

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

**Seventy-Sixth Session  
March 3, 2011**

The Committee on Judiciary was called to order by Chairman William C. Horne at 8:20 a.m. on Thursday, March 3, 2011, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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

**COMMITTEE MEMBERS ABSENT:**

Assemblywoman Olivia Diaz (excused)  
Assemblyman Mark Sherwood (excused)

**GUEST LEGISLATORS PRESENT:**

Assemblyman Pete J. Goicoechea, Assembly District No. 35  
Assemblyman Lynn Stewart, Clark County Assembly District  
No. 22; also representing the Legislative Committee on Senior  
Citizens, Veterans, and Adults with Special Needs  
Assemblywoman April Mastroluca, Clark County Assembly District  
No. 29

**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Henry Krenka, President, Nevada Outfitters & Guides Association  
Walt Gardner, Private Citizen, Ruby Valley  
Doug Busselman, Executive Vice President, Nevada Farm Bureau  
Federation  
Joe Dahl, Private Citizen, Fallon  
Jeff Sanders, Private Citizen, Fallon  
Don Alt, Chairman, Nevada Livestock Association  
Bill Bradley, representing Bradley Drendel & Jeanney  
Herbert Randall, President, Nevada Silver Haired Legislative Forum  
Michael Foley, Public Guardian, Office of the District Attorney,  
Clark County  
Kathleen Buchanan, Public Guardian, Office of the District  
Attorney, Clark County  
Susan DeBoer, Public Guardian, Office of the Washoe County  
Public Guardian  
Kim Spoon, National Master Guardian, Guardianship Services of  
Nevada, Inc.  
Rebecca Gasca, Legislative and Policy Director, American Civil  
Liberties Union of Nevada  
Jon Sasser, Statewide Advocacy Coordinator, Washoe Legal  
Services; and Legal Aid Center of Southern Nevada  
Kevin Schiller, Director, Washoe County Social Services  
Erin McMullen, Private Citizen, Reno

**Chairman Horne:**

[Roll called.] We have three bills on the agenda. We will start with the horses, and open the hearing on Assembly Bill 140.

**Assembly Bill 140:** Limits civil liability of certain persons for injuries or death resulting from certain equine activities. (BDR 3-879)

**Assemblyman Pete Goicoechea, Assembly District No. 35:**

I am here to present Assembly Bill 140 and bring the equine liability bill forward. Presently, there are 46 states that have an equine liability law in place. I will let Mr. Krenka speak to what those states are. The bottom line is, we have taken Montana law and shaped it to fit the state of Nevada. I know there are a number of people in the audience who feel we are releasing the people from negligent acts, but that is not the purpose of this bill.

In my own business as a rancher, there have been cases when I would be held liable if someone comes out to my property to help me brand calves and his own horse bucks him off. What this bill does is clarify that you need to actually be negligent. You have to provide a horse, tack, or a dangerous condition on your property in order to be held negligent. You can be sued for anything, but we are trying to avoid frivolous lawsuits by clarifying what a negligent act is. You can end up in court, paying attorney fees, and trying to defend yourself because someone with his own horse came to help you and was injured by that horse. In the case of the outfitters and guides, they supply horses, trying to match clients and animals as well as they can; however, the client may do a stupid thing and get injured. We all know that horses are big animals and you can get hurt by them. If you book a hunt, do the best you can, and are not negligent, you should have some protection under the law. That is what we are doing with A.B. 140.

With that, I will close and take any questions.

**Chairman Horne:**

Exactly how many lawsuits are there in Nevada in this particular area? How many ranchers and horse owners get sued for injuries of this nature?

**Assemblyman Goicoechea:**

I apologize, but I do not have a number on that. I have not done the research, but this also includes fairs, horse shows, rodeos, et cetera, so I would assume there are a number of lawsuits. I do not know if it would be 10 or 20. We are trying to avoid exposure to liability for those people who are supplying animals or are in the business, such as outfitters, guides, or trail rides. People who love horses like to get out and enjoy them, especially in Nevada.

Getting hit with a frivolous lawsuit can ruin a business. We are trying to tighten it up a little. I assume there will be some language that needs to be amended. I know the trial attorneys think it is too broad, but in some cases, we feel it is not broad enough. We would like to work through this and see if we can limit some of the liability exposure to these people who are making a living supplying horses or putting on equine functions.

**Assemblywoman Dondero Loop:**

I heard you say fairs and rodeos. Would this include the National Finals Rodeo? I understand smaller rodeos in small rural communities, but do those groups that bring in the rodeos carry insurance, as well as the riders?

**Assemblyman Goicoechea:**

We all carry liability insurance. We are just trying to narrow the exposure down so that it is not quite as expensive. You have both participant and spectator insurance in any function, even the small rural rodeo. You need to have it for liability exposure. In many cases, we feel this exposure is more than it needs to be. You can be held liable for anything.

**Assemblywoman Dondero Loop:**

When a guide takes someone out on a horse, they are usually on public property. Is this bill specific to the animal?

**Assemblyman Goicoechea:**

Even if they are on public land, you cannot sue the Bureau of Land Management (BLM). Therefore, the guide retains all of the exposure, even though it might not be his fault. They do not control badger holes and trees on these lands. If the horse trips in the hole and falls, is it the guide's fault? Is that a negligent act? That is what we are trying to clarify with this bill. That should not be construed as a negligent act.

**Assemblyman Daly:**

In the example that you gave about branding your calves, are the helpers volunteers or are they paid? If they are paid, I assume they are covered by workers' compensation. If they volunteer, is there a release? Everything you do has a release that says you are engaging in the activity at your own risk. It is not any different than going to a baseball game. If you read the fine print on the ticket, it says that, if you get hit by a ball or something, the presenter of that event is not liable. Are there some of those protections available?

**Assemblyman Goicoechea:**

Getting back to the branding of calves, they are strictly volunteers. There are a lot of people who would like to brand calves. People volunteer to come

because it is part of the western atmosphere. If you are paying people, they are employees covered by workers' compensation. There is no way to waive that. I can get you, as a volunteer, to sign a waiver, but it really does not mean anything.

**Assemblyman Hansen:**

My children are involved in lots of events that include horses. Is this also going to apply to private parties? When my children go to other people's houses and ride their horses, the parents send me a release to sign before they will let my kids ride their horses. Will this protect ordinary citizens as well?

**Assemblyman Goicoechea:**

Yes. It is intended to be broad based. We have a number of people, even in this building, that run barrel racing clinics. One of the attachés did barrel racing clinics, but had to stop because of insurance costs and exposure to liability. I leave it up to this Committee whether signing the waiver actually waives that person. I do not believe it does.

**Assemblyman Hansen:**

It is ridiculous that ordinary people have to get a release before they will let a kid ride on their horses. It is getting out of control. If this bill solves that, I am all for it.

**Assemblyman Goicoechea:**

That is the exact intent of this bill. If it is not clear enough, we are willing to amend it. Whatever it takes is the bottom line. Let us make it simpler for your kids to come ride a horse. When a person is choosing a horse for another person, he needs to match the skills of the person with the temperament of the horse. It is written right in the bill to ensure they do not give out faulty tack, and that the skill set of the person and the horse match.

**Assemblyman Segerblom:**

Did you indicate that this law is actually from Montana?

**Assemblyman Goicoechea:**

Yes, it was patterned after Montana law.

**Assemblyman Segerblom:**

Have you compared our insurance liability rates with Montana's? Are their policies cheaper than ours?

**Assemblyman Goicoechea:**

Are you asking if I feel that it helped?

**Assemblyman Segerblom:**

No. Do you know if liability insurance in Montana is cheaper than it is here?

**Assemblyman Goicoechea:**

I would not think it would be much cheaper. We are not really talking about the insurance rate. It is the frivolous lawsuits that we are trying to avoid. The insurance is fine, but the policy's premiums will go up if they must defend you in court on a frivolous case that truly was not your fault. I realize that it may not stand in court and may be rejected, but if the insurance company has to respond, it costs you money.

**Chairman Horne:**

Are there any other questions? I see none.

**Assemblyman Goicoechea:**

We are willing to work on the bill if it will help.

**Henry Krenka, President, Nevada Outfitters & Guides Association:**

The Nevada Outfitters & Guides Association is asking the Legislature to enact an equine activity liability statute for the state of Nevada. We first became aware of such laws through our insurance companies when we applied for liability insurance. One of the questions we were always asked was if Nevada has an equine activity liability law. Through research, we learned what an equine activity liability law was, and that Nevada is one of four states that do not have such a law.

[Read from written testimony ([Exhibit C](#)).]

**Chairman Horne:**

Are there any questions?

How often has the Nevada Outfitters & Guides been sued?

**Henry Krenka:**

I cannot think of anything that has gone to court in Nevada. There have been accident cases, but they have been settled out of court.

**Chairman Horne:**

Have you been denied liability insurance, or is it too expensive?

**Henry Krenka:**

The problem is that it is becoming harder to get anyone to talk to you about it. Horses are part of the business, but many insurance companies will not even talk to you about coverage.

**Chairman Horne:**

Do you currently have insurance?

**Henry Krenka:**

Yes.

**Chairman Horne:**

How would you define "an inherent equine risk?"

**Henry Krenka:**

If my livestock was not used to the mountains where I do most of my work, that would be a risk. Not matching your hunter's ability to ride a horse with the horse itself would be a risk.

**Chairman Horne:**

One of the problems that I have with the language of "inherent risk" would be that an inherent risk is that people fall off of horses. It does not matter what your skill level is. You could be the best rider that has ever been on a horse, but you have probably fallen off at some time. That seems to be an inherent risk, just riding the animal. An inherent risk may also be riding a horse at night across the open field when you do not know what holes may be in the ground to trip the horse.

There are other risks that may not necessarily be inherent. I am concerned that those risks may be covered in this type of legislation. Things may be inherent to you because you have been taught that way your entire life, but it may not be inherent to someone visiting your property.

I had to explain to my son one time that horses bite. A horse can bite you and leave a nasty wound. He did not believe me because he was six years old. He thought about dogs biting. So, I am interested in risks that the average person who has not been around horses could fall injury to.

**Henry Krenka:**

The steepness of the terrain in the mountainous areas of the wilderness would be an inherent risk. Also, Mother Nature does things in the mountains, like rockslides or mudslides, between the times that you check the trail. Trees could be blown down by the wind, and badgers dig holes.

**Assemblyman Kite:**

I am 6 feet 6 inches tall, and Mr. Hansen is not. Would you say that not adjusting the stirrups to fit my height or his would be an inherent risk?

**Henry Krenka:**

No. That would be my responsibility.

**Assemblyman Kite:**

That is where I am headed with this. If I was in front, and was turning around laughing and flirting with my girlfriend behind me, and went under a tree and it knocked me off, would that be an inherent risk? I am just saying there are many things that can go wrong that really are your responsibility, like adjusting the stirrups. There are also a lot of things that are not your responsibility that you can still be sued for. You have a lot of responsibility to ensure that I am safe on your livestock, but there is a lot that could happen that you have no control over. I am assuming this legislation is to tighten up that which you are not responsible for.

I do not have a problem with this as long as you do your job to ensure the person you put on your animal is as safe as possible, and that we are not protecting you from things that are logically your responsibility. You should be protected from people who do not pay attention to what they are doing.

**Assemblyman Hansen:**

Actually, we are talking about things that you can control, such as proper tack and training for people who might ride. This deals with the horse that you cannot control. There are some things that are out of your control, like when I was bitten and bucked off of a horse. Is the intention of this bill to protect you from things that are out of your control?

**Henry Krenka:**

Horses have a mind of their own, but we hope we have control over that most of the time. It is when something out of the ordinary happens. Horses are powerful animals and can do whatever they want. This bill is not only for the outfitter, but also for all of the events that horses are involved in.

**Chairman Horne:**

Are there any other questions?

**Assemblyman Carrillo:**

My question regards spectators. You want liability taken off of you, like when a rider falls off of the horse. What happens if the horse rears and the rider falls on spectators at a performance or a parade? Or the horse rears and falls on the



spectator? Is this what you are trying to take out? Can you please give me some feedback on that?

**Henry Krenka:**

I am not sure I understand your questions. This would be so the spectator could not sue me if my horse reared up and I fell on the spectator?

**Assemblyman Carrillo:**

You might have a rider sign a waiver. I know this is two different things. As an outfitter on the mountain, there are no spectators walking along, so this liability would not be there. I am looking at the broad spectrum, not just being in the mountains. Events are also mentioned, so I am looking at the spectator at a parade who is at the wrong place at the wrong time. That is an inherent risk. Not all events have gates to keep spectators away from the horses. Although they are in a pit at rodeos, the horse could get into the stands and trample on someone. There is an inherent risk if you are at an event and in the pit, but if the horse comes out of the pit, where does the liability stand? You are trying to protect the riders, but what about the spectators? I want to ensure we are covering all of the bases.

**Henry Krenka:**

I had not given that a lot of thought. Maybe someone else can answer that question.

**Chairman Horne:**

I think that only applies to spectators in an unauthorized area.

**Walt Gardner, Private Citizen, Ruby Valley:**

I think this bill is a great step in the right direction. I am happy that you are listening to our arguments, and I appreciate it.

Our intent is not only to protect ourselves as outfitters, but this also includes rodeos and all of the county fairs. There are little fairs and large ones. All of these organizations and groups have to get insurance every year. If this passes, the cost of insurance should go down if the insurance is on an event basis. My insurance will drop. It costs groups like the 4-H, and some of the little nonprofit groups that like to get together and ride once a week, a lot of money throughout the year. This will go a long way to help them in that area.

**Chairman Horne:**

Are there any questions?

**Assemblyman Hansen:**

My question is for Legal. Mr. Carrillo brought up the scenario of a horse in the Reno Rodeo parade that starts acting up and runs into people in the crowd. Is that already addressed somewhere? It has to be. We used to ride horses all of the time, so there must be issues dealing with horses going back hundreds of years. Are there statutes already that address some of these things so they would not need to be addressed in this bill?

**Nick Anthony:**

I believe you are referring to common law like negligence actions. If we look back at the bill, it addresses immunity from civil liability for an injury or a death to a participant. If you look at page 3, section 1, subsection 5, paragraph (e), the bill actually defines "participant" and that is what the Chairman was talking about. "Participant" includes, ". . . without limitation, a spectator. . . ." It goes on to say, ". . . if the spectator is in an unauthorized area . . .," but because "participant" includes "without limitation," some could argue that it could include anyone, any spectator, anywhere.

**Assemblyman Hansen:**

So it would deal with conditions like Mr. Carrillo brought up. Are there any existing laws? I am sure it is not new that people get injured at parades or such when horses start acting up.

**Nick Anthony:**

I am not a trial attorney, but I would argue that it would be brought under your general negligence liability. There are theories of liability that may not be contained in statute particularly that someone could address those actions through.

**Assemblyman Kite:**

Most of what I was going to mention about the spectator at an equine activity in an unauthorized area has been covered. This just covers the horse, but it is getting harder to write an insurance policy for someone who has a dog, depending on the breed of the dog. I do not think they are asking for a blanket cover of nonliability. I think this goes a long way toward defining what their liability is. Parades with horses have a very large liability policy to cover these horses, so we are not eliminating the spectator from being able to sue anyone. Those events are required to have their own liability insurance policy, and most volunteers are covered under the ranchers' liability policies. If I get injured on this gentleman's ranch and he does not have workers' compensation, it would be covered under his liability policy.

**Chairman Horne:**

This discussion is going on into an area that belongs in a work session. Please keep to questions that should be for clarification.

Are there any questions? Is there anyone else who wishes to testify for A.B. 140?

**Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation:**

The Nevada Farm Bureau policy has been, for a long time, to support legislation that is embodied in A.B. 140 and we encourage your support. We are willing to work with any group to iron out any problems that need attention. We are interested in liability protection for people who are at risk from other people's voluntary participation in equine activities.

**Joe Dahl, Private Citizen, Fallon:**

In the discussion today, there was a question asked several times about inherent risk. Inherent risk of horses is quite unique compared to motorcycles, airplanes, automobiles, shovels, hammers, chairs, et cetera. None of those inanimate objects do anything until we make them. However, we can make horses do some things, but beyond that, they do whatever they want. There really is a huge difference in inherent risk in horses.

There was discussion about insurance rates. I was thinking while I was listening to the testimony and questions, that I have not seen the insurance rates for workers' compensation recently. Wherever there are horses involved with activities that are insured, rates go sky high. I am sure this law will have an effect on insurance rates.

**Jeff Sanders, Private Citizen, Fallon:**

I am looking at this from a small business point of view. The insurance rates were already discussed, but I have experience working in a state that has this type of statute. My wife and I managed a horse-boarding stable in Colorado. Colorado has a statute similar to this bill that has been in place for quite some time. Because of the Equine Liability Act in Colorado, the insurance rates for that business were almost nonexistent as opposed to what we are looking at now in the state of Nevada.

I also do clinics all over the world, and insurance rates vary greatly from area to area and state to state. If I go to Colorado and do a clinic, there is no problem. However, I do not do clinics in California because the insurance rates are cost prohibitive. A bill like this that limits liability reduces the cost of insurance. Not only will it make business more profitable in Nevada, you will also see a lot of business coming over the mountain from California. There are lots of

businesses like mine and horse events that are right over the mountain in Sacramento that would be more than happy to come to Reno if the insurance rates were cheaper. Insurance is cost prohibitive in some states and we are facing that here. Also, much of the insurance that is purchased for equine events in Nevada is purchased outside of Nevada. As a result, Nevada loses that income.

There is an inherent risk any time you are working with horses. There is no such thing as a safe horse. Horse events are very different from other events. Colorado, being a ride-at-your-own-risk state, recognized inherent risk, so personal property owners are not held liable. You would be looking at an increase in tourism because more businesses like mine would be able to conduct business here. People will come from all over the country to attend equine events.

I understand from the trial lawyers that there are things in the bill that may need to be tweaked a bit. I think Nevada and small equine businesses will benefit from this law, just as all of the other states with laws like this have benefited.

**Chairman Horne:**

You mentioned that insurance premiums vary across the states with this type of law, but I have not heard of any significant increase in the insurance rates in Nevada. There is no mention of spikes as we have had in other discussions. For instance, physicians could come in and say that their insurance premiums have gone up X percent. I have not heard any testimony like that for Nevada or any complaints that you cannot get reasonable insurance rates.

**Jeff Sanders:**

I can give you examples from my business. When I do an event in Nevada, it costs me \$2,500 per two-day event for my overall liability policy, which is written out of Arizona. That covers participants and spectators. If I do the same event in Colorado, I do not have to pay any insurance because of the way their law is written. This makes a huge difference. This includes everyone who rides or participates, and all spectators. Other states that I have worked in still have liability policies, but they are significantly different.

The other issue is when someone comes to my house to ride for fun. I need to have a liability policy to cover that, but do not have to in other states like Colorado. Since it is hard to find insurance in Nevada, all of that money leaves the state.

**Chairman Horne:**

That leads me to my next question. The unpredictability of horses and their having a mind of their own has already been discussed. You have also stated that there is no such thing as a safe horse. If that is true, there are things that cannot be made safe, like dynamite, and you cannot be immune when you operate dynamite. By your argument, if we have an animal that you say cannot be made safe, why would we depart from the theory of liability and say you can be immune from actions that you know are unpredictable?

**Jeff Sanders:**

We are looking at something that is common in our society. With the horses, it is very important that the public understand that there is an inherent risk. That is why, in Colorado, there must be signs. There are specific requirements where the signs have to be placed at the arena, the barn, and the entrance of the facility. When someone comes onto that facility, it is clearly posted that this is an equestrian facility and there is inherent risk just driving in the gate. When we look at things that are a common part of our society, again, there is no question that it is a risk. When we look at tack and such things, it is my responsibility to ensure that equipment is properly maintained so I do not provide someone with a saddle that is defective. When it comes to the mind of the horse, there is no way to guarantee 100 percent control as there is for a motorcycle or dynamite. If you do not pick up the dynamite, it is not going to hurt you. If you walk behind a horse, you can be injured. Signs need to clearly denote that so the public is aware that there is an inherent risk on the property.

**Assemblyman Segerblom:**

In Colorado, do you verify that your participants have some other type of insurance?

**Jeff Sanders:**

No, it was not required. If someone came onto the property to ride at the boarding stable, there was no requirement that they have insurance.

**Assemblyman Segerblom:**

If they fall on their head, go to the emergency room, and the county now owes \$100,000, there is no guarantee that the hospital will get paid.

**Jeff Sanders:**

Just as if they got hurt riding on public lands.

**Assemblyman Brooks:**

You mentioned Colorado and the existing law. How many other states have laws that would be comparable to the legislation that you are asking us to approve today?

**Jeff Sanders:**

I believe there are 46 states.

**Assemblyman Brooks:**

And that excludes equestrian activities . . . [He is interrupted.]

**Jeff Sanders:**

There are small differences among the states, but they have similar legislation.

**Chairman Horne:**

Is there anyone else to testify on behalf of A.B. 140?

**Don Alt, Chairman, Nevada Livestock Association:**

I received a number of phone calls from the members of the organization to come testify for this bill. There are thousands of branded calves, and branding is always done by neighbors and friends. People help everyone else. Without that type of help, the industry would die. People cannot afford to hire someone to do everything. My insurance covers people who come to help do that type of work. I do not know if the cost of insurance would go down if this bill is passed, but it might keep it from going up. I also have a chuck wagon and I do cooking for friends' weddings and such. When too many people started asking me to do these events, I decided to get liability insurance. The first question that every company asked was, "Are there horses involved?" If there were horses involved, they would not sell me the insurance. I had no idea where to go. In this case, there were no horses involved, but I do not know where I could have found that type of insurance. This bill is really needed.

**Chairman Horne:**

Are there any questions? I see none. Is there anyone else to testify? I see no one, so we will move to the opposition.

**Bill Bradley, representing Bradley Drendel & Jeanney:**

I have been coming to this building for almost 30 years talking about immunity issues and liability. This is an issue that we have addressed in the past; however, there are some new folks here, so I want to talk about a few general principles about Nevada law that point out the problems with the bill.

I want to first talk about the idea of immunity. Immunity means that you cannot sue. I was happy to hear Mr. Goicoechea, whom I greatly respect, saying we do not want to release ourselves when we are negligent. That is what we are here to talk about. We do not want that either. We are as passionate about a jury deciding cases where there is negligence as these gentlemen are passionate about their industry and livelihood. In Nevada, there is a statute called the "Recreational Use Immunity Statute." We will start there. It says that anyone who is recreating on land cannot hold the owner responsible. That law is very clear; it has been on the books for a number of years. Now, if that person is on someone else's land and is given permission to be there, under the recreational use statute, the law applies to that person. In Mr. Goicoechea's case, if he says he has given someone permission to come on his land and brand cattle, and that person is bucked off a horse and is injured, the only way that person would be allowed to recover is if he could show that Mr. Goicoechea was negligent. If he was not negligent, there is no recovery. Insurance liability policies are designed to cover actions that are determined to be negligent. The mere fact that you get hurt on someone else's property in no way means they were negligent. For example, you would have to show that Mr. Goicoechea had a big hole that he knew about and kept telling people to fill up. But they did not fill it up and a horse stepped in it and tripped. There was knowledge, and a reasonable person would have done something. Negligence is defined as something a reasonable person would do to avoid problems, or not do something that a reasonable person would do to fix it. That is what it is, failing to act as a reasonable person.

The problem is this: Mr. Goicoechea does not want to waive negligence, and I respect that. I disagree with the running theme that goes through all of these bills that there are a lot of frivolous lawsuits. I have been in this business for 30 years, and there are lawyers who are hired by insurance companies that will eat you alive if you file a frivolous lawsuit. The problem is that nobody wants to be sued, and we understand that. I do not want to be sued, and neither do you. If our conduct is not negligent, we do not think we should be sued. But there are always two sides to a story. In every one of the examples that we have talked about, there are two sides to the story. The guides say, if they are negligent, they should be held responsible. If we forgot to tighten the cinch strap, if we knew our saddle was about to fall apart and we put a person on it and the saddle broke, we should be held responsible. Unfortunately, A.B. 140 goes beyond that. It creates immunity and says you cannot sue.

I talked with Mr. Goicoechea and Mr. Busselman and they would like the law to say that, if we are not negligent, we should be immune. That is what this boils down to. That is the law today. The problem is, who is going to decide if they are or are not negligent? In the rodeo area, when the horse jumps over the

arena wall, that tells me the walls to contain the animals are not tall enough. You learn that the operator of that facility decided to cut costs. Although the design plans show that the walls should be ten feet tall, but to save money on the concrete, they only built them six feet tall. If a reasonable rodeo facility operator says he would have built those walls ten feet tall to keep the horse from jumping over it, then that is evidence of negligence. Then a jury is asked to decide if that was negligence. Our belief is that a jury should decide these issues after they hear both sides of the case and not prejudge every one of these cases in an Assembly or Senate hearing on what is or is not negligence. That is why we believe in juries and judges.

This is what this boils down to: we elect judges to enforce our laws and our judges are there to analyze cases and see if they rise to the evidence of negligence. About 15 years ago, we, the Nevada Justice Association, passed a law nicknamed "The Lawyer Pays." The statute, *Nevada Revised Statutes* (NRS) 7.085, says if a lawyer files, maintains, or defends an action in a frivolous manner, the lawyer is personally responsible. Many of you have heard other states considering laws that say the losers should pay. We believe that did not go far enough because the client relies on a lawyer for advice. If the lawyer says you have a case, and it is frivolous, you should not hit the client for that, you should hit the lawyer who filed the frivolous case. Who makes that decision? A judge does; the judges that we elect. In any of these cases, what really happens is, if I or one of my colleagues is approached by someone who was seriously injured in an event involving a horse, we look at that and determine if the owner of the horse, or the facility's actions, were reasonable under the circumstances. We look at our own client's actions. For example, someone tells Mr. Goicoechea that he wants to go out and help brand, then gets bucked off of a horse. He then comes into my office and says he would like to sue Pete Goicoechea because he got bucked off a horse when he was helping him brand. I would say, "Good luck, because you are not going to win that. You are going to Eureka with a whole bunch of cowboys and you are going to say that Mr. Goicoechea is responsible. The judge is going to throw you out and, if he does not, the jury will. You need to have evidence of negligence." I will submit that you need to have evidence of significant negligence to win one of these cases.

You are like a jury here and you get to hear both sides of the story. You listen to both sides of the story and then you make a decision. That is what the jury does. That is the guarantee that we have under the Seventh Amendment of the *United States Constitution*, to let juries hear cases that make it through the analysis of the judge to see if it is real, if it is negligence, or if it is phony. If it is phony, let us get it out of here and get the lawyer for bringing a frivolous action.



Unfortunately, this bill eliminates almost all rights of people injured around horses, mules, and donkeys. Horses are unpredictable, and we know that is an inherent risk. I have a horse and I am going to ride it in a parade. That horse is a mare and she is in heat, and I know there will also be a couple of stallions in the parade. I know I need to keep my mare on the other end of the parade route because those stallions are going to go through hell and high water to get to that mare. If I ride right by the stallion, and it rears up and hurts four or five people watching, is that reasonable conduct? I knew I had a problem with this horse that could put people in danger. If we could write a bill that said "if you are not negligent, you are immune," that would be fine. But that is what our law is now. It is just that judges and juries have to decide negligence. How do we go any further than stopping the filing of frivolous cases? I will submit that our civil filings are down significantly despite the rhetoric that lawsuits are out of control and frivolous lawsuits are ruining this country. In Nevada, and most states, that is just not the case.

We will walk through the bill a bit and I will point out what this bill really does. It does not comply with Mr. Goicoechea's intent. If you start out with the language on the first page, in section 1, and you throw out the "Except as otherwise" and all that stuff that gets in the way, it says, ". . . a sponsor, equine professional, veterinarian or any other person is immune from civil liability . . . ." That is where we start. Then we go to the "unlesses." We can go through this language and we will see "for any inherent risk of injury." That is what the first three sentences of this bill say. Then, if you go over to "inherent risk of equine activity" on page 3, line 14, it starts laying out what are inherent risks of an equine activity, and some of them I understand. But if you go down to number 6 on line 27, it says that an inherent risk of an equine activity is "A negligent act by a participant . . . ." If I am riding that mare and a stallion reacts, this bill eliminates the responsibility for my poor decision to get that mare anywhere near that stallion. It eliminates from premises liability the horse jumping over the rail. It eliminates virtually everything. I know that is not Mr. Goicoechea's intent. The intent is that, if we are negligent, we should be held accountable, but I do not know how to write that other than to say, "If we are not negligent, we are immune." That is an easy sentence to say in a bill, but it does not do anything because that is the law now.

Going through just a couple of other examples, on page 2, starting on line 3, "A participant shall:" and it says everything that a participant shall do, but it does not say anything about what the operators shall do. All this is directed at the victim. It does not create any responsibilities on the operators. I understand what Mr. Goicoechea is trying to do, and what these gentlemen are trying to do, but you cannot eliminate responsibility. Immunity in our world breeds contempt. Immunity takes away the incentive to be responsible,

the need to be personally responsible and individually accountable, and it takes away the right of a judge and jury to listen to these cases.

It is because of that that you will see other immunity bills in this session. We are seeing more immunity bills introduced in this session than we have in a long time. We were on the Senate side yesterday dealing with an immunity bill for off-road racing. It is the same basic concept. Our goal in all of these bills, if there is negligence, is that a judge and jury be allowed to listen to both sides of the evidence and make a decision, and do not prejudge any case without hearing both sides. That is what we have judges and juries for.

**Chairman Horne:**

Are there any questions for Mr. Bradley?

**Assemblyman Hansen:**

What I understand that you said is that most cases almost never get before a jury or judge. They are settled by the insurance company long before the jury gets a chance to hear whether someone is negligent. The problem that I have with what you are saying is that the tendency in law now is to always settle rather than go to trial. I do not hold you accountable for that, but I know from dealing with insurance companies they always settle these things in advance. How is it that we are supposed to get these cases before a jury when, in almost all circumstances, it is settled long before by the insurance companies involved?

**Bill Bradley:**

I am going to respectfully disagree with you. You say that they are almost always settled. I do this every day. The cases that are settled are based on a decision by both sides that a settlement is better than going to trial. But they do not settle cases where there is no liability because juries are very sophisticated. There are eight jurors in Nevada and, if we average their age at 40 years, that is 320 years of experience. You do not fool them. You put your facts in front of them and they listen to it. Nonmeritorious cases do go to trial and there is a jury that decides them. Long before that, judges are looking at them because the judges do not want baloney cases. They do not want the baloney cases messing up their calendar, and they do not want to delay the meritorious cases that should be resolved. It is a decision made by the lawyers and the insurance company whether to settle. If liability is established, they are going to try to settle it. If there is no liability, they are going to take it to a jury. That is my 30-year experience in doing this. I really have to disagree with your basic premise that all these cases are settled. I find myself in court many times when I think I have a good case, and the other side does not, so we let the jury decide.

**Assemblyman Hammond:**

The way I understand your testimony, you are looking at this bill and saying we do not need it, it is not necessary, and we do not want it at all. But the other side is saying that we need it, we are willing to work on it, and we are willing to work on parts that might be the most egregious to our industry. Mr. Goicoechea stated that this bill is also, for the most part, used in 46 states already. How do you reconcile that 46 states believe that there is some part of this that is necessary? I look at it as common sense. If you are riding a horse and you go out into the woods and a snake comes up and you get bucked off, do not even bring this to court. You never know what is going to happen when you get in front of a jury; they can see it differently. Can you address that issue about the need for compromise when 46 states already have it?

**Bill Bradley:**

I am not aware of the 46 states. I have not compared the laws, but I guarantee they vary from state to state. I agree with you, Assemblyman Hammond, it is common sense. But immunity takes common sense out of the equation. In other words, when you grant immunity, you are saying that you, as a matter of legislative intent, have decided that most of these cases are frivolous, and I cannot agree with that. There are two sides to a story, and that is why we have the judge. If it is frivolous, the judge is going to dismiss it and hold me personally accountable. That is a heck of a deterrent to a lawyer. Although 46 states may have some version, and we are going to look at that, we heard from the bill sponsor that he does not want to release negligent claims. I hope you agree with that because I agree with it. It is common sense, but who makes the decision on common sense? Only the one who can listen to both sides of the story. In your example about the rattlesnake scaring the horse, common sense tells me that that is not a case. If I am a judge and I am reading that complaint because a defense lawyer says, "Judge, this is common sense. This is ridiculous. They are arguing that a snake scared a horse, and that turns into someone's negligence." That judge would say, "Mr. Lawyer, you better prove right now how that operator was negligent." If you do not have proof, the case will be dismissed and the lawyer will be held responsible. That is the fundamental question. I agree with Mr. Goicoechea that if you are negligent, you need to be held responsible. But who makes that decision? I think it is very hard to make that decision unless you hear both sides of the case.

**Assemblyman Hammond:**

The point I am trying to make is that there are statutes in these other states, so it seems there might be some common ground that we can work on.

**Bill Bradley:**

I mentioned to Mr. Goicoechea that I am happy to sit down and draft a bill that says if there is no negligence, you are immune.

I do want to address one thing. I make a living representing injured people, but none of the people who are going to be injured ever walk into this Assembly room. I am not standing up for my organization. I am not here to ensure bad lawyers make a living. I come into this building to ensure that innocently injured people have a right to hold negligent wrongdoers accountable. We are the only ones who speak on behalf of those potential victims because they do not know they are a victim until after it happens.

**Assemblyman Ohrenschall:**

When the proponents of the bill came up, many of us asked how many frivolous lawsuits have been filed based on horse accidents. We never got a concrete estimate. Do you have an idea? Has there been a rash of frivolous lawsuits being filed against outfitters or for rodeo accidents?

**Bill Bradley:**

I was on the Wildlife Commission for ten years and worked very closely with these men, and I have a lot of respect for them. I am not aware of a case. I have not filed a frivolous case. I have filed cases where the conduct of horse operators has been negligent, and has been determined to be negligent. I also filed the case where the mare was in heat, and the case where a mismatch occurred between an inexperienced rider and a "rank" horse, which is one known to be uncontrollable. But the guides and outfitters would be in a better position than me to know, and Mr. Krenka said he was not aware of any.

Going out in the rural communities where these horse operations occur, you are walking into a community that loves horses, guides, hunting, and has a tremendous respect for common sense. As I said earlier, if you go into one of these rural counties and accuse a horse owner of negligence, you better really have a good case to convince some of these juries.

The National Finals Rodeo in Las Vegas is a huge production and Ms. Dondero Loop had concerns about it. This bill would eliminate responsibility for some of the things that she was concerned about. Many of the members may think this is a softball question. I am so tired of hearing about frivolous lawsuits that, if I heard about one, I would call the lawyer and say, "Your case came up in front of the Nevada Legislature. What the heck are you doing? That is wrong and I hope the judge smokes you on the lawyer pays statute because you deserve it."

**Assemblyman Ohrenschall:**

I want to know if you agree with the way I am reading the bill. The way I am reading it is that it would provide immunity for the operator, but not the victim. If I went out on one of these outfitting trips and I was negligent and something happened and the horse was seriously injured and had to be put down, the operator could still sue me for my negligence in causing the destruction of the horse. There is no immunity for the participant. Is that correct?

**Bill Bradley:**

There is no immunity for the participant, though I have to tell you respectfully that these gentlemen would never think of that. That defies common sense. If you did not do anything wrong, and the horse stepped in a badger hole and broke its leg, and the horse had to be put down, you are not immune. Someone could theoretically file a claim against you. This sounds as ridiculous as some of the other things we have talked about today. It is ridiculous that you can hold someone accountable for something frivolous. Our court system just does not work that way.

**Chairman Horne:**

I see no other questions. Is there anyone else here to testify against A.B. 140? Is there anyone neutral? Seeing none, I will close the hearing on A.B. 140 and bring it back to the Committee.

We will open the hearing on Assembly Bill 147.

Mr. Stewart, are you here for Assembly Bill 163? Since you are here and Mrs. Mastroluca is not here yet, I will close the hearing on A.B. 147 and open the hearing on Assembly Bill 163.

**Assembly Bill 163:**      Revises provisions relating to public guardians.  
(BDR 20-157)

**Assemblyman Lynn Stewart, Clark County Assembly District No. 22; also representing the Legislative Committee on Senior Citizens, Veterans, and Adults with Special Needs:**

The Legislative Committee on Senior Citizens, Veterans, and Adults with Special Needs met during the interim and was chaired by former Assemblywoman Kathy McClain, who is very passionate about these bills, and I am presenting them on her behalf.

[Chairman Horne left the room and Vice Chairman Ohrenschall assumed the chair.]

On March 10 and June 15 of 2010, we held meetings of this Committee and heard extensive testimony relating to the protection of senior citizens, veterans, and adults with special needs who have appointed guardians. There were many testimonies and exhibits, and I refer you to the meeting minutes. Members of the Guardianship Steering Committee, public and private guardians, and attorneys testified that Nevada's system is complex and the NRS should be revised to better protect those with guardianships.

On a more recent note, I do not know if you are aware that this guardianship issue is a very important one. I do not know if you saw the news this morning on Mickey Rooney, the film star. Those of you who are younger may not remember Mr. Rooney. He is one of the great film stars of all time, and he mentioned in his testimony before Congress yesterday how he had been abused by his stepson, who was a type of guardian for him, for over 30 years.

This bill, hopefully, would go a long way in protecting people such as Mr. Rooney. Under current statute, guardians are allowed to ask for, and have provided, information from the ward, from relatives, and from others who are close to them. They obtain this needed information to assist the ward. They are also allowed to obtain information from public agencies. What this bill does is allow authorized public guardians to obtain information for a prospective ward if there is indication that the ward has been abused. In the case of Mr. Rooney, he was abused for over 30 years financially and physically, and we have had testimony after testimony in the hearings that we held during the interim of these types of abuses, financial as well as physical. This bill will also allow a public guardian to obtain information from a public agency if there has been evidence or suspicion of abuse or neglect. What this bill does, in short, is to provide the proposed public guardian with the opportunity to obtain information, medical records, and financial records, et cetera, to be used in defense of a prospective ward before they actually take over that ward's care. In that way, they can be better informed on how to proceed and better protect the ward as he or she comes under the control of the public guardian.

I have folks here that have had extensive experience in the public guardianship field and have seen all kinds of abuse take place on wards, so I would like to turn this over to them. Before I do that, however, I have an email that I would like to read from Ernie Nielsen ([Exhibit D](#)). Would that be appropriate?

**Vice Chairman Ohrenschall:**

Yes. Please go ahead.

**Assemblyman Stewart:**

This is from Mr. Ernie Nielsen of the Senior Law Project. He apologizes first for not being able to come to Carson City, but he says, "I wanted to tell you that I and the Washoe County Senior Law Project are in support of the new authority that this bill gives the public guardians. Just to remind you, the Washoe County Senior Law Project routinely represents wards and proposed wards in guardianship cases." I wanted to read that into the record from Mr. Nielsen.

[Chairman Horne reassumes the chair.]

**Herbert Randall, President, Nevada Silver Haired Legislative Forum:**

As you may know, the Nevada State Legislature created the Nevada Silver Haired Legislative Forum (Forum) in 1997 to identify and make recommendations on issues of importance to aging persons. Guardianship reform is the third recommendation in our current summary report dated November 2010 to the Legislative Commission and the Governor. The Forum has heard many concerns about guardianships and, even though many issues are still being identified and studied with some worked through as private versus public guardians, we believe that anything that strengthens guardianship for the benefit of the ward, but still protects the individual rights, is good public policy. We think A.B. 163 is good public policy.

**Chairman Horne:**

Are there any questions for Mr. Randall? I see none.

**Michael Foley, Public Guardian, Office of the District Attorney, Clark County:**

I am here to support this bill. As you know, the Legislature has charged the public guardians to investigate possible abuse, and act as guardians when necessary. This bill will have a streamlining effect on the process. The investigator will be able to cite a statute to banks and other financial institutions when processing investigations. Our investigators will be able to determine if money is disappearing from seniors'—or any impaired individual's—bank accounts. It saves the step of first getting appointed as a temporary public guardian. As you know, we use private attorneys any time we are appointed as guardian. It turns out not to be necessary a lot of the time. There is an expense to the ward and the fees come out of the senior's bank account. If the proposed guardians can look at accounts first and see there is nothing wrong, they can make the determination that no guardianship is needed. It is a possible hassle that can be avoided for the ward and his family.

**Chairman Horne:**

I have a problem with the premise of gaining access to information and documents that would typically be private in nature without the process of

going before a judge when competency has not been established yet. The presumption is that the person is competent until ruled otherwise. I know it can be inconvenient, but we have procedures in place for a reason. Why would we depart from that? I see it as someone has said something, and the person might be old, so we are going to forego these procedures and start looking into their business.

**Michael Foley:**

I am with you. We are not in this business to invade people's privacy. Obviously, this is a bill that just applies to county public guardians and not to private guardians. In a way, it is a shortcut if the bank or anyone turns us down. It does not have any real teeth other than we would have to get a subpoena from a district court judge otherwise. All of the protections are still there; it is just a matter of allowing the prospective guardian to look at bank accounts to see if there is evidence of exploitation.

**Chairman Horne:**

How difficult is it to get a subpoena?

**Michael Foley:**

They would have to be appointed special guardian first through family court, then they would go to the judge for the court order.

**Chairman Horne:**

Approximately how long does it take?

**Michael Foley:**

If it is an emergency, it can be done in one day. If not, it will be a few days to get the lawyer and get all of the paperwork done.

**Chairman Horne:**

A few? Five? A week? Two weeks?

**Michael Foley:**

I think five is a good number.

**Kathleen Buchanan, Public Guardian, Office of the District Attorney,  
Clark County:**

I would like to respond to your question. When a public guardian goes after temporary guardianship, it is usually done because there is financial exploitation or physical abuse occurring already. The whole purpose of this language is to be able to protect the cognitively impaired individual.



The public guardian does not go looking for work. We are a governmental agency. We are there to protect the ward. As invasive as this might seem, it does truly protect the ward. If we have to go through the hurdles of getting a subpoena, we run the risk of that individual losing their entire life savings. I cannot tell you how many cases we have at the office because of all the mechanisms we have to go through. By the time we get in, the individual has lost a good portion, if not all, of their life savings.

**Chairman Horne:**

I appreciate your testimony that this is only to help, but history is replete with abuses occurring later because government measures were taken to help. It is our responsibility to ensure that the policies we put in place are truly for that purpose and do not have unintended consequences. I am concerned that you say you are protecting wards who are abused, but how do you come to learn about them in the first place?

**Kathleen Buchanan:**

Referrals can come from various sources within the community. They come from senior protective agencies, hospitals, banks, neighbors, relatives, friends, doctors' offices, you name it. We get them from about every entity in the community.

**Chairman Horne:**

So, you get a referral from a neighbor or friend saying they believe the person is being financially exploited. This bill, if passed, would allow you to forego the procedures we have today and start getting financial documents from their bank account, et cetera. Is that correct?

**Kathleen Buchanan:**

According to the statute change, it would make it easier for us. That does not mean that we would bypass our office's policies and procedures. We would never presume that someone is incompetent just because they might be exploited. We have to make contact with that individual and go through the entire process of questions and answers. Yesterday we received a referral, which we responded to within two hours. The person was exercising poor judgment on a telemarketing scheme, but that did not make them incompetent. We said that the person was competent and walked away. If they lose their life savings because they use poor judgment, that is unfortunate, but they do not meet the criteria for a guardianship.

**Chairman Horne:**

Are there any more questions? I see none.

**Susan DeBoer, Public Guardian, Office of the Washoe County Public Guardian:**

We are here to support this bill, and I may be able to clarify the importance of being able to look at those documents. We receive allegations, or referrals. We went through 130 referrals for guardianship last year. We petitioned for one-third of those. There are many allegations, some true and some not, but we need to have hard evidence to take to court. What we have found is that the people we look at, and deal with daily, are the most perfect victims because of the protections in place on the other side. For instance, last year a facility called us on a case of a lady who was eighty-some years old. They said the person with her power of attorney was missing in action and he had not paid her bill. That case had been referred to elder protection services and law enforcement, but they were unable to find the evidence to support exploitation. We pursued it, but we did not have cause to go in on a temporary guardianship because there was no immediate risk. We were unable to see bank records to report to the judge. In the meantime, the exploiters, who may have been convicted, got away with \$500,000. This was the woman's life savings; money that was supposed to take care of her.

These are the cases that we see. We see cases of exploitation from \$500 to \$20,000. It is hard to pinpoint exploitation until months after it has happened. We want to be able to contact the bank and ask if there is inappropriate activity in order to submit that to the judge.

This bill also gives us a basis for the subpoena that you are talking about. We have no issue with presenting our concerns at court and getting a subpoena. We work off of referrals, and we have very little investigative authority to get any information. We have to rely on information given to us. To petition for guardianship, you need to have medical evidence that supports that the person lacks capacity. You cannot just say you think they are being exploited; you have to have the medical evidence.

Chapter 159 of the *Nevada Revised Statutes* (NRS) has been worked on for the last few sessions, and clearly outlines and tightens the requirements for guardianship as they should be. You should not be able to just take over someone's life. We do not want to petition for temporary guardianship if it is not warranted. That, to me, is probably more intrusive than a subpoena to look at records.

**Kim Spoon, National Master Guardian, Guardianship Services of Nevada, Inc.:**

I am in my thirteenth year of working with private guardianships. I know this bill does not relate to private guardians, but Assemblyman Stewart asked if I could participate since our office was involved with the original committee.

I am here to voice support for this bill. I am for anything we can do to help the guardians ascertain what needs to be done for these people.

One thing I would like to clarify is the type of person we are dealing with when we are trying to get a guardianship. Most of the time, these people are going through a disease process. They are not capable of understanding that they need help. Many times we work with these people to get them to help us help them in different ways, such as looking at their bank statements or talking to their doctors. We try to get their permission to move forward to get whatever information we can find. These people are not capable of understanding that they even have an issue. They may not have seen the doctor for years, or they have a doctor but cannot remember his or her name. They may have dementia. They may not know where their checkbook or bank statements are. They may be paranoid, which is a sign of people with dementia, so they do not allow you to look at anything or to talk to them. There is often no way of getting the information you need to bring forward to the judge, even though you clearly have someone who is at risk. Without that information, we really cannot help these people, although they desperately need it.

This bill goes a long way toward helping the Public Guardian's Office to get the information they need to help these people if they feel there is exploitation or abuse, either physically or financially.

**Chairman Horne:**

Are there any questions for Ms. Spoon? I see none. Is there anyone else who would like to testify in favor of A.B. 163? We will move to the opposition now.

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

I would like to note for the record that, while we understand the intent of the bill, it is not why we are here to oppose it. We are here based on some of the concerns that the Chairman has already expressed relating to the access of confidential information.

Looking at A.B. 163, it allows the public guardian access to normally confidential information concerning a proposed ward. The ward who has the capacity to consent can refuse such access. If that person refuses, the public guardian can seek to overrule the proposed ward's denial of access by obtaining a subpoena. However, from our perspective, this bill sets forth no procedures to actually evaluate the competency of the proposed ward. The language clearly indicates that a lack of competency is not a requirement. Even if a competent proposed ward objects, the ward can still be overridden by a court. On the other hand, in the case of a proposed ward who has not been

determined to be competent, no judicial approval is required. Those are the actual people who are in need of the checks and balances that judicial oversight can provide. Therefore, the ACLU has submitted a proposed amendment ([Exhibit E](#)) for your consideration that moves to strike ". . . access to, inspect or copy . . . ." From our perspective, we believe this amendment will serve to protect individuals who are extremely vulnerable in ensuring court oversight of the process.

**Chairman Horne:**

Are there any questions for Ms. Gasca?

**Assemblyman Ohrenschall:**

There was testimony earlier that it is hard to get records until someone is declared a ward. I am not sure, but I thought district attorney's offices had the power to investigate exploitation of a senior that is not competent to get those records. Maybe it is before someone loses competency and is found incompetent, if there is suspected exploitation. Do you know anything about that?

**Rebecca Gasca:**

I am not familiar with the process. I think the district attorneys do have an extreme amount of ability to perform investigations. I do believe, in many circumstances, they have their own type of self-executing subpoena power.

**Chairman Horne:**

Are there any more questions? I see none. Is there anyone else against the bill? In the neutral? I see none.

I would like to put on the record the email from Ernie Nielsen. [Read email ([Exhibit D](#)) again.]

We will close the hearing on A.B. 163 and bring it back to Committee.

We will open the hearing on Assembly Bill 147.

**Assembly Bill 147:** Revises provisions relating to the termination of parental rights. (BDR 11-116)

**Assemblywoman April Mastroluca, Clark County Assembly District No. 29:**

Assembly Bill 147 seems like a small bill but it does have the opportunity to make a big difference in the life of a child in foster care. This bill would allow a child whose parent's rights have been terminated to be entitled to inherit if that parent should die. This would not apply to a child who has been adopted.

In addition, this change would allow the child to receive Social Security survivor's benefits to the age of 18, with the same provisions that adoption would disallow this benefit.

We have discussed NRS 127.160 with many groups. This statute states that a child is not entitled to inherit from his or her natural parents once that child has been adopted. We believe that offers protections for the child who has been adopted, and would keep that record closed.

**Chairman Horne:**

Two mothers give birth on the same day. One child is adopted and the other is not, but goes into foster care. Both mothers die in a car accident. One child would be able to take his inheritance because he was in foster care. The other would not even though both of the mothers' rights were terminated for cause. Is that correct?

**Assemblywoman Mastroluca:**

That is correct.

**Chairman Horne:**

Are there any questions?

**Assemblyman Ohrenschall:**

It is more like a statement. I like this legislation. I am honored to be your cosponsor on this bill because there are many parents who have had their rights terminated who do not have wills. I do not have a will even though I am a graduate from law school. Many people without wills do not intend to leave their natural children anything because of the termination of parental rights. This bill goes a long way in making it incumbent on parents that, if they do not want anything to go to a child, they can make out a will and leave their assets anywhere they want. But, if they die intestate, the laws of intestacy would provide for that child.

**Chairman Horne:**

Are there any more questions? I see none. Do you have anyone else to testify?

**Jon Sasser, Statewide Advocacy Coordinator, Washoe Legal Services; and  
Legal Aid Center of Southern Nevada:**

Both of these organizations have a Child Advocacy Program, which provides attorneys for abused and neglected children in the foster care system. I am glad to testify today on behalf of this bill, which came out of the Interim Study Committee that I testified in front of as well.

I have given you written testimony electronically ([Exhibit F](#)), but I am not going to read it. Briefly, what this does is provide the ability of a natural child to continue to inherit if a natural parent dies after parental rights have been terminated by a court. That parent has the right to create a will leaving the property to that child or someone else. If there is no will, and the property passes intestate, the act of terminating parental rights does not hurt that child, who can continue to inherit. If that child is adopted at any time, the adoption cuts off the right of that child to continue to inherit. We are now talking about a parent dying while a child is in limbo between the parental rights being terminated and the time of adoption. The child has done nothing wrong; the rights were terminated due to the actions of that parent. You have an innocent child that would lose his ability to get support if they are in that situation.

It is important in terms of Social Security. The Social Security Administration looks at local state law in determining who is a natural child and who is entitled to survivor's benefits. Social Security defines that as someone who is able to receive property intestate under the state law. So, by making this change, it also clarifies for the Social Security Administration that these children are entitled to those benefits.

Last summer when I testified on this, I checked with the foster care systems in the north and south and, in Washoe County, at that time, there were about 200 kids who were in limbo and about 700 in Clark County who would be affected by this legislation. Obviously, that number goes up and down from time to time.

We ask your support on this bill and believe clarifying the law would be good for Nevada's kids.

**Chairman Horne:**

I need to get some clarification from Legal. I do not see where this is limited to "a child," someone under the age of 18. I am still my mother's child. She may have had her rights terminated when I was a youth, and she could die tomorrow. As I read this, I could still take. Unless "a child" is going to be defined differently in statute, it already excludes me because I am over the age of 18.

**Assemblywoman Mastroluca:**

You are correct. It does not say that. We are working on an amendment. It is not complete, so I did not have it submitted. We have discussed that and an amendment will be coming forth that limits it to once a child is no longer in the foster care system as a ward of the state and not eligible to inherit. It would follow the Social Security Act definition of a child which includes the words

"under 18 or a full-time student under 19," so once they are beyond that point, they would no longer be eligible.

**Assemblyman Hammond:**

You mentioned Social Security benefits. Is there any conflict with this law when a parent whose parental rights were terminated passes away while receiving Social Security benefits? Under this law, the child would be entitled to those benefits. Is there conflict with federal law?

**Jon Sasser:**

There is no conflict because federal law specifically says that, in determining who is a child, you look at state law. The federal law recognizes that state law is supreme on this issue.

**Chairman Horne:**

Would this bill prohibit a parent whose rights were terminated from drawing up a will and explicitly excluding that child from being able to inherit?

**Jon Sasser:**

It would not. The parent would still have the right to exclude that child from being able to inherit. Under Social Security, however, the issue would be if state law allows the child to inherit under the state's intestacy law. The child would still be able to get Social Security benefits in that situation.

**Chairman Horne:**

Are there any more questions? I see none. Mr. Schiller, and anyone else who wants to testify in favor of the bill, please come forward.

**Kevin Schiller, Director, Washoe County Social Services:**

In the interest of time, I do not want to repeat what Mr. Sasser has already indicated but, as a child welfare agency, we are dealing with about 750 children in a legal foster care system at any given time. As Mr. Sasser indicated, that number fluctuates. Conservatively, we typically have from 100 to 200 children who fit into this category. As the director, I have run into difficulty with inheritance. Mr. Sasser also clarified the Social Security issue that I was going to put on the record.

I want to voice my support of this bill for the agency. I believe it is going to directly benefit kids. Although it does not occur often, it does occur and this will clarify the issue.

**Chairman Horne:**

Are there any questions? I see none.

**Erin McMullen, Private Citizen, Reno:**

I was talking to Assemblywoman Mastroluca about this bill. In my experience, I represented three children whose mother's parental rights were terminated. They were not adopted and still lived with foster parents. I had to explain the termination of parental rights to an 8-, 12-, and 13-year-old. It is very difficult to explain to children that they will get nothing from their parents and they cannot communicate with them until they age out. I believe this will help a lot of children, like the three girls that I represent, so I wanted to express my support.

**Chairman Horne:**

Are there any questions for Ms. McMullen? I see none. Is there anyone else who would like to testify in favor of the bill? In opposition? Is there anyone neutral? I see none.

We will bring this back to the Committee and close the hearing on A.B. 147. Please get the amendment to us, Mrs. Mastroluca, and we will schedule it for a work session.

Is there any other business to come before the Committee? Seeing none, we are adjourned [at 10:20 a.m.].

RESPECTFULLY SUBMITTED:

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Karyn Werner  
Committee Secretary

APPROVED BY:

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Assemblyman William C. Horne, Chairman

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



**EXHIBITS**

**Committee Name:** Committee on Judiciary

**Date:** March 3, 2011

**Time of Meeting:** 8:20 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B. 140	C	Henry Krenka	Written testimony
A.B. 163	D	Assemblyman Lynn Stewart	Email dated March 2, 2011, from Ernest Nielsen
A.B. 163	E	Rebecca Gasca	Testimony and proposed amendment from the ACLU
A.B. 147	F	Jon Sasser	Written testimony