

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

**Seventy-Sixth Session  
March 1, 2011**

The Committee on Judiciary was called to order by Chairman William C. Horne at 9:03 a.m. on Tuesday, March 1, 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, 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/](http://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](mailto: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 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:**

Assemblywoman Olivia Diaz (excused)

**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

Dave Ziegler, Committee Policy Analyst  
Nick Anthony, Committee Counsel  
Jeffrey Eck, Committee Secretary  
Michael Smith, Committee Assistant

**OTHERS PRESENT:**

Julie Butler, Records Bureau Manager, Records and Technology Division,  
Department of Public Safety  
Brian Campolieti, Executive Secretary, State Board of Pardons  
Commissioners  
Cliff King, Chief Insurance Examiner, Life and Health Section, Division of  
Insurance, Department of Business and Industry  
Mark Dickinson, Actuary, Life and Health Section, Division of Insurance,  
Department of Business and Industry  
Carolyn Ellsworth, Securities Administrator, Office of the Secretary of  
State

**Chairman Horne:**

[The meeting was called to order. Roll was called.]

Ladies and gentlemen, today is a work session day. We have four bills on the work session document. As a reminder, work sessions are not for providing testimony on any particular bill, but for the Committee to work through each bill and possible amendments, and possibly to move the bills. There may be a time when someone is asked to come up to the witness stand for clarification of a particular issue, but that is not an opportunity to reargue your position for a particular bill. Also, I would appreciate everyone's patience in this process, because this is our first attempt at a work session using the Nevada Electronic Legislation Information System (NELIS). Typically, we would have a work session document in front of us—hard copies in a binder—but this time we are going to be going through the NELIS system. We are going to give it an honest shot and see if we can get through this efficiently. Make sure you sign into NELIS after opening the program.

First up, we have Assembly Bill 43. Mr. Ziegler will walk us through that document.

**Assembly Bill 43:** Extends the interval at which records of traffic citations must be audited by governmental agencies. (BDR 43-241)

**Dave Ziegler, Committee Policy Analyst:**

[Mr. Ziegler read from the work session document ([Exhibit C](#)).] Thank you, Mr. Chairman. Assembly Bill 43 was sponsored by this Committee on behalf of the City of Henderson. We heard this bill on February 9. Mr. Trujillo and Ms. Sheesley, the City Auditor, testified and were the proponents. This measure changes from semiannual—that is twice yearly—to annual the requirement for a fiscal officer of a government agency to which a traffic enforcement agency is responsible to audit the records of traffic citations. No amendments were proposed, Mr. Chairman. Thank you.

**Chairman Horne:**

Thank you, Mr. Ziegler. Are there any questions from the members on A.B. 43? Mr. Sherwood.

ASSEMBLYMAN SHERWOOD MOVED TO DO PASS  
ASSEMBLY BILL 43.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN DIAZ AND SEGERBLOM  
WERE ABSENT.)

**Chairman Horne:**

Our next item is Assembly Bill 49. Mr. Ziegler.

[Assembly Bill 49](#): Revises provisions relating to public defenders. (BDR 14-279)

**Dave Ziegler, Committee Policy Analyst:**

[Mr. Ziegler read from the work session document ([Exhibit D](#)).] Thank you, Mr. Chairman. Assembly Bill 49 was sponsored by this Committee on behalf of the Nevada Association of Counties (NACO). Mr. Wes Henderson presented the bill on February 14.

This bill creates the Fund for Legal Defense of Indigent Persons, and it creates the Board of Trustees of the Fund. Sections 9, 10, and 13 of the bill provide for increased administrative assessments for credit to the fund. The bill also imposes a 1/8-cent sales and use tax on tangible personal property and authorizes a county to impose an additional 1/8-cent sales tax upon approval by a two-thirds majority of the county commission and approval by the voters. After a deduction to cover the cost of collection, the taxes are credited to the separate indigent legal defense funds of the counties. A county that has imposed the maximum tax allowed under this bill may apply to the Board of Trustees of the Fund for Legal Defense of Indigent Persons for full or partial

reimbursement of extraordinary costs incurred in connection with legal services for an indigent person.

There was one amendment suggested on the day of the hearing. The Department of Taxation requested a change in the effective date to October 1, 2011. Also, please note that this is a concurrent referral to this Committee and to the Committee on Taxation.

**Chairman Horne:**

Thank you, Mr. Ziegler. So, the only amendment was the suggested date change, Mr. Ziegler?

**Dave Ziegler:**

Yes, sir.

**Chairman Horne:**

Are there any questions concerning A.B. 49? Basically, NACO is attempting to raise money for indigent defense. Mr. Hansen.

**Assemblyman Hansen:**

In regards to the additional sales and use tax, is this bill going to provide an opportunity for it to be placed on the ballot, or does the bill itself require that the tax be imposed?

**Chairman Horne:**

Which are you talking about? There are two 1/8-cent taxes on there.

**Assemblyman Hansen:**

I was not aware that there are two. I thought there was one. In either case, does either of them go on the ballot, or are they automatically imposed by the passage of this bill?

**Chairman Horne:**

We have our legal counsel ready to answer that question.

**Nick Anthony, Committee Counsel:**

Thank you, Mr. Chairman. It appears there is a 1/8-cent sales tax imposed in section 18, and that tax would be imposed automatically. There is also an additional 1/8-cent tax in section 19, and that authorizes the board of county commissioners to impose it by ordinance. That has to be approved by a two-thirds majority of the members of the board of county commissioners, and then the ordinance becomes effective.

**Chairman Horne:**  
Mr. McArthur.

**Assemblyman McArthur:**

Thank you, Mr. Chairman. My only concern about this bill is that it looks like it is mostly about funding and taxes, rather than policy. I am curious to know why we have it.

**Chairman Horne:**

It is dual referral. After our discussion, we are going to refer it to the Committee on Taxation with the date change amendment and no other recommendation. We will let the Committee on Taxation deal with the rest of it. Mr. Daly.

**Assemblyman Daly:**

Thank you, Mr. Chairman. In the two-thirds on the county vote for the ordinance, my understanding is two-thirds is not required at that level to introduce it. There is confusion to me. It says on page 19, subsection 3, line 21, ". . . at least 120 days after the approval of the question by the voters." Are they referring to the county commissioners as the voters, or a vote of the people?

**Chairman Horne:**  
Mr. Anthony.

**Nick Anthony:**

Thank you, Mr. Chairman. It appears that in section 19, subsection 2, there is a two-thirds majority of the board of county commissioners needed to approve the ordinance, and then that ordinance becomes effective 120 days after approval of the question by the voters. So, I read subsection 3 to mean that the ordinance would then go for approval to the voters at the next general election, although we could certainly clarify that.

**Chairman Horne:**  
Mr. Frierson.

**Assemblyman Frierson:**

Thank you, Mr. Chairman. I think that several of us are struggling with the same issue. For my own edification, I want to be sure we are looking at the policy aspect of this and not the tax aspect. Is that the direction we are looking at?

**Chairman Horne:**

That is correct. That is why, if we move the bill, it will be without recommendation.

**Assemblyman Frierson:**

And so, that is independent of our position on taxes, or taxes about this particular issue. It is just a policy about. . .

**Chairman Horne:**

That is correct. Mr. Sherwood.

**Assemblyman Sherwood:**

With the two-thirds requirement on this bill, do two-thirds of us in this Committee need to sign off on it to move it?

**Chairman Horne:**

No. It would require a simple majority.

**Assemblyman Sherwood:**

And then once it gets to the Taxation Committee, two-thirds of that Committee?

**Chairman Horne:**

No, it requires a simple majority out of committees.

**Assemblyman Sherwood:**

So it is always a simple majority?

**Chairman Horne:**

Until you get to the Floor. Mr. Hansen.

**Assemblyman Hansen:**

Thank you, Mr. Chairman. I noticed it says there is no fiscal note. I am new to the process, too, on work sessions and so forth. If we are imposing a tax, normally do they not include with that some kind of fiscal note attached? Do I understand correctly that if we vote, say, in favor of this, will it then go to one of the money committees? Will it go to Ways and Means?

**Chairman Horne:**

It will go to Taxation. However, at anytime when a bill reaches the Assembly Floor, Ways and Means can reach out its long arm and grab any bill it believes belongs in their committee.

**Assemblyman Hansen:**

I want to make sure that if I supported this thing, what I do not want to do is say, "Look, I support the idea of setting this up. I do not support the idea of a sales tax to fund it, though." So, I am caught in a little dilemma here. Policy-wise, I like the idea, but I do not like the idea of potentially having a tax increase to fund it. Since this has no fiscal note on it, I am confused as to how this all plays out.

**Chairman Horne:**

Mr. Anthony, do you have a point of clarification for Mr. Hansen?

**Nick Anthony:**

Thank you, Mr. Chairman. Generally, on the face of the bill, we indicate whether there is a fiscal note. That is based on whether there is a cost to the state to implement it, not as to whether there is a revenue. Anything that raises revenue, such as a fee or a tax, is what triggers the two-thirds requirement.

**Chairman Horne:**

Mr. Ohrenschall.

**Assemblyman Ohrenschall:**

Thank you very much, Mr. Chairman. In light of the comments made by my colleague from northwest Las Vegas, we are a policy committee, and I just want to inform the freshmen of that. We do not deal with fiscal issues. That is why I think we would refer this to the Committee on Taxation, and I would like to make that motion, if you and the rest of the Committee members feel comfortable with that.

ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND WITHOUT  
RECOMMENDATION ASSEMBLY BILL 49.

ASSEMBLYMAN KITE SECONDED THE MOTION.

**Chairman Horne:**

Is there discussion? Mr. Sherwood.

**Assemblyman Sherwood:**

Thank you, Mr. Chairman. To my colleague, regarding the policy tax issue, of course we are not a money committee. The policy is basically funding something with tax money, and so to bifurcate the fact that we are making policy based on raising taxes is disingenuous. You cannot compartmentalize that for me.

THE MOTION PASSED. (ASSEMBLYWOMAN DIAZ WAS ABSENT FOR THE VOTE. ASSEMBLYMEN HAMMOND, MCARTHUR AND SHERWOOD VOTED NO.)

**Chairman Horne:**

The next bill is Assembly Bill 66.

**Assembly Bill 66:** Revises certain provisions concerning the restoration of a person's right to bear arms. (BDR 14-465)

**Dave Ziegler, Committee Policy Analyst:**

[Mr. Ziegler read from the work session document ([Exhibit E](#)).] Thank you, Mr. Chairman. Assembly Bill 66 has to do with the restoration of a person's right to bear arms. It was sponsored by this Committee on behalf of the Department of Public Safety. Julie Butler presented the bill on February 14. The bill requires a court to give persons whose records have been sealed a written notice that their right to bear arms has not been restored, unless they have received a pardon, and the pardon does not restrict that right. The bill provides that a person who receives an unconditional pardon has the right to bear arms, and if a pardon restores that right to a person, that pardon document must explicitly say so.

This measure also authorizes the State Board of Pardons Commissioners and its agents to inspect sealed records if the person who is the subject of the records has applied for a pardon.

On the day of the hearing, there was one amendment that was proposed by the Department of Public Safety. The amendment is on the Nevada Electronic Legislation Information System (NELIS). It is the next page on the document in the system. According to the Department of Public Safety, the proposed amendment would exempt older pardons from the bill's requirement that any restoration of firearm rights must be directly addressed in the order.

**Chairman Horne:**

Thank you, Mr. Ziegler. Did you say that amendment is on NELIS? I see no exhibits on A.B. 66.

**Assemblyman Hammond:**

It is page 5 of the work session document. [Page 2 of ([Exhibit E](#)).]

**Chairman Horne:**

Thank you, Mr. Hammond. Are there any other discussions on A.B. 66? I would like to clarify something. I read in a newspaper that this Committee



was considering granting ex-offenders the right to bear arms. I do not think this bill does that. If somebody disagrees with me or thinks I am wrong on that, I would be happy to hear from them. Mr. McArthur.

**Assemblyman McArthur:**

I am going to need some clarification on this. It looks like if records are sealed, a person gets the basic right to vote, hold office, and serve on a jury where they can decide the fate of people's lives, but they do not have the right to bear arms. I have a little problem with that. If they are going to restore those basic rights, I think the right to bear arms also ought to be restored. Otherwise, I am just as comfortable with not having any of their rights restored, but maybe I need some clarification on why the process goes for sealing records.

**Chairman Horne:**

Would you like some clarification on exactly how records are sealed?

**Assemblyman McArthur:**

Yes. I question why we can restore some of the most basic rights we have, but not the right to bear arms. I am trying to figure out why we are differentiating there.

**Chairman Horne:**

Ms. Butler.

**Julie Butler, Records Bureau Manager, Records and Technology Division,  
Department of Public Safety:**

Good morning, Mr. Chairman and members of the Committee. The reason for the wording in the seal statute is because upon the sealing of a criminal conviction, the rights of a person to serve on a jury, to hold public office, and to vote are automatically restored. That is the current wording in statute. However, statute is silent on the right of a person to bear arms, and in terms of a Brady background check, we need specific confirmation that the firearms right has been restored in order to approve the transfer of the firearm.

**Assemblyman McArthur:**

I understand that part. My disagreement is with the way the statute is written.

**Julie Butler:**

We were not proposing to change the seal statute. We were just proposing to have a more formal means of communication with individuals to let them know that if they do get the records sealed, they do not automatically get the firearms right restored because of the way the statute is currently worded in Chapter 179 of the *Nevada Revised Statutes* (NRS).

**Chairman Horne:**

Mr. McArthur, perhaps Mr. Anthony can provide some clarification, but as I understand it, if a person commits a felony, he loses that right to bear arms upon conviction. At a later time, he has to apply to get those rights restored. When we discussed other bills in past sessions on automatic restoration of a person's rights, I believe some of the conversation was explicit in excluding an automatic restoration of your Second Amendment right to bear arms. Otherwise, if you made that explicit, every single offender who came out and who had done their time would automatically get their gun rights back. There was discomfort with the breadth of such an automatic restoration. That is how I remember it. Mr. Anthony maybe can say it clearer than that or correct me.

**Nick Anthony:**

Thank you, Mr. Chairman. I believe your explanation is exactly correct. It is certainly a policy choice that this body could make if they wanted to include the right to bear arms in the sealing of records.

**Chairman Horne:**

Mr. Kite.

**Assemblyman Kite:**

Thank you, Mr. Chairman. I am looking for the same clarification. If a felon has done his time, and his record is sealed, does he have an opportunity to file to get his firearms record cleared so that he can purchase a firearm? If so, who makes that decision?

**Chairman Horne:**

Mr. Anthony.

**Nick Anthony:**

Currently, the decision whether or not to restore a right to bear arms is made solely through the Pardons Board.

**Assemblyman Kite:**

But if that record is sealed, they can go back to the Pardons Board and request that their right to carry has been restored after the file is sealed?

**Chairman Horne:**

Ms. Butler?

**Julie Butler:**

No, they cannot. As the law is currently worded, the Pardons Board does not have statutory authority to open up that sealed record and look to see whether

the individual's criminal history is such that they are going to pardon it. Right now, without the passage of A.B. 66, the Pardons Board cannot go back and look at the sealed record, so the person is kind of put in a situation where they have had their records sealed and they have applied for the pardon, but the Pardons Board cannot look at the record because it has been sealed. They cannot determine whether or not the individual's firearms right should be restored. This bill would give the Pardons Board that authority to open up that sealed record and look to determine whether the individual should get his firearms rights restored.

**Assemblyman Kite:**

Will this allow that convicted felon to appeal to the Board, and then they can go back and check to see whether they want to give it to him?

**Julie Butler:**

That is correct.

**Chairman Horne:**

Mr. Hansen.

**Assemblyman Hansen:**

I am curious to know when they have had their rights fully restored, traditionally does that include their right to keep and bear arms, or in this case, are we trying to clear that up so that that right can be part of that full package? Also, if a felon was convicted of armed robbery, do they have the ability to say that the felon should not have that particular civil right restored to him because of his gross abuse of that privilege in the past? Is it all or nothing in every case?

**Julie Butler:**

I cannot speak for the Pardons Board. I can only tell you that there are some cases where my staff have come across a situation where they will look at a pardon that will say "unconditional pardon," but when they go back and do research, it is determined that the firearm right was not restored. It is not, from my staff's experience, necessarily automatic. Perhaps a Pardons Board representative can help me out on this.

**Brian Campolieti, Executive Secretary, State Board of Pardons Commissioners:**

In reference to certain rights being restored, the Pardons Board can exclude certain rights. If, for instance, an individual was convicted of armed robbery, and the Pardons Board reviews his case, they may restore certain civil rights such as the right to vote, the right to serve on a jury, and the right to run for office but exclude the right to bear arms. If an individual may have been

involved in jury tampering, they may exclude that right to serve on a jury and restore the rest of the rights. They can certainly do that.

**Assemblyman Hansen:**

So, this does not make it an all-or-nothing case, then. You still have that authority to kind of pick and choose?

**Brian Campolieti:**

Absolutely.

**Assemblyman Hansen:**

Okay, thank you.

**Chairman Horne:**

If I can have some clarification, those rights, particularly the right to bear arms, have not been changed. That right will not be restored unless an application is made to do so.

**Brian Campolieti:**

That is correct. The Pardons Board is the only body at this point in time that can restore the right to bear arms.

**Chairman Horne:**

Mr. Daly.

**Assemblyman Daly:**

Thank you, Mr. Chairman. I just want to make sure that with the amendment proposed here that it would only apply to pardons after October 1, 2011. If a person has the old pardon that has the language that is stated here, "all rights heretofore enjoyed by him had been restored," what is the timeline on when this will apply? That pardon, the way I read this amendment, is going to stand, and unless it is specifically stated that he does not have the right to bear arms, he does. New pardons issued previous to this bill which specifically say one does not have the right to bear arms are still going to be valid, and on a go-forward basis, you are either going to put it in there, or you are not going to put it in there, and everyone will be clear.

**Brian Campolieti:**

The Pardons Board has only been referencing the restoration of firearms for the last 15 years. I believe that has to do with changing laws, such as the Brady Bill. Formerly, before 15 years, they would state that all civil rights have been restored. Statutorily, under NRS 213.090, that pardon is considered an unconditional pardon. That is the reason for the amendment—to keep the

integrity of those pardons. Say, for example, an individual was granted a pardon with all rights restored 15 years ago, and he has been purchasing firearms. If A.B. 66 is passed without the amendment, and he goes to purchase a firearm, he is going to be refused, because there is no reference to the firearms. That is where the amendment came from. That was our concern.

**Assemblyman Daly:**

I believe that answers my question. Essentially, I think I heard you say that those old pardons will stand with regards to people's rights to bear arms and not go backwards, and that is the purpose of the amendment.

**Brian Campolieti:**

That is correct.

**Chairman Horne:**

Mr. Anthony raised a question on that proposed amendment. It takes place after October 1. Generally, when we pass bills, we are talking prospectively anyway. Is that necessary?

**Nick Anthony:**

That is correct, Mr. Chairman. Your assessment that, generally, when this body passes bills, they are only prospective in nature unless the Legislature specifically states the bill is intended to apply retroactively. In this case, this bill would apply prospectively to all pardons granted in the future. Certainly, the Committee could include a further statement of intent in transitory language to clarify the bill further.

**Chairman Horne:**

It causes me concern to start putting language like this into a bill. I think it messes up what we already do, and the next thing you know, people will be referring to it. If we did not do it, then it implies that we did not mean for it to be prospective, so I do not know whether we need that proposed amendment in there. Mr. Hammond.

**Assemblyman Hammond:**

I thought I had a grasp on this, but more questions come up. There was something you said to Chairman Horne a moment ago about people who are pardoned. In that pardon, sometimes you have all the rights that are going to be restored to them written down. Did you say that in no case will the right to bear arms be restored until after they petition for that, or am I incorrect? There might sometimes be cases in which a person's first restoration of rights would include the right to bear arms. Is that correct? Will some get it right away, whereas others might have to petition to open up their sealed records? Is there

one aspect of the bill that says there may be some who get that right back automatically?

**Julie Butler:**

There are two aspects to the bill. One is just letting people know that just by virtue of getting your records sealed, you do not automatically get your gun rights back. That is current law.

**Assemblyman Hammond:**

You might get your gun rights back, too.

**Julie Butler:**

Not unless you get a pardon. The only way to restore a person's firearms right is to get that governor's pardon. We get people calling my office saying they have retained an attorney to seal their record, and they spend hundreds of dollars only to find out at the end of the process that they cannot purchase a gun. The money they spent is for naught. We are trying to do two things. We are trying to notify those folks that they should not think that just because they had their records sealed they will get their gun rights back.

The second part of the bill is to allow the Pardons Board the authority to go back and look at that record.

**Assemblyman Hammond:**

That is what I thought.

**Chairman Horne:**

Are there any other questions or concerns pertaining to A.B. 66? Mr. Brooks.

**Assemblyman Brooks:**

Just a point of clarification. If, in fact, the Pardons Board denied the gun rights, and then you go back in and take a look at it, at that point can the Pardons Board override the stipulation put in there for them not to have their gun rights restored?

**Brian Campolieti:**

I am not sure.

**Assemblyman Brooks:**

Say this bill passes, and there is an individual that conducted an armed robbery, and maybe you go back in and see that all the rights were restored with the exception of the gun rights, but here it is ten years later. Do you have the right to say, "Okay, well, it has been 10 or 15 years, and we are going to go ahead

and give him those rights now that we have looked at the case again?" Do you have the right to do that, or do you have to follow what was put in the initial stipulation of the Board?

**Brian Campolieti:**

Traditionally, what happens when an individual has his rights sealed ten years prior, they will apply to the Pardons Board because they do not have the right to bear arms, and they would like to bear arms again. If A.B. 66 passes, and the Pardons Board has the authority to look into those sealed records, we will conduct a background investigation. A report will be provided to us by the Division of Parole and Probation, and then the Pardons Board can make that decision to grant an unconditional pardon, which would restore that right to bear arms.

**Assemblyman Brooks:**

I understand. So, it would never have had a Pardons Board stipulation before, because you would not have seen it. This just gives you the authority to take a look at it and make a decision.

**Brian Campolieti:**

That is correct. As it is right now, the Department of Parole and Probation, which conducts these background investigations for us, cannot get in there if the record is sealed. I guess the individual would have to go back to the court and request that. The Pardons Board has the authority to go into the sealed records to conduct that investigation.

**Assemblyman Brooks:**

I understand. Thank you for clarifying that.

**Chairman Horne:**

Are there any other questions concerning A.B. 66? Mr. Kite?

ASSEMBLYMAN KITE MOVED TO DO PASS ASSEMBLY BILL 66.

ASSEMBLYMAN SHERWOOD SECONDED THE MOTION.

**Chairman Horne:**

Is there discussion? Mr. Frierson.

**Assemblyman Frierson:**

Thank you, Mr. Chairman. I just want to clarify whether the motion is to pass the original bill, or to amend and do pass.

**Chairman Horne:**

I thought it was a straight motion, and I mentioned I did not want to entertain the amendment on setting precedent on something we already do. Is that correct, Mr. Kite?

**Assemblyman Kite:**

That is correct.

**Chairman Horne:**

We have a motion to do pass with a second by Mr. Sherwood. Is there any further discussion?

THE MOTION PASSED. (ASSEMBLYWOMAN DIAZ WAS ABSENT FOR THE VOTE. ASSEMBLYMAN MCARTHUR VOTED NO.)

**Chairman Horne:**

Our final bill of the day is Assembly Bill 72. Mr. Ziegler.

**Dave Ziegler, Committee Policy Analyst:**

[Mr. Ziegler read from the work session document ([Exhibit F](#)).] Thank you, Mr. Chairman. Assembly Bill 72 relates to securities. It was introduced by this Committee on behalf of the Secretary of State. Carolyn Ellsworth, who is the Securities Administrator in the Office of the Secretary of State, was the proponent of the bill at the hearing on February 16. The bill makes a number of changes to the Nevada Securities Act. Among other provisions, the bill provides that persons are engaged in unethical or dishonest securities practices if they use certain types of certifications or professional designations. It increases the nonrefundable annual licensing fee for a representative of an investment advisor from \$110 to \$125, and it requires an investment advisor to obtain a license for a branch office. It modifies the grounds for an order of the administrator denying, suspending, or revoking a license, imposing a fine, or taking other disciplinary action. It modifies the list of securities exempt from state registration and filing of sales and advertising literature and adds four types of exemptions to the requirement to file a notice of claim of exemption and pay a fee. It prohibits circulating or publishing any false or misleading statement regarding a publicly traded security to manipulate the market, and since the Securities Act contains its own penalty provisions, it removes the provision from the criminal statutes that such an act is a gross misdemeanor. It prohibits a person from making a materially false, fictitious, or fraudulent statement in a securities investigation, proceeding, or prosecution; and it increases the fee for requesting a waiver of enforcement or a no-action letter from \$200 to \$500.



On February 16, the day of the hearing, you considered four proposed amendments, and they are attached. The first one is in section 1 of the bill, which is on page 3. There is an Internet address. The Committee members suggested that the Internet address be deleted, since Internet addresses are subject to change.

In section 5, Carolyn Ellsworth requested a change in subsection 5, relating to securities that are exempt from registration for which the person claiming the exemption must file a notice with the administrator and pay a nonrefundable fee. With her proposed amendment, only paragraph (d) would be added to the existing law. Paragraph (d) refers to securities issued by, and representing an interest in, an insurance company.

In section 9 of the bill, you considered an amendment to clarify that this bill does not create an exclusive remedy for violations of the Securities Act. Ms. Ellsworth suggests the addition of a sentence at the end of section 9 to say nothing in the section is intended to limit the right of a person to bring a private civil action alleging fraud.

Finally, in section 13, the Chairman suggested an amendment to the provisions regarding the effective dates. As introduced, section 2 is effective on July 1, 2011, and all the other sections are effective on passage and approval. With the proposed amendment, sections 3, 5, 6, 7, 8, and 10 would also be effective July 1, 2011. The effect of that last amendment would be that amendments that relate to such things as making a false statement, or that provide certain grounds for discipline, would be effective on passage and approval, but other portions of the bill that require certain administrative actions and implementation steps by the Secretary of State would not be effective until July 1, 2011. That would also put people on notice that there was a change coming down the road.

**Chairman Horne:**

Thank you, Mr. Ziegler. Also, with the proposed amendment in section 9, the language in that section is not intended to limit a person's right to bring a private civil action. I have the same concerns with that as I did in the last bill. I did not see anything that prohibits bringing a civil action in the bill. Throughout the testimony of that day, it was put on the record as never being intended. If you put that in here, I think it opens up a huge door and other chapters and statutes and people saying, "Well, they did not put in there that the right was or was not limited, therefore they must have intended it to be limited," et cetera. I think we should not do that, but we have a lawyer on the Committee for that, Mr. Anthony.

**Nick Anthony, Committee Counsel:**

I would certainly agree with your assessment. I believe you stated it clearly for the record, as was evidenced during testimony on the bill that that amendment is not necessary.

**Chairman Horne:**

Are there any questions from the Committee members? Mr. Ohrenschall.

ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO  
PASS ASSEMBLY BILL 72.

**Chairman Horne:**

Hold that motion for now, Mr. Ohrenschall. Mr. Brooks.

**Assemblyman Brooks:**

Thank you, Mr. Chairman. I have in my notes that there was a question that had to do with moral turpitude. It was a question on which the Committee was looking for some more clarification, because "moral turpitude" can include a number of different things.

**Chairman Horne:**

That was Mr. Frierson's question. Did anyone get back to you on that, Mr. Frierson?

**Assemblyman Frierson:**

Actually, I did speak with some folks about that phrase. My understanding is that this is not the only place in the law where "crimes of moral turpitude" exists and that there is statutory and, more importantly, case law that describes "crimes of moral turpitude." That is not as open as I originally thought. So, I am comfortable.

**Chairman Horne:**

Are there any other questions or concerns about A.B. 72? Mr. McArthur, and then Mr. Kite.

**Assemblyman McArthur:**

Thank you, Mr. Chairman. The only comment I have is that I will be voting for this bill with the right to change my mind.

**Chairman Horne:**

Thank you, Mr. McArthur. Mr. Kite?

**Assemblyman Kite:**

With your indulgence, could I ask a question of Mr. King from the Division of Insurance?

**Chairman Horne:**

Yes. Mr. King?

**Cliff King, Chief Insurance Examiner, Life and Health Section, Division of Insurance, Department of Business and Industry:**

Mark Dickinson is an actuary with the Division's Life and Health Section, which was actually responsible for drafting the regulation that was adopted in November 2010 regarding many of these same things. Mr. Dickinson is with me today.

**Assemblyman Kite:**

That was my question. A lot of the same things are in here, and I was just wondering whether that was interfering with the Insurance Commissioner or if it was repetitious.

**Mark Dickinson, Actuary, Life and Health Section, Division of Insurance, Department of Business and Industry:**

There is a little bit of an overlap between the regulation and A.B. 72. The regulation that will become effective July 1, 2011—the one that was passed a couple of months ago—deals strictly with life and annuity products. This new A.B. 72 has to do with the sale of securities. Some life and annuity products are considered to be securities, so there is some overlap, but there is certainly no contradiction between the two bills.

**Assemblyman Kite:**

Thank you. That was my question.

**Chairman Horne:**

Are there any other questions? Mr. Brooks.

**Assemblyman Brooks:**

Thank you, Mr. Chairman. The felony classification for this will go from a C to a B, if I am correct. I actually looked up the different classifications yesterday. I just wanted to ensure that this Committee was okay with changing the classification from a C to a B. I think there is a big jump within those two, and I want to make sure that that is something we are comfortable with.

**Chairman Horne:**

Thank you, Mr. Brooks. That jump from a C to a B raises concerns for me as well, in that one of the things we have been trying to do is reduce our prison costs, et cetera. In what section was that, Mr. Brooks?

**Assemblyman Brooks:**

I believe it was in sections 8 and 12. For those of us freshmen, class B felonies are manslaughter, drug offenses, sexual offense, burglary, aggravated assault, and white-collar crime. Class C felonies are grand larceny, robbery, battery, assault, and theft.

**Chairman Horne:**

Mr. Anthony?

**Nick Anthony:**

Section 8, subsection 1(f) of the bill adds the language, "Put off, circulate or publish any false or misleading writing . . . ." That would become a category B felony. Currently, I believe it is a gross misdemeanor under *Nevada Revised Statutes* (NRS) 205.440. Also, section 8 prohibits the willful making of a materially false or fictitious statement. That would also become a category B felony per NRS 90.650.

**Chairman Horne:**

What was it prior to that, Mr. Anthony?

**Nick Anthony:**

Mr. Chairman, I am sorry. I do not have that in front of me. I would have to look that up.

**Assemblyman Brooks:**

If I may, Mr. Chairman, right above section 12 on page 16, line 7, there is a little arrow that shows, ". . . is guilty of a category C felony and shall be punished as provided. . . ." It looks like in the past, it was category C.

If you look on page 2, line 43 in the Legislative Counsel's Digest, it says, "Sections 8 and 12 of this bill make such conduct a category B felony instead."

**Nick Anthony:**

It appears that both of those crimes are currently categorized as gross misdemeanors. This bill would make the penalty a category B felony. I know there is some confusion as to where that B comes from. It actually comes from NRS 90.650, which is not contained in the bill, but that is the catch-all

provision for any violation of Chapter 90. That lists the criminal penalties therein.

**Assemblyman Brooks:**

For clarification, it is the terminology that is used that classifies that as NRS Chapter 90. It does not specifically state it goes to a B.

**Nick Anthony:**

Yes. *Nevada Revised Statutes* 90.650 is a catch-all provision, so that violations of Chapter 90 do become category B felonies. By adding this language, it makes it subject to the catch-all provision of NRS 90.650.

**Assemblyman Brooks:**

And that would include the language which says, “. . . circulate or publish any false or misleading writing, statement or intelligence regarding a security that is publicly traded.” That is the language.

**Chairman Horne:**

Mr. Sherwood.

**Assemblyman Sherwood:**

If someone were guilty of this, and multiple people were victimized, and we did not change it to a category B felony, and maybe 20 people were victims of this, can you stack the 20 gross misdemeanors on top of each other and then use that as a way to penalize somebody who victimized more people without making them category B felons right out of the gate?

**Chairman Horne:**

I do not believe so. A gross misdemeanor is punishable by up to a year in jail, so you could run them consecutively. Mr. Anthony?

**Nick Anthony:**

This bill does make the penalty a category B felony. I believe, currently, if you had an individual who committed numerous infractions or violations, the prosecution would charge that individual with each count for each separate crime if they could prove it as such.

**Chairman Horne:**

Mr. Anthony, could this be made into a category C felony, instead of a B? Are we locked into a B because it is in that chapter?

**Nick Anthony:**

Certainly, if you wanted to change the provisions contained within sections 8 and 9 of the bill—the two sections that make it a category B—you could specify in those sections that any violation of those particular sections would be a category C. The language of NRS 90.650 right now reads, “A person who willfully violates: (a) A provision of this Chapter. . .” So, it is a chapter-wide penalty. The reason that is done is for uniformity, enforcement, and prosecution.

**Chairman Horne:**

That currently exists in NRS 90.650. This is simply adding to that chapter, and if we wanted to make this less than a B felony, we would have to explicitly state that we are going to make it a category C outside of NRS 90.650.

**Nick Anthony:**

That is correct, Mr. Chairman, and this Committee could certainly lower that penalty threshold if they so choose.

**Chairman Horne:**

Mr. Kite.

**Assemblyman Kite:**

Thank you, Mr. Chairman. I am as interested in saving money as anyone else. Imagine you have a security with a guaranteed income, I come to you and I tell you that I am an expert because I am licensed, and my product is better than yours. Imagine further that I mislead you so that I can get the commission off of that security that I talked you out of which then fails. It wipes out your entire 401(k) or your savings. I think the penalty part of this should not be based on the economy. One guy doing it to me is just as bad as Bernie Madoff doing it to 1,000 people. It affects me just as hard as it does all the people who were involved with his schemes. I am not saying that we are talking about a Bernie Madoff here, but let us talk about someone coming in and misleading you and wiping out your entire savings. Lowering the penalty for that just because we think it might save us some money. ...

And one follow-up question, if I might. If it is a gross misdemeanor, I understand it is a year in the county jail, correct?

**Chairman Horne:**

It can be up to one year.

**Assemblyman Kite:**

With the economy as it is now, I can almost guarantee you that any judge in a rural county is not going to send somebody to jail for a year for this; and if it is escalated by two or three counts, he or she is not going to sentence them to two or three years in jail, because they do not have the facilities or the money to keep them there, so he is probably going to walk. I say we soak it to them as much as we can.

**Chairman Horne:**

Thank you, Mr. Kite. Mr. Frierson.

**Assemblyman Frierson:**

Thank you, Mr. Chairman. I just wanted to comment that for not being a lawyer, I think the perspective of Mr. Kite is right on point. My recollection is that this bill reflected the state's frustration with the system not taking white-collar crime seriously. I do remember a case with which I was involved several years ago where, as a prosecutor, I was chastised for even bringing the case, and so I believe that this effort at least reflects an interest on the part of the Office of the Secretary of State to show how serious this behavior is and to have that reflected in the penalty. It does not prevent them from negotiating cases in my understanding, but does put some teeth into the consequences of this behavior. I believe I recall that being their intent.

**Chairman Horne:**

Thank you, Mr. Frierson. Hello, Ms. Ellsworth.

**Carolyn Ellsworth, Securities Administrator, Office of the Secretary of State:**

I just want to clarify something for the record, because part of the bill had to do with updating a provision that existed in Chapter 205. There was a conflict between those two, and that is why the change was made, to take it out of Chapter 205 and put it in Chapter 90 where it belongs. That was my testimony at the prior hearing.

**Chairman Horne:**

Thank you, Ms. Ellsworth. Are there any other questions or concerns? I see none. Mr. Ohrenschall, do you want to make a motion on this bill?

ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO  
PASS ASSEMBLY BILL 72.

ASSEMBLYMAN DALY SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN DIAZ WAS ABSENT  
FOR THE VOTE.)

**Chairman Horne:**

Mr. McArthur has reserved his right to change his vote on the Floor. I think that concludes our work session for today. Now we have to do some assignments to defend these bills on the Floor.

We will give A.B 43 to Mr. Sherwood. Assembly Bill 49 is going to Taxation. Assembly Bill 66 will be defended by Mr. Frierson. We will give A.B. 72 to Mr. Kite.

That concludes our work today. Documents on the Nevada Electronic Legislation Information System (NELIS) will be part of the record. With no further business before the Committee, we are adjourned [at 10:07 a.m.].

RESPECTFULLY SUBMITTED:

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Jeffrey Eck  
Committee Secretary

APPROVED BY:

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Assemblyman William C. Horne, Chairman

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



**EXHIBITS**

**Committee Name:** Committee on Judiciary

**Date:** March 1, 2011

**Time of Meeting:** 9:03 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
AB 43	C	Dave Ziegler	Work Session Document
AB 49	D	Dave Ziegler	Work Session Document
AB 66	E	Dave Ziegler	Work Session Document
AB 72	F	Dave Ziegler	Work Session Document