

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

**Seventy-Sixth Session
February 16, 2011**

The Committee on Judiciary was called to order by Chairman William C. Horne at 8:05 a.m. on Wednesday, February 16, 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/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman William C. Horne, Chairman
Assemblyman James Ohrenschall, Vice Chair
Assemblyman Steven Brooks
Assemblyman Richard Carrillo
Assemblyman Richard (Skip) Daly
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Jason Frierson
Assemblyman Scott Hammond
Assemblyman Ira Hansen
Assemblyman Kelly Kite
Assemblyman Richard McArthur
Assemblyman Tick Segerblom
Assemblyman Mark Sherwood

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Lenore Carfora-Nye, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Carolyn Ellsworth, Securities Administrator, Securities Division, Office of the Secretary of State
Brett J. Barratt, Commissioner of Insurance, Division of Insurance, Department of Business and Industry
John W. Griffin, representing Nevada Justice Association
Wm. Patterson Cashill, representing Nevada Justice Association
Ross Miller, Secretary of State
Scott W. Anderson, Deputy for Commercial Recordings, Office of the Secretary of State

Chairman Horne:

[The roll was called.] There are 12 members present. Please mark Mr. Hammond and Mr. Segerblom present when they arrive.

We have two items on the agenda. We have a presentation by the Secretary of State and Assembly Bill 72. We were going to view the presentation first but, due to the weather, the presentation will be held until after A.B. 72. When the Secretary of State arrives, he will make his presentation.

Assembly Bill 72: Revises provisions relating to securities. (BDR 7-405)

Chairman Horne:

Good morning, Ms. Ellsworth. Please state and spell your name for the record.

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

As you are probably aware, the Securities Division of the State of Nevada enforces the "blue sky laws," which are the securities laws that are not preempted by federal law here in the State of Nevada. Our mission is to protect Nevada investors through criminal and civil enforcement procedures. We do that through the *Nevada Revised Statutes* (NRS) Chapter 90. Most of Assembly Bill 72 deals with NRS Chapter 90 or statutes that also bear on NRS Chapter 90. I would like to go through the sections one at a time as quickly as I can for you. Section 1 is a very important section. It is taken from

the model rule of the North American Securities Administrators Association. The purpose of it is to protect seniors who, as you know, hold the vast percentage of the nation's wealth and are therefore the subject of fraud in this country. Some places have adopted it as a regulation. We have chosen to put it into a statute to move more quickly. It would make it so that people cannot represent themselves as experts, certified senior planners, senior specialists, or retirement specialists unless they actually have those designations through a certified agency. The bill gives fairly broad allowances for the certification process. It just does not let somebody print a certification designation on a card and then present themselves in that context. They cannot simply say, "I represent John Doe Company and I can help you with all of your needs in retirement." Actually, all they are out there to do is "rip off" seniors and get them to change all of their investments, which are in safe and secure mutual funds, into variable annuities which won't pay them until 20 years after their life expectancy. It has an extra benefit because the recent Dodd-Frank Wall Street Reform and Consumer Protection Act provides if a state passes either the model insurance regulation or the model rules, the state will be entitled to apply for grants for the enforcement of securities rules and protection of investors. There are \$500,000 grants for three-year periods. It will give us the ability to apply for those grants. Therefore, it has the dual benefit of both protecting Nevada seniors and giving us a little extra money that does not come out of our General Fund or from state taxpayers.

Section 2 of the bill includes a fee. This section is basically about fairness. It will change the licensing fee for representatives of investment advisors. Last session, the fees for broker-dealers were increased to 15 percent or \$15 per licensing fee. The problem is that I have received a lot of whining from the broker-dealers. They do not think it is fair. I would have to agree with that. I do not know why the fee provision was not passed during the last special session. So it is basically a parity issue.

Section 3 is a technical issue. It amends existing law to clarify how notification to the Securities Division must be made when a sales representative's association with a broker-dealer or issuer is terminated. We have received many inquiries from issuers about how they notify the Securities Division when one of their representatives terminates association with the issuer. Agents of the issuer have to be licensed in Nevada if they sell securities that are issued by a private issuer.

Section 4 would be characterized as our "bad-boy" rule. It is intended to give the Securities Division more flexibility in keeping undesirables from being licensed in the securities industry. Regarding enforcement, I feel that prevention is a better way to approach the issue, if we can, to help prevent "bad boys"

from getting into the securities industry in the first place. That is not to say that the truly "bad boys and girls" will not offend, even if they are not licensed. At least investors can check. We urge people constantly to check to see whether the security professionals they are dealing with are broker-dealer representatives or investment advisor representatives licensed by the state. This provision will give us more flexibility in making those decisions. The administrator has wide flexibility so that in every situation we can look at someone coming in for licensing. When there is any kind of flag on their licensing application through the Central Repository for Nevada, we flag it and investigate it further by asking questions. Sometimes if the investment advisor or the representative is working here and we have concerns, we will place him under special supervision or provide probationary periods. This gives me flexibility. It is not a situation where if someone is convicted of a misdemeanor, he will never work again. It is not like that. The bill will allow us the flexibility to look at the individual situation and question whether we should license the person. We will determine whether the person will be a risk to Nevada investors, or we may decide whether the person should be placed under some special supervision with the firm that employs the person.

Section 5 is also a technical section. It explains what the word "enterprise" means in NRS 90.520. We get a lot of questions about that from issuers. We want to clarify that it means "a private industrial or commercial enterprise" and not a governmental enterprise. Section 5 also amends the law to update the section that now refers to the American Stock Exchange, which does not exist anymore. It is amended to say the "NASDAQ Stock Market." The last part of Section 5 proposes further amendments to NRS 90.520. It is the subject of my prefiled amendment to A.B. 72, which was sent to the Committee back at the beginning of the month. Section 5 proposes to add exemptions to registrations of certain securities. It proposes to add an additional exemption, which does not change the fact that it is exempt. It will only change whether we will have to be notified if someone is planning on selling an exempt security in our jurisdiction. It refers to a security that is issued by insurance companies and/or guaranteed by insurance companies. Insurance company guaranteed securities or issued securities were once considered very safe. That is no longer the case. The purpose of this amendment would be to require notification to us when such a security is being sold in our state. This amendment gives us the ability to be on notice, aware, and potentially look into it further. As the administrator, I have the authority to revoke exemptions if I have a reason to do so. If I know that there is something that could be a problem, I can look into it.

Sections 6 and 7 are amendments to conform existing provisions that were added during the 2003 Special Session to conform with the annual renewal requirements for other claims of exemption for registration, which were

accomplished through a notice filing. We want to make clear that those notice filings are good for one year. All notice filings are good for one year, but the legislation that was passed in the 2003 Special Session did not clarify that. It caused some confusion for the industry and we have received a lot of calls regarding that issue. We are trying to cut down on those calls.

Sections 8, 11, and 12 move provisions in NRS Chapter 205, which were put in place prior to the adoption in 1987 of the Uniform Securities Act, into NRS Chapter 90, where the provisions belong. The amendments insure that securities violations will have all the penalties that are prescribed by NRS Chapter 90. There were some provisions in NRS Chapter 205 that were in place for many years. These gross misdemeanors were not removed or amended when the Uniform Securities Act was passed in 1987. We are now getting around to doing that.

Section 9 amends NRS 90.605 to make it a violation to willfully, "Make any materially false, fictitious or fraudulent statement or representation" in securities related investigations. As part of our investigations, division investigators go out and interview the victim. If someone is making a claim that he has been victimized and defrauded, we feel it is our duty to seek out both sides of the story. We always give the other side the opportunity to tell us what their side is. We have had occasions where the story given to our investigators is completely false and the documents are forged. We want to make clear that such claims will not be tolerated. There was some concern by the Nevada Trial Lawyers Association that this would create some kind of exclusive remedy in the Uniform Securities Act and preclude private individuals from suing in a civil action. That is not the case. Of course, the Securities Division can, and does, take criminal action, in cases rising to criminal activity and also civil enforcement action. We can bring either administrative action through administrative law procedures or we can go directly to court in a civil action. We always encourage people to file a civil action if they choose to do so, because we cannot seek certain damages that a private lawyer can, such as damages that would assess civil penalties for the victim. I want to assure you that it is not an exclusive remedy with the Securities Division. There is nothing in the statute that would keep a private individual from filing a private lawsuit. In fact, we encourage that both verbally and on our website.

Section 10 is an attempt to bring the cost of responding to a request for a "no-action" letter more in line with the actual cost of responding to these requests by a fee increase from \$200, which is the current amount, to \$500. A "no-action" letter is a request that an individual or issuer makes. The request is usually made through lawyers. In fact, the regulations spell out what is required in the request for a "no-action" letter. A very detailed recitation of facts and of

the law is required. It will indicate how the facts, in each particular situation, relate to the law as it exists. What is asked for in these letters is some kind of assurance. It will indicate that this is the belief of the person as to the facts and the law, and if the person moves forward, the person may be the subject of enforcement action by the Division.

Obviously the person would want to avoid that consequence. These requests for no enforcement, "no-action" letters, may take many hours of work. In fact, I worked on a matter recently where the law firm in question was seeking a "no-action" letter from the U.S. Securities Exchange Commission as well as from every state, for actions that were going to be taken in particular transactions. It included nearly every state in the union. It had to do with an insurance company that basically "went under" because of credit default swaps. The company was looking to issue bonds as a way to keep the whole insurance company from going completely belly-up. It would allow the fund within the State of Wisconsin, where the insurance company was located, to issue these bonds to satisfy claims. The company needed to have some assurance that a provision in our law would cover it. The law firm kept sending me piles of documents every two weeks. This was a serial request for "no action." I have spent many hours of time on this. The lawyers who were involved were probably billing their client \$600 per hour, which is a pretty common going rate for securities legal work in any large city. These lawyers were working out of New York City. Therefore, I don't think that an increase to \$500 is out of line.

Section 13 deals with when the law provisions will be effective, if passed. The Chairman pointed out his concern to me this morning with regard to making one section effective July 1, 2011, while all other sections will be made effective on passage of the legislation. He suggested that perhaps it may be better if all sections become effective July 1, 2011. I do agree with that because otherwise we will have different time issues regarding giving notice. Therefore, having it become effective on July 1, 2011, would be perfectly fine with the Securities Division. This concludes my presentation and I will be happy to answer any questions.

Chairman Horne:

Thank you, Ms. Ellsworth. We are not opposed to having an amendment stating that the current portion of NRS Chapter 90 that authorized the Securities Division to commence a criminal action is not an exclusive remedy. Parts of NRS expressly state which remedies are exclusive and which remedies are not exclusive. I think it may be important to articulate that in this statute. This particular bill does not amend those existing provisions of NRS Chapter 90.

Carolyn Ellsworth:

That would be perfectly acceptable. Thanks.

Assemblyman Kite:

Am I reading this correctly? In section 1, subsection 1, paragraph (a) of A.B. 72, it indicates that only elderly people are covered.

Carolyn Ellsworth:

The provision is really intended to cover the way licensed individuals would represent themselves either as certified experts or as having some specialization in dealing with elder planning or retirement planning. This section of the bill affects persons who are licensees. It provides that it would be wrong to falsely represent that information and would subject those persons, as licensees, to an enforcement action. If a person represents himself as an expert in retirement planning, and did that to someone who is 40 years old, it is still not allowed.

Assemblyman Kite:

The first part of paragraph (a) reads, "Indicates or implies that the person has special certification or training in advising or providing services to older persons or retirees in connection with the offer, sale or purchase of securities. . . ."

Carolyn Ellsworth:

That is correct.

Assemblyman Kite:

It does not say anything about younger people being misled in the same way. Am I confused with the way this is written? Does it imply that young people are not covered by this amendment?

Carolyn Ellsworth:

You are covered and so am I.

Assemblyman Kite:

So why does it specifically state . . .

Chairman Horne:

If I may, Mr. Kite, I believe it is stating that if a person makes a representation or engages in conduct indicating that the person manages retirement plans or similar plans, this section applies to the person making such a statement. The section does not apply to the person the representations were made to. Therefore, if representations like that were made to someone, it does not matter who the representations are made to. It only applies to the party making the representation.

Assemblyman Kite:

I just thought it was a little bit misleading and didn't quite understand. Thank you for the explanation.

Assemblyman Frierson:

Thank you, Ms. Ellsworth. Mr. Kite brought my attention to section 1, and I have one comment. There is a website listed in the statute. What will happen if the website changes? I don't know how often we show a website in a statute, which makes me think that it may be something we would want to consider keeping consistent. We may have to wait two years to amend it, if the website changes for any reason.

Also, regarding section 4, I would like to know the kind of behavior you are targeting involving moral turpitude. I believe I understand, but it seems to me that it may be subjective. For instance, if there are two people involved in the same conduct, one may be limited by the statute and the other may not because it is so subjective. What is it you are targeting when you propose to add actions involving moral turpitude?

Carolyn Ellsworth:

We actually had one instance where we had a person, who had been convicted of a violent sex crime, apply for licensing. We had no way of denying that person from licensing. Obviously, that type of crime involves moral turpitude. Of course, being a lawyer yourself, you know that the case law defines what types of things will be considered moral turpitude. That was particularly the case. The reason I had the concern was because many investment advisors in Nevada work from branch offices, which are their homes. Sometimes the advisors meet with clients in the home of the advisor and more often in the home of the client. It is very important that when we license people, the public has a right to expect that we are doing a screening and not subjecting them to a potential violent attack in their own homes. If a person has been licensed as a professional in the securities industry, the client will feel confident in meeting with the licensed individual in the client's home. That is the purpose of this amendment.

Assemblyman Frierson:

If I may follow up with one additional question, in section 9, subsection 1, you propose to add the language "Make any materially false, fictitious or fraudulent statement or representation." What is the penalty for violating that section? Does section 9, subsection 3, paragraph (c) cover the same behavior? Maybe there is some behavior that is not covered in hindering the investigation that you are targeting as far as the false representations go.

Carolyn Ellsworth:

The penalty for a violation of NRS Chapter 90 is a felony. At an administrative hearing, if you violate NRS Chapter 90 by offering into evidence a document as genuine that is actually forged, it is considered a felony. If you set an appointment with an investigator to explain why you did not commit fraud when you sold the security to an individual, and you produce documents that are false, it would not have been covered by subsection 2 because it is not being offered into evidence. It is arguable as to whether subsection 3, paragraph (c) would apply. Basically, the purpose of this amendment is to indicate that if you make a materially false, fictitious, or fraudulent statement or representation within the course of an investigation, that conduct will be considered a crime. The statement has to be material. If you come in and say you are 30 years old when you are actually 50 years old, that is not a material statement. However, if it is a material statement and is false, fictitious, or fraudulent, that will be a crime.

Assemblyman Hansen:

I have a question regarding section 1, subsection 4, which reads, "For the purposes of this section, a title of a job within an organization that is licensed or registered by a financial services regulatory agency of this State, any other state or the Federal Government is not a certification or professional designation if the title is not used in a manner that would confuse or mislead a reasonable consumer and the title." It appears that the verbiage is wrong. It seems like the second "not" should not be there. Should it?

Carolyn Ellsworth:

I have read that myself many times. It is the model rule, and the Insurance Commissioner has also adopted regulations that mirror the same language. After reading it about 20 times, I realized that it does need to be in there.

Assemblyman Hansen:

Okay, although to me, it seems that it is saying that "you are certified if you use it in a confusing or misleading fashion." But, it is okay as long as you are comfortable with it. I just wanted to bring it to your attention.

Assemblyman Sherwood:

Thank you for a great presentation. There is no question that protecting seniors is more important than ever. Regarding the changes in sections 8 and 12, if I am reading this correctly, if you "circulate or publish any false or misleading writing, statement or intelligence regarding a security," it is considered a category B felony, which could result in incarceration of up to 20 years. We just visited the Nevada State Prison yesterday and, as a principle, we are trying to keep people out of places like that for 20 years. What kind of latitude

is there? To me, that seems excessive. If somebody does something misleading and may not even know it is misleading, that person could go to jail for 20 years. That does seem excessive to me.

Carolyn Ellsworth:

Chapter 90 of NRS already makes it a felony to do this. The problem is that because NRS Chapter 205 contained this section for many years, there is a conflict. The issue would be, at a jury trial would this be allowed to be presented as a lesser included offense of something that is already considered a felony and has been considered a felony since 1987? The sad reality is that our trial judges do not particularly take securities fraud very seriously and, in most cases, do not sentence to prison. Unless a person has offended several times, a prison sentence is not given in Nevada. I cannot say that is the case in the rest of the country. Securities fraud is one of those crimes where an elder offender is not uncommon. They can be in their eighties sometimes. In fact, recently, there was a case of a gentleman who was 83 years old and was sentenced to 10 years in prison in California for operating a Ponzi scheme. Every judge, under our sentencing guidelines, makes sentencing decisions. While there is the discretion to sentence someone up to 20 years, in my four years with the Securities Division, there has been only one case where I have seen a first-time convicted person be sentenced to prison. That was a multimillion-dollar Ponzi scheme with hundreds of victims in Nevada and many more hundreds of victims all over the country.

Assemblyman Sherwood:

So, a judge has the discretion not to send a first-time violator to prison for 20 years or 10 years.

Carolyn Ellsworth:

Correct.

Assemblyman Sherwood:

Okay, thank you.

Assemblyman Hammond:

I would like to go back to section 10, regarding the fee increase from \$200 to \$500. You gave us a nice example, but I am concerned as it seems like this one example may have been an extreme case. Can you make a case for something a bit more average? You may have said it quickly or briefly, and I may not have understood. Can you tell me what the average cost is? Going to \$500 is more than double the current cost of \$200. Can you give an example of another case?

Carolyn Ellsworth:

I can say that I have never spent less than three hours on such a letter. I review the materials, draft the response, request additional information, and sometimes have to call the lawyers on the other side. When I was in private practice, prior to coming to public service four years ago, I billed \$250 per hour for my work. This takes me away from all other work. When I am working on this, I cannot do any other work. I do not want people to send requests for "no-action" letters unless they have seriously done their homework. Sometimes we get processes that have not been studied, which requires me to respond with further questions. The process sometimes involves telephonic conferencing, which takes even longer. Frankly, the \$500 fee will not make any difference because they are prepared by lawyers, who are going to be charging thousands of dollars in attorney fees to prepare the requests. At a time when we are stretched in our resources, as we are now, because of a 50 percent cut in our staffing, the state should be compensated for the amount of time I spend on this issue.

Chairman Horne:

Are there any other questions for Ms. Ellsworth? There are none. Thank you very much, Ms. Ellsworth. I now call Brett Barratt, Insurance Commissioner.

Brett Barratt, Commissioner of Insurance, Division of Insurance, Department of Business and Industry:

Thank you, Mr. Chairman, and members of the Committee. As you heard from Ms. Ellsworth this morning, A.B. 72 addresses the use of senior-specific certifications and professional designations by persons involved in the sale of securities. Section 1 mirrors regulation R086-10, which is a regulation promulgated by my office in November and becomes effective on July 1, 2011. The regulation addresses potentially deceptive certifications and professional designations used by persons who sell securities and insurance products to Nevadans. Assembly Bill 72 will prohibit persons selling securities from using potentially misleading designations. Variable annuities and variable life insurance products are considered securities, which my office has the authority to regulate. When combined with the regulation my office has promulgated, section 1 closes the circle with regard to protecting our citizens, and particularly our senior citizens, from potentially deceptive sales practices. I want to note that during the regulation process, life insurers and their trade groups were supportive. The American Association of Retired Persons has also testified in support. I, therefore, wish to express my support for A.B. 72 and trust it will help insure and protect some of our vulnerable citizens here in Nevada. Thank you.

Chairman Horne:

Are there any questions for Mr. Barratt?

Assemblyman Daly:

I have one quick question for clarification purposes. Regarding the regulation on the insurance side, it only mirrors section 1, and you do not have anything with regard to a "moral turpitude" provision in the Insurance Code, correct?

Brett Barratt:

That is correct. The Insurance Division's regulation focuses solely on the designation aspect. That does not mean that there are not other sections of the Insurance Code that are similar to other sections of A.B. 72.

Assemblyman Daly:

The reason I asked is because I have concerns about the "moral turpitude" reference and hope that some of my colleagues on the Committee will help me feel more comfortable with it. Thank you.

Assemblyman Ohrenschall:

Up until now, have there been successful prosecutions of people who have committed some of the associated crimes addressed in section 1?

Brett Barratt:

Our regulation does not become effective until July, 1 2011. It is not law yet. Therefore, we have not had any opportunity to utilize enforcement actions for people who are violating our regulation, which is similar to the language here in A.B. 72. I would also like to add that generally under the Insurance Code, any violation would call for an administrative action. As far as receiving prison terms or jail sentences, that would be up to the Attorney General's Office or a particular district attorney. Generally, what my office does is administrative actions.

Chairman Horne:

Is there anyone else present who is in favor of A.B. 72? Is there anyone in opposition or neutral?

John W. Griffin, representing Nevada Justice Association:

First, I would like to say that I signed the sheet incorrectly. I am here in support of this bill. We support the consumer protection efforts and the efforts by the Secretary of State and the Insurance Commissioner on these issues. The issue has already been discussed, in detail by the Secretary of State's Office, and addressed much better than I could have addressed it. We appreciate that question being discussed and addressed. We are here in support of the bill.

Wm. Patterson Cashill, representing Nevada Justice Association:

I am a private lawyer in Reno and I handle securities and fraud cases. This is a good bill. Our concern was that the bill should not be seen as the exclusive remedy. We think that point has been addressed. This is the type of protection the consumers of Nevada need. We support the bill.

Chairman Horne:

Thank you, and please leave your card with the secretary for the record. Are there any questions for Mr. Griffin or Mr. Cashill? There is no further testimony, and we will close the hearing on A.B. 72. There are going to be a couple of amendments and those will be held for a work session. The date has yet to be determined. As some of you have noted, a two-thirds majority vote is required, but that is not in Committee. That is required on the Assembly floor. A Committee meeting calls only for a majority vote.

We will now have a presentation from the Secretary of State's Office. I am pleased that Secretary of State Ross Miller has made it here through the blustery weather.

Ross Miller, Secretary of State:

Good morning Mr. Chairman, Mr. Vice Chair, and members of the Committee. For the record, I am Nevada's Secretary of State Ross Miller. I know many of you are familiar with the members of my staff. For those of you who are not, to my left is my Chief Deputy Secretary of State, Nicole Lamboley. To my right is Scott Anderson, Deputy for the Commercial Recordings Division. He has been the head of that Division since 1997. Also present are Securities Administrator Carolyn Ellsworth, who has just finished a presentation, and Management Analyst Jeff Landerfelt, seated in the audience, who is our number-two person at the Commercial Recordings Division.

Many of you are familiar with our office but for those who are not, I would like to provide you with a quick overview. The Secretary of State's Office is the third-highest-ranking constitutional office in the state. We have 5 deputies and a staff of 130. Of those, over 50 are working in the Commercial Recordings Division. I think it is important to note that if the revenue that the Commercial Recordings Division produces is divided by the number of employees, the result is approximately \$2 million annual revenue per employee, which is significant. It is also important to note that the revenue is, in large part, dependent upon our customer service and interaction. We take that very seriously. Our main office is in the Capitol Building. We have smaller offices in Reno and Las Vegas. Except for certain election and candidate filings, most election functions are handled in the Capitol office. The duties of the Secretary of State are a bit varied. We have four main divisions.

The Securities Division licenses the investment advisors, broker-dealers, and athletes' agents. We have a Notaries Division. Obviously, I serve as the Chief Elections Officer. We have the Commercial Recordings Division. We manage a number of programs, including Domestic Partnership Registrations and The Living Will Lockbox. Anytime there is an idea for a new program, that new program ends up in our office. I also sit on quite a number of Executive Branch boards including the Board of State Prison Commissioners, the Board of Examiners, the Tahoe Regional Planning Agency, and others.

I will briefly take you through the Securities Division [page 3 of [Exhibit C](#)]. You already heard in some detail what that Division does. We enforce the "blue sky laws," known as NRS Chapter 90, to protect investors and capital markets in Nevada. That Division investigates fraud cases. We actually have peace officers within that Division who work with the Attorney General's Office to prosecute offenders. In all, we have more than 121,000 security firms and professionals that are regulated and licensed by the Division. The recently passed Dodd-Frank Wall Street Reform and Consumer Protection Act added an additional 40 to 100 investment firms and an undetermined number of their representatives. As part of the mission of the Securities Division, the securities professionals who are licensed and residing in Nevada regularly come up for inspection when my office receives a complaint or tip. The Securities Division has done a yeoman's job of meeting the task in spite of the fact, as Carolyn Ellsworth mentioned, that Division had a 50 percent reduction in staff as a result of budget cuts. In spite of those cuts, that Division collected nearly \$41 million in license, registration, and inspection fees, all of which went directly to the General Fund. Although enforcement funds cannot be relied upon as a regular funding source, the Division has collected \$1.6 million in enforcement funds as of January 31, 2011. We are diligent about maintaining that fund and collecting additional funds. We have also benefited from the Division's efforts to collect approximately \$800,000 in restitution for victims. The Securities Division works for Nevadans on two fronts. It will protect them from fraud and seeks to obtain significant revenue for the state in the process.

Our Commercial Recordings Division comprises nearly half of our office staff. As I have noted, it is responsible for the processing and filing of organizational documents. It is really the point of entry for every business in the state. Anyone who wants to do business in the state interacts with the Commercial Recordings Division in some form. We also oversee trademarks, Uniform Commercial Code (UCC) financing statements, and other business activities. Nevada is in a premier place in terms of its commercial recordings and filings. We are a top ten filing state. We are second behind only Delaware with the number of entities we have on file per capita. I think that means, when viewed in the eyes of the nation's public, Nevada is the second-best place

to incorporate. We are trying to expand that in terms of promoting the fact that more will choose to come here to do business. I think that speaks for the pro-business steps that Nevada has put into place. As a historical reference, it really began with the 1991 Session when Nevada incorporated many of the statutes that Delaware had in place, which allowed us to attract many small and medium size businesses as a filing opportunity. We then did another smart thing. The Legislature funded the Electronic Secretary of State Processing System (eSoS). It is an award winning system that many may be familiar with. When you log onto our website and use our "business entity" search, it will be utilizing eSoS. In that regard, our site has very heavy traffic. We are able to process transactions much more efficiently than we have previously done. In the early 1990s, in most jurisdictions, including Nevada, the wait would be six weeks to complete the process of establishing a limited liability company (LLC) or to set up a business. The eSoS reduced that time significantly. We are now one of the most efficient jurisdictions. In most cases, we can process requests within a few days.

In terms of revenue, the collection of the business license fees has resulted in meeting our projected revenue. This is an opportunity to remind you that customer service is an important element in producing such revenues. We implemented furloughs, layoffs, and staffing cutbacks, all while taking over the business license responsibility from the Department of Taxation. This caused a significant increase in our processing time and affected our customer service. We are trying to avoid that. It is important to keep in mind that the term "customer service" is not just the people working with the public, but also having the technology available to provide those services.

I would like to draw your attention to the slide that lists new filings on the top of page 9 of the presentation ([Exhibit C](#)). The slide is entitled "Nevada Employment and Filing Comparative Analysis," and was prepared by Jeremy Aguero of Applied Analysis. As many of you may know, Jeremy Aguero and his company provide economic analysis, and he has prepared some very interesting findings for us. We will provide you with the updated version, when available. This historically tracks our new filings, along with our renewals, in comparison to the employment figures. The referenced chart is effective through the final quarter of the last fiscal year, March 1 through June 30, 2010. During those three months, the number of new business filings totaled 13,806, which contributed to a 12-month total of 55,432 new business filings, although the latest quarterly volume was 1.2 percent below the preceding quarter and 7 percent below the 14,844 filings reported in the same period of the prior year. While new-entity volumes remain down from the prior year, the pace of the decline has slowed, suggesting that the worst may be behind us. In fact, our numbers have increased significantly since this chart

was produced. According to the analysis, our commercial recordings data may very well be a leading indicator of the employment data. You can see by looking at this chart that when there is a significant increase in the filings, often there will be an increase in the employment figures. Consequently, when we see a decline in the number of new business filings, the employment numbers will lag. I am very hopeful the updated chart will be demonstrative of the fact that the worst may be behind us and we have turned the corner towards improvement. It is still difficult to tell whether we will reach that goal.

We did not begin collecting revenue from state business licenses until three months into the fiscal year because of the transition period. We only have nine months of collections for that period. For the fiscal year 2011, we had collections through the end of this past January. We are meeting the projections, as promised. When we asked for the responsibility to collect the business license fees, it was because of the fact that there was a significant gap. We had about 300,000 entities on file. The Department of Taxation should have been collecting a business license fee from everyone we had on file but was only collecting about 150,000. What we demonstrated was that by integrating these two databases, we would know, universally, who we are supposed to be collecting fees from, and it would bring in a significant amount of previously uncaptured revenue. I would like to point out there is an available exemption from paying a business license fee. We are seeing significant use of exemptions being claimed on home-based businesses or nonprofit organizations. As you can see [page 10, [Exhibit C](#)], 20 percent of the applications and 21 percent of *Nevada Revised Statutes* Title 7 entities, LLCs, corporations, et cetera, are applying for those exemptions. We think that number is high and we are in the process of developing ways to more strictly enforce payment of the business license fee. A business that is in good standing and has paid its appropriate fees should not be competitively disadvantaged by another business that claims an exemption it is not entitled to and avoids paying fees.

Next, we show a list of the online services provided by my office. This has been an area of significant focus for us. We have tried to increase the services that we make available online. Looking at the growth of online filings, you will note the demand and willingness to use these online resources. In a period of five years, our online filings have more than doubled as a result of demand and availability. I think there are probably more accounts of this nature reflecting comparable growth in everything from online retail to online dissemination of information. It is incumbent upon our office to do everything that we can to encourage that growth. Within the last few months, we also launched the ability for businesses to file online Articles of Incorporation. We are very proud of that.

Keeping in mind the growth of online services, I would like to introduce you to perhaps our most significant initiative, which we have termed the "Nevada Business Portal" [page 13, [Exhibit C](#)]. We are presently working on this. Many of you veterans may be familiar with the portal. With the support of the Nevada Legislature during the 2009 Session, including specifically Speaker Ocegüera, who sponsored the Legislation, we developed this initiative to try to create a "one-stop shop" for new and existing businesses to conduct transactions with all state agencies. Eventually our goal is to streamline that process down to the counties and local agencies. Anyone who has been associated with business, at some level, knows the process for setting up a business is cumbersome. In the past, to set up an LLC, a form would be filed with our office. That information was entered into our database. It was then necessary to go to the Department of Taxation, and provide them the same information you provided our office. Then it was required that you contact the county and local agencies. There was no effort to try to share this information.

The portal will try to streamline that process by collecting information electronically one time, allow payment for those transactions, and also allow completion of all of your renewals at the same time. If you are starting a new business in Nevada, during the first phase, this will be accomplished through one single portal. Probably the best example of a portal is Amazon.com, where you can establish a secure account and keep your information on file, including your credit card or other payment information. Then you can easily return to Amazon.com to make additional purchases. Yet, if you think about the back end of Amazon.com, they are all independent vendors. Amazon is collecting those with the same technology that we will utilize. It is service oriented architecture enabling the transaction of business with multiple agencies throughout the state. This is efficiency on both sides of the table. It is an efficiency for the consumers and constituents to be able to streamline the process, but it is much more efficient for government also. It will reduce paperwork as well as the need to input the information repeatedly with other state agencies. Perhaps most significantly, for this budget session, we anticipate that it will allow us to collect significant sums of uncaptured revenue. The current problem is that our office may know you, for example, as "William Horne, LLC," but the Department of Taxation may know you by some other name variation. Without a unique identifier, we would have no way of knowing whether or not you are in good standing with different agencies. We believe that when we eventually roll out the Nevada Business Portal, it will result in tens of millions of dollars in additional uncaptured revenue.

In the second phase of the portal, we will have business licensing functions with Clark County, City of Las Vegas, and Carson City. Those were three local entities that have approached us wanting to feed into the portal. Those entities

will be among the first because of their ability to quickly interface with the portal platform. Once the architecture is built for this, we will be able to start plugging other agencies in as quickly as they can make the necessary modifications to their system. Some local governments do not collect their local business license information in electronic form. Until that is accomplished, those entities will be unable to plug into our system. We are very proud of the portal. I probably should have seen from the onset how complicated this undertaking would be. I thought we would be able to accomplish this quicker than we have been able to. However, until now, no other state has been able to do this. Once this portal is in place, we will be the first state in the country to have a true "one-stop shop." I believe this will go a long way to reestablish Nevada's status as not only a very efficient processing jurisdiction, but overall the most pro-business jurisdiction in the country. With that said, I will be happy to answer any questions.

Chairman Horne:

Thank you, Secretary Miller. I think you have done a great job. I believe it will make a tremendous impact in placing Nevada on top in that regard.

Assemblyman Sherwood:

As somebody who was there five years ago, when you made the presentation to us, at a Rotary Club in Las Vegas, I say, "Congratulations." This is a multiphase process and to see it through from start to finish is exciting. What is so exciting about it, for the business people, is the convenience. I remember our conversation about becoming number one. I have separate issues regarding the filings that I will address another time, but my question now is regarding the commercial revenue. It shows an estimated revenue of \$122 million. Is that based on the doubling of the fee from the last session? If it "sunset," what happens to your projection?

Ross Miller:

I will let Mr. Anderson address that question.

Scott W. Anderson, Deputy for Commercial Recordings, Office of the Secretary of State:

Currently, we have about \$50 million per year that is attributable to the state business licenses. If that does "sunset," it will reduce our revenue by approximately \$25 million. Granted, this estimate is through the fiscal year ending June 30, 2011, which would include the business license at the \$200 level. This revenue estimate, which is probably closer to \$125 million, is based upon what was provided to the Economic Forum this past December. If there is a "sunset" of that provision, there very well could be this decrease, depending on how we handle this apparent gap in the exemptions.

Assemblyman Sherwood:

Has the doubling of the business license fee caused a decline in the number of incorporations or licensing of entities in Nevada? For instance, with businesses that would license here in lieu of another state, such as Delaware or Wyoming, have we seen a decrease in licensing due to the increase in fee?

Ross Miller:

It is difficult to tell. We do not maintain data indicating whether or not entities have a physical presence in Nevada. Certainly we have seen a decline in the number of entities we have on file over the past few years. If you track that with the employment figures provided by Jeremy Aguero, my opinion is that the decline in the number of entities on file is more likely the result of economic conditions in this state. I do not believe the decline is due to the business license fee increase.

Assemblyman Frierson:

I would like to go on record as well and compliment you for the work that you do in conjunction with the Bureau of Consumer Protection. You do a tremendous amount of work with an extremely limited amount of resources. It is very important work, and I would like to encourage you and make sure that you know that we recognize and appreciate it. Several years ago, I had first-hand experience in looking at and dealing with such work with limited resources. It is really important work and I thank you both for what you do.

Chairman Horne:

Thank you, Mr. Frierson. I see no other questions. Mr. Sherwood, do you have a final remark?

Assemblyman Sherwood:

Yes, thank you. I would like to see some additional data regarding our statistics in comparison with other states, such as Delaware or Wyoming. Right now it is terribly convenient for businesses, but if we could couple that convenience with cost efficiency, we can attract even more businesses. I will try to determine the numbers and would appreciate it if Mr. Anderson can locate some additional data as well.

Chairman Horne:

Are there any other questions for the Secretary of State or his staff? I see none. Thank you, Mr. Secretary, for your presentation. That concludes our presentation from the Office of Secretary of State. [There is an amendment to A.B. 72 as pre-filed ([Exhibit D](#)).]

Regarding some housekeeping measures, the Assembly Judiciary Committee has a few bill draft requests at its disposal. If any of the Committee would like to speak to me about any of them, please feel free to do so. I will take it under consideration. I trust everyone enjoyed the trip yesterday to the Nevada State Prison. Is there any other business to come before the Committee this morning? Seeing none, we are adjourned. [The meeting adjourned at 9:17 a.m.]

RESPECTFULLY SUBMITTED:

Lenore Carfora-Nye
Committee Secretary

APPROVED BY:

Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 16, 2011

Time of Meeting: 8:05 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Ross Miller, Secretary of State	Presentation
A.B. 72	D	Carolyn Ellsworth, Securities Administrator	Amendment to A.B. 72 as Pre-filed