I would like to make some closing statements.

Our veterans have sacrificed much and asked for so little. While we sleep peacefully in our beds, our brave men and women are sleeping, and have slept, in ditches to protect us. While we are at home listening to the laughter of our children, without a care in the world, our brave men and women are away from their families. I am afraid they are not listening to the laughter of their children, but to the sounds of war. We, as Americans, who have not served in this capacity cannot begin to imagine what the cost of freedom looks like. Our veterans, our brave men and women, have given much and asked for

so little. Mr. Chairman and members of the Committee, our veterans are asking for Senate Bill 356 (1st Reprint). Thank you.

Chairman Horne:

We will close the hearing on Senate Bill 356 (1st Reprint). That is the only bill we had on the agenda today. However, I want to revisit the marriage license bill that we heard on Monday Senate Bill 381 (1st Reprint).

[Senate Bill 381 \(1st Reprint\)](#): Revises provisions concerning the issuance of marriage licenses. (BDR 11-227)

If the Committee is willing, I will entertain a do pass motion on that bill. I want to say that I found it highly unsettling that Ms. Parent, as she stated on the record, admitted that she put an unsolicited fiscal note on that bill solely for the purpose of killing it. The fiscal note made no sense. She said it was done because they did not like the bill. It was an attempt to kill it, and it was done after the hearing in the Senate. Any concerns that they had were not raised in the Senate. To do that just to kill a measure that they do not like, I did not care for. I will leave it at that. I would be willing to move it today with a do pass.

Assemblyman Ohrenschall:

I would be more than willing to make that motion if you will accept it. I did want to make a couple of comments. During the hearing, Mr. Carrillo made some excellent comments about Las Vegas and how there are people who go there for their vacation. They intend to get married. The same thing is true in Reno. Sometimes they want to get married at 1 o'clock in the morning. They are sober and they want to get married, but the office is closed. I think this would be good for tourism and our economy. I am comforted by the fact that the bill has a sunset provision so, if there are problems, we can revisit it next session. I think it is a well-written bill. I am willing to make a motion when you are ready to accept one.

Assemblyman Brooks:

I agree with you 100 percent. I was appalled that someone would put a fiscal note on a bill to kill it and sit here and admit that to us. I was taken aback. I am not buying that there is some kind of top secret, homeland security checklist that you need to identify someone in order to get married. I concur, and I would be more than willing to make the motion to move this bill. I feel that it was done unjustly and I believe it is a good bill that will help our private businesses.

Assemblyman Sherwood:

I want to make certain that on the legislative intent there was a follow-up email about Clark County. The intent of this bill is for northern Nevada, not Clark County. As long as we understand that Clark County works the way it is now, and we are not trying to open up Clark County and their hundreds of wedding chapels to do this. This is need-specific for the wedding chapels in northern Nevada. Legislative intent is, "If it ain't broke, don't fix it." Clark County is not broken, so I am good with the bill without any amendments as long as we understand that this is not opening the door for throwing Clark County out.

Chairman Horne:

They testified that it did not affect Clark County. I will entertain that motion.

ASSEMBLYMAN OHRENSCHALL MOVED TO DO PASS
SENATE BILL 381 (1ST REPRINT).

ASSEMBLYMAN CARRILLO SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Is there any other business before the Committee? Is there any public comment? I see none, so we are adjourned [at 9:48 a.m.].

RESPECTFULLY SUBMITTED:

Karyn Werner
Committee Secretary

APPROVED BY:

Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 18, 2011

Time of Meeting: 9:05 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster