MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-sixth Session
May 12, 2011

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:09 a.m. on Thursday, May 12, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Valerie Wiener, Chair
Senator Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

GUEST LEGISLATORS PRESENT:

Assemblyman William C. Horne, Assembly District No. 34

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Policy Analyst
Bradley A. Wilkinson, Counsel
Judith Anker-Nissen, Committee Secretary

OTHERS PRESENT:

John Cahill, Clark County Public Administrator
Donald L. Cavallo, Washoe County Public Administrator
Chris Ferrari, Kemp & Associates
Daniel J. Mannix, Kemp & Associates
Ty Kehoe
Carolyn Ellsworth, Securities Administrator, Office of the Secretary of State

Annette James, Lead Actuary, Life and Health Section, Division of Insurance, Department of Business and Industry
Ross Miller, Secretary of State
Scott Anderson, Deputy for Commercial Recordings, Office of the Secretary of State
Bryan Wachter, Retail Association of Nevada
Sam McMullen, Las Vegas Chamber of Commerce
John Griffin, Independent Gaming Operators Coalition
Matthew Taylor, President, Nevada Registered Agent Association
Trevor C. Rowley, Executive Vice President, Nevada Corporate Headquarters, Inc; Executive Vice President, Corporate Service Center, Inc.
Jed Block, State Agent and Transfer Syndicate, Inc.

CHAIR WIENER:
I will open the hearing on Assembly Bill (A.B.) 291.

ASSEMBLY BILL 291 (1st Reprint): Makes certain agreements between heir finders and apparent heirs relating to the recovery of property in an estate void and unenforceable under certain circumstances. (BDR 12-306)

ASSEMBLYMAN WILLIAM C. HORNE (Assembly District No. 34):
John Cahill, Clark County Public Administrator, will explain to you why he needs to have additional time to find heirs of estates, a job he was elected to do.

JOHN CAHILL (Clark County Public Administrator):
I am in support of A.B. 291. My first case had almost $3 million in assets with no will and no known heirs. All the information I share today is public information because it comes out of my office. The case name was Rives, and the attorney who I selected to represent the estate was Charles Deaner. Mr. Deaner, a longtime attorney in Las Vegas, started practicing in 1954. Mr. Deaner served in World War II, went to law school and had a commonsense background before he started practicing law. Mr. Deaner served as president of the Clark County Bar Association and president of the State Bar of Nevada and earned many honors as an attorney.

In the Rives case, I filed the necessary paperwork on Friday and on Monday was called by an attorney representing the heirs. The attorney stated, "We have found your heirs." I said, "What do you mean you have found my heirs? I do not understand how this works; explain this." I found out there are heir-finding

firms. If they can get onto a case where there are no known heirs, they will find the heirs and get them to sign for a percentage of their inheritance. What these firms say is, "We believe you have an inheritance; we will lead you to that inheritance if you agree to pay us a percentage." Most commonly, the percentage is 33.33 percent. The heirs sometimes will not sign, but sometimes they will.

Finding an inheritance is like hitting the lottery, and the heir-finder firms are going to show them the location of the ticket. In the Rives case, the heir-finding firm brought the heirs to me. I learned how the firm did it, and I just put my head down on my desk. It was my first year in office and the first time I had come up against this. I thought I had done something terribly wrong. I thought, "Oh, we are going to get sued; these heirs are going to want to know why I did not find them." How come the heir-finding firm had to find them? I did not even get a chance to work on the case. In the end, the heir-finding firm's percentage was about $600,000 for two days' work. Now I ask anybody on the Committee, can you find a legal way to make $600,000 over a weekend? How hard will you fight to keep that process in place? I would say, pretty hard.

This is why we are here today and why this needs to change. The precedent in Nevada is the case of unclaimed property held by the State Treasurer. Heir finders are prohibited from being involved in an unclaimed property case for 24 months. They are limited by State law to no more than 10 percent of the estate, and they are excluded as a party. In other words, if the heir finder connects the unclaimed property to the heirs, the State holds that the contract is between the heir finders and the heirs, and it will have no part of it. The Treasurer will pay the unclaimed property directly to the heirs, and it is up to the heirs to pay the heir-finder firm based on the contract.

In the case of probate, the heir-finder firms can cut in front of me. They get to jump into a case when I have not had an opportunity to look for the heirs. They sign the heirs up, the heir finders pick the attorney by referral, and that attorney operates as a representative for the heirs for a percentage of the distribution. The attorney will represent that the distribution should be paid first to the attorney, then that attorney pays the heir-finder firm, pays himself or herself and then pays the balance to the heirs for their final distribution.

The heir-finder industry anticipates that this bill may pass—that our Nevada lawmakers will believe that on behalf of Nevada families and families

everywhere it is proper to put into the probate process at least part of what they have put into place for unclaimed property. That cuts the heir finders out of the system. In the case of a public administrator, I have an opportunity to do my job to find the heirs.

Last week, I filed a case where one heir had been located in California and one in Arizona. An heir-finder firm found the heirs, signed them up for a percentage and referred those heirs to an attorney in Las Vegas. The heir-finder firm then advised the heirs to nominate a private fiduciary and cut the public administrator out. The heirs have the right to do that nomination and I have no fight with that. The administrator, Jared Shafer, was selected by the attorney referred by the heir-finder firm. Mr. Shafer will do a fine job; he will make sure all of the proper heirs are found and that the distribution is properly done.

The court held that the heirs have the right to nominate Mr. Shafer, but what this process shows is that the heir-finder firm is willing to control the process from beginning to end. They will sign the heirs, pick the attorney by referring the heirs to him or her and then advise the heirs. The heirs in California and Arizona could not pick either me or Jared Shafer out of a lineup. They have no idea who we are; this is all based on the advice of their attorney. The heir-finder firms control the process from the first step to the last.

And there is still a mystery. I do not know how they find these cases. I do not know how they find cases that have, at the time the person is deceased, no known heirs and no will. In the case that happened last week where the firm filed and successfully cut the public administrator out, a death when there is no family and no obituary takes weeks to get a death certificate. I know these firms pay a bounty to people who lead them to these cases. I am told anecdotally they pay runner services that go to attorneys' offices, and they pay people at the county clerk's offices; but in this case, nothing had been filed yet.

DONALD L. CAVALLO (Washoe County Public Administrator):
I am in support of A.B. 291 as it is written today. The six-month window is an appropriate period of time, especially since the language within this document says, "the period beginning with the death of the person." There are times when we do not receive a referral from either a medical examiner or an attorney's firm for months after the death. This would give us an appropriate window to work within that time. There are already a number of time lines set within the probate process that require things to be done in a quick fashion

throughout the estate process. But when you prepare notice to creditors and so on for an estate, you can easily be involved for nine months to a year before the distribution period takes place.

When it comes to the heir-finder firms, they perform a task. We have utilized them in the past when we have exhausted our own abilities to search for the next of kin. One concern I have is their form of payment, entering into contracts with individuals outside. In the probate process, all fees to any professionals are approved by the courts. We also have the ability to hire attorneys for absent heirs, and those attorneys' fees are also approved by the courts. As long as there is some governance over this process, I am in support of the bill the way it is written.

CHAIR WIENER:
Mr. Cahill mentioned statutory limits of a fee up to 10 percent. Could you help me understand that? Also, I heard something about a 24-month window. There are many time lines bouncing around; in the bill we have six months, and we have mandatory offerings that reduce that substantially. Was that something that was struck as a compromise from something else? This is the first reprint; was that part of the change in the draft?

MR. CAVALLO:
In the first print it was set as a 12-month window, and it was moved to 6 months. There will be individuals to testify against the bill who want that window shorter. I am not familiar with the other figure of 24 months that was mentioned.

CHAIR WIENER:
Mr. Cahill had mentioned a 10 percent cap; he had also mentioned by contract. Could you tell us how you would see this working in terms of the procedure?

MR. CAVALLO:
I do not believe the bill addresses a fee that an heir-finder firm can enter into a contract with a beneficiary. It would have to be completely refashioned. That would involve more time, but if there was a cap on the percentage of the estate that went to the heir finders of 10 percent to 25 percent, that would be a more realistic figure. We have seen heir-finder firms go up much higher. The most I have seen is around 40 percent or so. As Mr. Cahill said, the heir-finder firms come to the next of kin and say, "We will enter into this agreement with you."

But normally, from my understanding and experience over the last 24 years in doing this type of work, the heir-finder firms do not tell the heirs where the estate is or the name of the deceased until after they have the heirs on contract. The family does not have an opportunity to do any research themselves.

CHAIR WIENER:
How often does this happen in Washoe County?

MR. CAVALLO:
We have perfected our investigations. In the last fiscal period, we only escheated to the State around $3,000, so it does not happen often. In one of our more complicated cases, we had to go internationally, and it took us over a year and a half to find the next of kin. There have been a few occasions when we had attorneys file a notice of appearance on behalf of an heir-finder company. We contacted the attorneys and filed an order to show cause to have the attorney appear in court to produce the client and the documents of the records of the beneficiary. The attorney did a notice of withdrawal and walked away from the estate. We have not had too many in Washoe County.

SENATOR GUSTAVSON:
I am unfamiliar with this process and how the process worked before. How do other states handle this? Do they have caps or time lines?

MR. CAVALLO:
I would have to defer to Mr. Cahill because he has done research on that issue.

MR. CAHILL:
This has been difficult to research because there is such a variety of ways the states handle this problem. Some states require heir-finder firms outside the state to employ an agent licensed as a private investigator to operate within the state. There are states that apply fees and business licenses, and there is a wide range of things they do.

I confused things earlier; I was referring to the 24-month period, the limitation of 10 percent and not acknowledging any heir-finder firms as a party to the distribution. These come under a uniform act titled Unclaimed Property in *Nevada Revised Statutes* (NRS) 120A. I bring up that example as a reference. The reason I feel it is a useful reference is we have had people ask why the

government is sticking its nose into this process. These heir-finder firms are private businesses; this is interstate commerce. When heir-finder firms sign up heirs, that is a contract between the heir and a private agency, and it is none of the government's business. I do not hold it against the heir-finder firms that they will fight hard to keep this process in place; there is big money involved. But that big money is taken away from the heirs where it should properly go. The opponents to this bill are going to bring up examples where the heir-finder firms have done a good job by connecting heirs who could have otherwise been cut out.

But in the case of the public administrators, we made the change from the first writing of the bill that would have applied to any administrator, and we asked for 12 months. We made the change to limit it to the public administrator and reduced the 12 months to 6 months in the hope the heir-finder firms might support this bill. But they are here today testifying against the bill. *Nevada Revised Statutes* 120A show the State's willingness to get involved in this process and to prevent what I will read to you in a minute—a letter from Charles Deaner (Exhibit C) to the State Bar of Nevada. Mr. Deaner characterized it as "being ripped off by bounty hunters." I will read just a portion of that letter, and then I will enter that letter into the record as a part of my testimony.

For the purpose of this bill, those 24 months and the limit of 10 percent are only a reference to the State getting involved in this process, so you can set that all aside. My strategy was to focus on one issue: give me the time to do the job that I have, while appointed public administrator, to locate the proper heirs and to make sure the distribution is done properly.

Members of the industry have already tipped their hand because now seeing that is my approach, they are willing to get involved in the process that will cut me out completely. In a similar case I am defending, the heir-finder firm filed a petition that involves heir finders. They allege that I am dragging my feet, taking too much time looking for heirs and squandering resources of the estate by looking for heirs in a case that, as Mr. Cavallo pointed out, is international, and that always takes more time.

In this case, we know the names of the heirs; we have the last addresses of the heirs provided by the decedent, who had eight siblings. It may be that all of those siblings have passed away, but we are working hard to locate them and to confirm them. In the meantime, an heir-finder firm found the children of one

of those siblings and filed on behalf of those siblings. Even though we have not completed finding the heirs, the firm is now saying, "We want to get rid of Mr. Cahill and get somebody else in there. We think this should be settled." Even when we have the names of the heirs and we are in the process of locating those persons, they want to move it forward; they want to hurry up. The only reason I can figure why the heir-finder firm wants to hurry up is that they want to get their commission.

In this same estate, there is $150,000 sitting in a bank account with a pay-on-death beneficiary whom we are also looking for, even though it is not our duty. If the pay-on-death beneficiary is not available, that money will increase the amount of the estate and thus increase the distribution. That will also increase the earnings of the heir-finder firm because their earnings are based on percentage. The firm is very anxious to push these things, to hurry and get it settled. I question their motivation to find more heirs because when that distribution gets cut and spread out, their earnings drop. I am not accusing the firm of anything improper, only that influences need to be considered, especially when I have two cases in which heir finders are trying to push me out completely—and they have successfully done it once.

I will read part of Mr. Deaner's letter dated January 9, 2008, Exhibit C, that was addressed to the State Bar Probate and Trust Law Section. The State Bar of Nevada has remained neutral on this matter, which is a powerful position since it relates to the attorneys' abilities to earn through this particular process.

From what Mr. Cavallo said about the attorneys representing the heir-finder firm and in Mr. Deaner's letter, I now clearly understand the attorneys always represent the heirs. The heirs are referred to the local attorneys by the heir-finder firms. In that manner—and this is unusual in probate—the relationship between the heir-finder firms and the heirs is held to be outside of the jurisdiction of the probate court because of attorney-client confidentiality, and the probate court is unable to inquire what percentages are paid to the attorneys and what percentage is paid to the heirs.

Once the money is paid to the heirs' attorney, it goes into his or her trust account for subsequent payments to the heir-finder firm, the attorney and then distribution to heirs. There is no tracking that the heirs have received their distribution.

However, I do not question that system. I do not believe any Nevada attorney would risk his or her standing at the State Bar of Nevada by doing anything improper. It is just an awkward process when you take this bundle of activities and put them outside the jurisdiction of the probate court, where the probate court approves all fees paid to the attorneys and the administrator and reviews claims and other debts paid for the estate.

I have Mr. Deaner's permission to submit his letter to the Committee, Exhibit C. I have other items for the Committee: "Notice to Heir Finders" (Exhibit D) and a letter from Tina M. Walls, Esq., dated May 10 (Exhibit E).

SENATOR GUSTAVSON:
The reason I asked my question was that our Committee has all of these Uniform Law Acts, and out of curiosity I wanted to know what other states do. I am not suggesting we do that with this bill, but what are other states doing? How are they handling the matter? I did not get an answer or a good answer.

CHAIR WIENER:
This one may not have a Uniform Law Act. Mr. Wilkinson, does this have a Uniform Law Act?

BRADLEY A. WILKINSON (Counsel):
No.

CHAIR WIENER:
It will now.

CHRIS FERRARI (Kemp & Associates):
Kemp & Associates is a genealogical research firm in business since 1966. Kemp has identified heirs around the world, providing an important service to the citizens of Nevada and across the Country. This is a complex business; Kemp & Associates have a close affiliation in Salt Lake City with the Genealogical Library. It was not Mr. Cavallo or Mr. Cahill, but after the last hearing in the Assembly Committee on Judiciary, another administrator from the State asked me, "Are you working with Kemp? Those guys found this person in Thailand that we could never find; it took years, and they did it in a couple of weeks." This is an important process. Oftentimes, heir-finder firms support the public administrator when the administrator does not have the ability or skill to

identify that heir. Many times the heirs petition the court to hire a business like Kemp & Associates to assist them in the process.

We are here in opposition to A.B. 291 as written but in support of the concept Mr. Cahill and Mr. Cavallo are referencing. We appreciate and respect the role public administrators play and want to continue to support them in that regard and allow them to perform the job for which they were elected.

For the record, we do not deal with unclaimed property, something that was mentioned numerous times. Also, Kemp & Associates dealt with three cases in the last year in the State.

We worked very closely on this bill in the Assembly, both with Mr. Cahill and Mr. Cavallo, and with Chair Horne of the Assembly Committee on Judiciary. We are trying to find a middle ground.

To answer Senator Gustavson's question, there is only one other state in the Country with any type of limitation on the use of heir finders, and that state has a time frame of 60 days.

Additionally, the letter Mr. Cahill referenced from what sounds to be a reputable attorney, Mr. Deaner, Exhibit C, states, "We would have been able to locate these heirs within 24-48 hours." And that is exactly the point; many times with technology and especially with the sophistication of somebody like Kemp & Associates, and even on the public administrator's level, those people are often found within 24 to 48 hours. As things get more complex, it can take more time. But to incorporate some kind of time line of six months when the only other state in the Country has a 60-day time line would make Nevada something of an anomaly. Mr. Deaner also references, Exhibit C, a statute as it pertains to unclaimed property, although we do not deal with unclaimed property, which talks about a 30-day period to locate those unknown heirs. For that reason, we propose in our amendment (Exhibit F) to change the time line from a six-month limitation to a 30-day limitation.

Additionally, we provided one other document titled, "How Heir Finders Serve a Critical Check and Balance for Nevadans" (Exhibit G). These are numerous cases—and this is not in any way negative toward a public administrator—that regardless of how the case is closed, there are heirs who are not identified. These are legal, rightful heirs, and this has happened in numerous cases

Kemp & Associates has worked. In many other cases, heirs have been found who were higher ranking in the hierarchy, such as a cousin versus a cousin once removed, and so on. Many times people get greedy when they find there is an estate, and it is not uncommon for those people to hire an attorney, jump in and say, "We are the only heirs," knowing full well other heirs may exist. The private sector in this case provides an important check and balance in this process, and we respectfully request your support to our proposed amendment.

CHAIR WIENER:
Mr. Ferrari, on May 5, I received a proposed amendment from you that said 60 days, and then on May 10, I received the proposed amendment that you are referring to that says 30 days. Please share with me what happened in those few days so that you cut it in half again.

MR. FERRARI:
We reviewed the testimony from the other side and listened through the minutes. After hearing Mr. Deaner, who was referenced in this process numerous times, refer to a 30-day window, we thought it would be a better place to start. Obviously, it depends on the will of the Committee. If that seems unreasonable in any manner, we would defer to you.

SENATOR GUSTAVSON:
How many employees are there in Clark County? Are there several employees working for Mr. Cahill? Mr. Cavallo has quite a few employees. Maybe there are not enough employees or they do not have enough money in the budget to hire enough employees for staffing. We hear testimony about heirs being ripped off and about attorney's fees—reasonable attorney's fees when attorneys are getting involved is a good idea—but I do not want to see people ripped off.

MR. FERRARI:
Mr. Mannix has some 20 years in the business, and his testimony will answer that question.

DANIEL J. MANNIX (Kemp & Associates):
My firm has been researching estates with missing or unknown heirs since 1966. Briefly, I would like to explain that process: A hypothetical example would be if a person dies with an estate which consists of his or her home valued at $150,000 that has been in the family for generations. Kemp & Associates would do a genealogical research on the family, possibly

going back to a 1930 census; we will assume the person was born in Ohio. We would research the person's mother and father to gain some genealogical information about them. If we were to find the father, we would research a 1900 census; perhaps he is in New York. If we found the father with two brothers, those are the future uncles of the person who passed away in Nevada. We would then bring them to the present, try to find out what happened to them and their families. If we had an uncle who passed away in Miami in 1980, we would send someone down to Miami to research the records to see if that person had any family; the researcher would look at a will, obituaries and so on. The children of that person would be the future cousins of the person who passed away in Nevada. We would then contact them and inform them they were heirs to an estate. Another part of our process is to put together a professional genealogical chart with exhibits showing these people are indeed attached all the way through the grandparents to the person in Nevada.

Oversimplified, that is what we do. Many estates are distributed before six months, and some as quickly as 30 days. That is one of the reasons we have issues with regard to this bill. Only one state in the entire Country has any time constraints trying to locate heirs for estates, and that state has implemented a 60-day limit. Other reasons why we have concerns with this bill has to do with estate assets; they are time sensitive. For example, if the decedent has a cabin on Lake Tahoe, it could easily be sold in short order prior to the appearance of unknown heirs. If the decedent has family pictures or World War II memorabilia, these items may be sold or discarded prior to a six-month waiting period before anyone could begin to look for the proper heirs.

Another situation is if the decedent had bonds or stocks, the rightful heirs may want to have input regarding whether they are sold, when they are sold or taking them in kind. The deserving heirs should not have to wait six months before they have influence on the assets that are theirs.

I want to give you two examples of Nevada probate estates that support our reasoning: in the estate of Marion Keith, a mobile home park manager produced a will for a person who was living in the mobile home park. The will was produced just prior to her death and was questionable in nature because it gave everything to the mobile home park manager. We did the genealogical research and found nieces to the estate. The nieces were personally familiar with the decedent, but they would not have been contacted, and the manager would

have gotten the estate. Through our research, the right people got the estate. Mr. Ferrari mentioned a case in Thailand, the estate of a man in Carson City. The public administrator hired an international company to locate a half brother who was believed to exist; they were unable to do so. We did the research and had to go to Europe. Many times family members are in Europe, and it is difficult to locate the records because of the wars, specifically World War II. I have a case right now with an Auschwitz survivor, and it is difficult. There is no way to do that research from the United States; you have to get professional people over there. We contacted someone in France because there were connections there. The researcher traveled to Thailand and had a Thai-speaking Frenchman help locate the correct heir. Because of our research, the right person got the money.

We provide the ancillary benefit of checks and balances in the majority of the cases that we research, and we do so at our own risk with no costs to the estate. In Nevada alone, we have helped hundreds of Nevadans get what is rightfully theirs based on statute. And if this bill is passed as written, Nevada would be the only state to have a law like this. This bill would damage our industry and potentially put us out of business.

TY KEHOE:
I am an attorney licensed in Nevada and residing in Henderson. Although the public administrator provides a valuable service in Nevada, this bill seems to be a solution without a problem. During the Assembly hearings, Mr. Cahill referenced 22 cases where an heir finder was hired by his office to search for missing heirs in his approximately five years as the public administrator. I estimate approximately 15,000 probates were filed during that time. He references approximately one-fifth of 1 percent of the cases and only mentions one of those with a negative outcome, the Rives case.

My opinion as an attorney, in spite of it being my trade and practice, is that the fewer statutes the better. We do not need to be filling up statute books with new statutes without a definitive need. It is interesting that Mr. Cahill does not mention a complaint made by the heirs in the Rives case. And frankly, I am not aware of a single complaint by heirs being made to the Secretary of State, the State Bar of Nevada or anybody else regarding the heir finders.

I know Mr. Cahill does a good job. He is sincere in his effort to find heirs, and he is honest in his disclosures to the court, unlike a lot of people who come before the court claiming to be the correct heirs when they are not. But Mr. Cahill will not be the public administrator forever. There have been former public administrators, including Mr. Shafer, who was mentioned by Mr. Cahill in his testimony today. Mr. Shafer was a longtime Clark County Public Administrator, and it sounds like he is involved with the heir-finder firms at this time. He is representing them, he is assisting them in the process and he must be comfortable with the process. In addition, I can testify that former public administrators did not search for the heirs like Mr. Cahill does. That was not their priority, objective or purpose. When we get a new public administrator at some point in the future; he or she may not search for heirs, and there may be a dead time when the unknown heirs are not sought. The issues raised by Mr. Mannix regarding family heirlooms, family properties or otherwise make it even more important that the process be expedited and these heirs located.

Mr. Deaner's letter, Exhibit C, suggests 30 days; that is where the proposed amendment comes. His letter says that heirs can be found within 24 to 48 hours. Therefore, 30 days seems to be appropriate. For years, I have personally been involved representing heirs located by Kemp & Associates. Mr. Mannix has mentioned a couple cases, but there are repeated cases where incorrect heirs come forward or are presented and Kemp & Associates has found the correct heirs. The exhibit presented to the Committee today, Exhibit G, also mentions cases that happen to be public administrator cases—one where the estate escheated within less than 30 days and the correct heirs were found after the fact. And the second one closed in 16 days, which is how fast this process can sometimes work.

This bill should not be passed at all, and that would be my preference. It is actually unnecessary. But if the Committee is inclined to pass the bill, we have attempted to be reasonable; we have attempted to understand the issues of the public administrators, and we have suggested changing the proposed time line from six months to 30 days.

CHAIR WIENER:
What seems minor can be significant. Mr. Kehoe, you indicated on the sign-up sheet and your introduction that you represented yourself, but I heard references in your testimony to your being a party to the amendment and working with Kemp & Associates. Are you a practicing attorney in this area?

MR. KEHOE:
I am a practicing attorney in the probate area. I have been hired for a few years now by Kemp & Associates. When Kemp locates cases in Clark County in which heirs need representation, Kemp & Associates hire me on behalf of those heirs.

CHAIR WIENER:
I will close the hearing on A.B. 291 and open the hearing on A.B. 72.

ASSEMBLY BILL 72 (1st Reprint): Revises provisions relating to securities. (BDR 7-405)

CAROLYN ELLSWORTH (Securities Administrator, Office of the Secretary of State):
Assembly Bill 72 was submitted by the Office of the Secretary of State (SOS). It contains several amendments related to securities and the activities of the Securities Division at the SOS. It also contains new protections for Nevada seniors, who are often targeted as investment fraud victims.

The Securities Division is the regulatory and enforcement agency for the State. It regulates the securities industry that does business in Nevada or into Nevada. The Securities Division has criminal investigation responsibilities as well as administrative compliance and enforcement responsibilities and duties. But the overriding mission of the Securities Division is the protection of our capital markets and to prevent and detect investment fraud, which diverts legitimate investment money out of the hands of legitimate businesses that create jobs in Nevada, and into the hands of thieves and con artists. The purpose of this bill is to make changes that would enhance the Division's ability to meet that mission.

Section 1 of the bill is a new provision and taken from the North American Securities Administrators Association Model Rule on the Use of Senior-Specific Certifications and Professional Designations. Nevada is a member of the North American Securities Administrators Association. I am the voting member of that organization, which includes not only all 50 states but also Canada and Mexico. The Model Rule provides that certain conduct associated with a claiming of a special certification or training in the providing of securities-related services to seniors or retirees will be deemed to be an unethical or dishonest practice if the person does not have special certification or designation. As you are aware, one can claim to be a specialist or retirement-certified specialist right now because no law regulates it. People represent themselves as specialists who have

absolutely no special certifications, or they have purchased certificates through a self-proclaimed expert organization over the Internet.

The purpose of this bill is to define unethical and dishonest practice in the securities business, a provision within NRS 90.420, which allows the securities administrator of the Securities Division to discipline someone in the securities industry who engages in an unethical or dishonest business practice. The Model Rule defines unethical or dishonest practices. This provision does not create any new crime; it expands the definition of an unethical or dishonest business practice.

It is further important because under the recent adoption of the Dodd-Frank Act, a provision says if a state adopts the Model Rule on the Use of Senior-Specific Certifications and Professional Designations, the state is eligible to submit for grants from the federal government of up to $500,000 per year for up to three years to be used to fund investor education and enforcement of securities law. It was our intent to go forward on this Model Rule without that, but it is nice to know that if we do adopt such a provision, it makes us eligible for grants. The grants will not come from Nevada-generated revenue, but rather from the federal government. In these times, we desperately need that in order to fund our mission.

Section 2 of the bill is about creating parity and fairness in the treatment of broker-dealer representatives and investment-advisor representatives. Licensing fees for representatives of broker-dealers were increased by $15 per year during the Twentieth Special Session, but for some reason fees for investment-advisor representatives were not. There are far more sales representatives and broker-dealer representatives than investment-advisor representatives. But I get complaints from those sales representatives and broker-dealers—why is there a need for them to pay an increase of $15 and not the investment-advisor representatives? Since Main Street investors generally have no understanding of the difference between broker-dealers and investment advisors in the securities business, bringing them both under a similar regulatory framework, including the fee schedule, is intended to benefit Nevada investors.

Section 3 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. The Securities Division receives many inquiries from issuers who do not understand how they are to notify the

Securities Division. This provision clarifies that the Uniform Form (Form U-5) should be used. The form is available for free download on the SOS's Website. It is a business-friendly service to issuers who do not use a broker-dealer firm to sell their securities. Under Nevada law, issuers of securities must retain sales representatives to sell their securities. In other words, a licensed person has to sell these securities. They may not be going through a broker-dealer firm to do that—they may instead retain their own agent, an agent of the issuer. These people need to be licensed. Because issuers are sometimes smaller companies that are not familiar with all of the forms and confused about how to notify the Securities Division, the law just states they have to notify the Division. This makes it far easier for them and streamlines the process.

Section 4 is intended to give the Securities Division more flexibility in keeping undesirables out of the securities industry and to either deny or condition licensing of felons who have been convicted of certain felonies, regardless of how long ago the convictions occurred. One thing revealed in our recent financial crash is that Ponzi schemes are often organized and run by the elderly. And they are quite successful in part because they seem to be less threatening. Age is not something that should be taken into consideration. If someone was convicted of a felony 10 or 20 years ago in a case of violent crime, yes, they may be less able to perpetrate a violent crime just because their physical abilities have changed. But with con artists and fraudsters, we do not have that. What we see are convictions going on all over the Country of 80-year-old people operating Ponzi schemes.

In addition, we have requested that crimes of moral turpitude be added. This gives the Securities Division more flexibility. When we see a licensee, we take into consideration all kinds of things. We recently had an applicant who had been convicted of a sex crime; we had no ability to deny licensing. It was a violent sex crime, and we could not deny the license or make special conditions because there is no provision. What is important to note is that investment advisors—particularly in Nevada, which is a relatively small state—are often working out of their homes. They invite their clients to their homes or they go to the clients' homes. This could put someone at risk because advisors have to disclose something to us that they may not have to disclose to their clients. It would give the Division flexibility to take that into consideration.

Section 4 would allow the Securities Division to deny a license to someone who has received discipline from a self-regulatory organization whereby that

discipline amounted to a requirement that the person no longer be allowed to supervise others. That often comes up in the situation of a self-regulatory organization disciplinary proceeding because it is a compromise. Self-regulatory organizations, while they are important, are the industry regulating itself, and their motives come from a starting point of protecting the industry. We would like the administrator to have the ability to look at someone who has received this kind of discipline and deny the license because of possible underlying unethical practices, or the issue is such that we do not want the person involved with Nevada investors and we want to limit the person's activities in this State.

Section 5 clarifies NRS 90.520, subsection 2, paragraph (a) to explain that the word "enterprise" as used in the statute is meant only to include a private industrial or commercial enterprise and not government enterprises. Although the provision has always been interpreted in this manner, the Securities Division gets a significant number of calls on this issue. Making that clear in the statute will cut down on the questions we get from the industry.

Section 5 also amends NRS 90.520, subsection 2, paragraphs (g) and (h) to update the law. Through a series of acquisitions, mergers and name changes, the American Stock Exchange is now known as the New York Stock Exchange (NYSE) Amex Equities; hence the need to amend paragraph (g). As for paragraph (h), this change is to correct an error made last Session when NRS 90 was updated to change all of the references from the National Association of Securities Dealers (NASD) to Financial Industry Regulatory Authority (FINRA). When the NASD was merged into the regulatory arm of the NYSE, that was the result—we have FINRA. But the function described in that particular subsection is not performed by FINRA but rather by the NASDAQ Stock Market, so we need to correct that error.

The last part of section 5 proposes to amend NRS 90.520, subsection 5 to add those exemptions which must be claimed through a noticed filing with the administrator; these are, in particular, securities issued or guaranteed by insurance companies. It says in an exempt filing, that notice needs to be given to the Securities Division. In our financial crisis, we learned that insurance-backed or guaranteed securities are not always the safe bets that we originally thought they were. The NRS 90.520 allows the Division to revoke or deny an exemption from a registration as to any specific security. If we do not

know about the security filing, we cannot take any action. This would require a notice be given to the Division that there is such a filing.

Section 6 is an amendment to conform the existing provisions added during the Twentieth Special Session to be in line with the annual renewal requirement or other claims of exemption from registration, which are accomplished through a notice of filing to the Division.

Section 7 clarifies that the section is intended to cover Regulation D of the Securities and Exchange Commission security offerings, which was the intent when that section was originally added during the Twentieth Special Session. It would additionally add a penalty for late filings. Filings are to be made within 15 days of the first sale in Nevada. The Division is required to bring an enforcement action against persons who file late, and this is not the best use of the Division's resources. We are suggesting a statutory late penalty would encourage the timely compliance with this statute without the need for an administrative action by the Division.

Sections 8, 11 and 12 move provisions in NRS 205—the criminal provision property crimes put into place prior to the adoption of the Uniform Securities Act in 1987—into NRS 90. The provisions that remain in NRS 205 were never taken out when the Uniform Securities Act was passed.

For example, section 8 of A.B. 72 adds a provision to NRS 90.580 that makes clear it is a violation of the Nevada Uniform Securities Act to publish or circulate false or misleading statements or writings regarding a publicly traded security. That is a gross misdemeanor in NRS 205, whereas NRS 90 makes it a felony. We want to make the provision clear because the antifraud provisions of NRS 90 are drawn in a broad manner. We want to give as much flexibility as possible, since criminals in financial crimes are inventive and try to stay ahead of the curve. The faster we come up with ways to stop the criminals, the faster they come up with new ways to divert us.

Because the antifraud provisions are broadly drawn, if someone made false statements and circulated them in the marketplace, it would be a felony under statute; but because this provision is still in NRS 205 from 40 years ago, it creates a potential for litigation of the issue. If we can stop things from being litigated, we can keep them out of court. We do not want these things to be continually litigated in court.

Section 9 amends NRS 90.605 to make it a violation to willfully make a materially false, fictitious or fraudulent statement or representation in a securities-related investigation. The Securities Division has criminal investigators who investigate allegations of securities fraud. In doing so, they interview people, witnesses and the parties involved. The Division makes a point to give the other side, the person about whom a complaint has been filed, the opportunity to explain what has occurred and why they have done nothing wrong. Oftentimes, these people have lied to the investigators or encouraged others to lie to the investigators, and we want to make this a crime. It is already a crime at the federal level, and it would give us the ability to stop this type of activity by letting these people know they do not have the ability to lie with impunity when they are questioned by a sworn peace officer from the Securities Division.

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 this request by increasing the fee from $200 to $500. Statute provides that private parties can submit a request for a no-action letter from the securities administrator. This is when securities dealers want to receive assurance that their practice does not violate the law. Our statute provides that the administrator may not issue a no-action letter in a situation where the facts—when analyzed by a competent, private lawyer reading the statutes with the regulations that interpret those statutes—can lead to a clear answer. Under those circumstances, the administrator must say the law is clear and you need to consult with a lawyer; we cannot issue a no-action letter.

When either the product to be sold in the form of securities or the transaction itself is complex, there is a need for a letter. Legitimate operators want assurance from the Securities Division that they will not be the subject of an investigation or disciplinary proceeding, so they file for these no-action letters. A regulation sets forth what types of things have to be presented. These transactions have become more and more complex. Lawyers, who are often securities lawyers in the large metropolitan areas such as Chicago, New York and Los Angeles, are paid $800 per hour. They spend many hours on these transactions. They send all of the documents to us, hundreds and sometimes thousands of pages of documents, which the administrator has to go through and analyze to decide whether he or she can issue a no-action letter under the law. If so, he or she will then issue a lengthy written legal opinion indicating the

Division would not, if the facts as stated are true, take action against the operator.

We are shorthanded at the Securities Division. We have two lawyers, me and the chief of enforcement, whom I am losing to private industry. We do not have a lot of time, and our assets are spread thin. In order for us to take the time to do these no-action letters, we have to take time away from other duties within the Division. It is hoped that increasing the fee from $200 to $500 will defer some of these additional costs.

Section 13 is merely asking that sections 2, 3, 5 to 8 and 10 become effective on July 1 in order to give adequate time for implementation. The remaining sections can take effect immediately upon passage.

CHAIR WIENER:
In section 4 where you discuss moral turpitude, has this been included in other statutory work we have done in the securities environment? Is this standard new, or has it been used elsewhere?

MS. ELLSWORTH:
Adding moral turpitude as one of the items that the administrator can look at to determine whether a licensee is suitable is new. It came to my attention and I submitted it in the bill because we had an applicant who was a convicted rapist wanting to apply for a license. That is not included in NRS 90.420, which outlines all of the different crimes. Moral turpitude is well defined in our case law, and that gives us more flexibility. If we said "rapist," what about someone who engaged in lewd conduct with a child under the age of 14? If we say moral turpitude, that gives us the ability to look at it more broadly and to fashion remedies that will fit. A crime of moral turpitude could be a person convicted of being a Peeping Tom. Maybe that happened 30 years ago, and since that time the person has had no problems, which can be documented. We may wish for someone to be licensed under those circumstances but other circumstances not. This language gives us more flexibility, and that is what we are looking for.

CHAIR WIENER:
At least it would give you the option to use your discretion. Would a Peeping Tom conviction or lewd and lascivious behavior with a minor be one of the conviction triggers?

MS. ELLSWORTH:
Yes, absolutely.

CHAIR WIENER:
In section 7, subsection 2, paragraphs (a) and (b), you have $250 and then $500 filing fees. How did you determine those amounts?

MS. ELLSWORTH:
As a late penalty, the first $250 provision applies if it is filed one to ten days after the date required and $500 for any filing more than ten days after that required date. We are basically giving them a break. The law clearly states you are supposed to file the documents within 15 days, so you already have a grace period. You have 15 days from the date of first sale; if you go beyond that but within the 10-day window, your late penalty will not be as much. We are trying to push issuers toward compliance.

CHAIR WIENER:
I understand these are late penalties. I question how you came up with these specific amounts of $250 and $500.

MS. ELLSWORTH:
It was arbitrary.

CHAIR WIENER:
In section 9, under your concerns about the materially false, fictitious or fraudulent statement or representation, that is a willful act of performing under those descriptions. What is our remedy now?

MS. ELLSWORTH:
Nothing; there is no remedy for that.

CHAIR WIENER:
Do you know when the amount of $200 was established in statute? How long ago was that dollar amount established in section 10?

MS. ELLSWORTH:
I do not know if it goes back to the original Act in 1987 or whether it has been bumped up in the interim. I do know that since 1987, the Act, in some fashion

or another, has been amended every single session, but I do not know when the $200 was put into place.

SENATOR MCGINNESS:
I see there is an effect on the State. Was a fiscal note prepared?

MS. ELLSWORTH:
Yes, a fiscal note was prepared.

SENATOR MCGINNESS:
What did it say?

MS. ELLSWORTH:
I do not have that with me today.

CHAIR WIENER:
I see $179,245 for fiscal year (FY) 2011-2012, then the same for FY 2013 and the future biennium. Is that correct?

MS. ELLSWORTH:
That would be approximate, yes. When I prepared the fiscal note, I contemplated every single section that could potentially effect a change. For instance, no-action letters; last year we received maybe 12 no-action letters, so it is not a large component to the fiscal note. Take the change to require the notice filing for insurance-backed securities or insurance-guaranteed securities. Since there is no requirement now for a notice filing, I have no idea how many might be made. In some ways, it is difficult for me to analyze and come up with that fiscal note.

CHAIR WIENER:
And it could be much less.

MS. ELLSWORTH:
Yes.

ANNETTE JAMES (Lead Actuary, Life and Health Section, Division of Insurance, Department of Business and Industry):
I will read from my written testimony (Exhibit H).

CHAIR WIENER:
Mr. Wilkinson notes the amount of $200 was from the 2003 Session.

I will close the hearing on A.B. 72 and open the hearing on A.B. 78.

ASSEMBLY BILL 78 (1st Reprint): Makes various changes relating to business. (BDR 7-403)

ROSS MILLER (Secretary of State):
Assembly Bill 78 proposes several changes to Title 7 of the NRS that further standardize and refine the filing process of the Secretary of State's Commercial Recordings Division.

Section 1 deals with the State Business License Fee, an annual $200 fee that anybody doing business in the State must pay. That $200 fee was increased in 2009 and set to sunset back to $100 on July 1 if the Legislature does not take the action being contemplated. Legislators also proposed several exemptions along with the $200 annual fee at the time this was enacted. In section 1, we would propose to add the word "natural," clarifying that only a natural person—as opposed to a person, which may include a corporation, limited liability company (LLC) or other artificial person—whose business operates from a personal residence may claim the home-based business exemption from the State business license requirements and therefore be exempt from the $200 annual fee.

The history of this language is important, and some of you were around when the State Business License Fee was put into place in 2003. It was initially intended to be a broad-based revenue generator for the State and apply to anybody who was doing business. When Legislators enacted it, they put into place six certain exemptions to the annual Business License Fee. A governmental entity, nonprofit corporation or motion picture company would not have to pay the business fee. I suppose they thought Twentieth Century Fox would relocate to Nevada if it was exempted from the $25 fee, but that did not happen.

The other key area was an exemption for a home-based business making less than 66.67 percent of the annual gross wage. That is the subject here. Testimony from the 2003 and 2009 Sessions show that the intent of that exemption was to apply to sole proprietors. A regulation adopted by the

Department of Taxation in 2004, shortly after the statute was enacted, clarified that the home-based business exemption was available only to "natural" people, i.e., the sole proprietor, not corporations or LLCs. The legislative testimony was clear that this was to apply to direct sellers—the Avon lady who is operating out of her house with some Tupperware on the side; the child who has a lawnmower in his parent's garage who goes around the neighborhood and mows a few lawns. At the time that this was passed, it was abundantly clear that LLCs and corporations could not claim this exemption. That was further codified in 2004 when the Nevada Tax Commission adopted a regulation. I want to read the language because the language is clear. At the time, it was *Nevada Administrative Code* (NAC) 360.760:

> "Person who operates a business from his home" interpreted. For the purposes of NRS 360.760 to 360.798, inclusive, and NAC 360.750 to 360.772, inclusive, the Commission interprets the term "person who operates a business from his home" to mean a natural person who individually operates or a married couple who jointly operate a business from a personal residence if: 1. No part of the personal residence is held open to the general public for use in furtherance of that business; and 2. No real property is owned, leased, rented or licensed by the natural person or married couple ... .

They go on to list specific additional requirements. That is basically identical to the language we are proposing to put in place.

In section 1 of A.B. 78, subsection 2, paragraph (c), we add to the exemptions. Where it previously read "a person," we revised that to add the term, "a natural person who operates a business from his or her personal residence."

The bottom line is that A.B. 78 is consistent with the original intent of the legislation in 2003 and the intent of the regulation passed in 2004, in limiting the home-based business exemption to simply sole proprietors, those direct sellers operating out of their houses with the fine net earnings who are making a minimal amount of money. Testimony from the Nevada Registered Agent Association in 2003 shows that the agents understood this; they even supported the concept of Title 7 and being required to maintain a state business license. A special form was created with the Department of Taxation so that their customers would not have to provide certain information as those businesses with a Nevada nexus. No discussions in hearings indicated that this

exemption was intended for anyone other than the natural person, particularly the direct sellers.

In 2009, the authority for the state business license transferred to the SOS because initial analysis that we had done showed that the Department of Taxation was collecting the State Business License Fee from only about 155,000 entities. Many more of those should have been subject to the fee, and the Department was not collecting it at the rate it should have. We had on file at the time about 300,000 entities, so we told the Legislature if they transferred this business licensing over to our office, we would be able to capture a significant amount of uncaptured revenue. At the time, we estimated that to be approximately $15 million. The Legislature in that Session also increased the fee from $100 to $200, so we expected to collect about $30 million to $31 million. We are now collecting about $20 million in additional revenue since that has transferred. There is a gap, and this addresses that gap.

When we took over the business licensing from the Department of Taxation, we asked for six months to make that transition. We were given three months because the Legislature needed the revenue. We inadvertently allowed all entities to claim the exemption, unaware of the regulation and the direct policy in place at the time. We had no idea that we were inadvertently expanding the exemptions and that expansion was in direct conflict with the legislative intent or the regulations at the Department of Taxation, or more importantly, the extent to which that possible exemption would be abused.

There are approximately 321,000 business entities registered with the SOS as Title 7 entities, corporations, LLCs, sole proprietors and partnerships. Of the 321,000 business entities, 71,320 or a full 22.2 percent are claiming an exemption from the annual state business license; 93 percent of those exemptions claimed are for home-based business exemptions. At the present time, 66,406 businesses and entities claim they are based out of their homes and making less than $27,000 per year. Almost 60,000 of those are Title 7 entities that, under the previous law and from 2003 to 2009, were never allowed to claim that deduction. It is disturbing to note this number has increased over 4,500 in the three months since January when we first ran reports from our Assembly testimony. So that number is on the rise. More and more people are claiming this exemption.

We initially discovered this issue when we analyzed our business license revenues in comparison to how much money we had projected to receive when we took over the business licensing, saw we were falling short of our projections and realized we had a problem. Further analysis showed we had an unusually high number of exemptions being claimed, resulting in less business license revenue than we had projected.

In response, last July, I requested that the Executive Branch Division of Internal Audits, Department of Administration, conduct an analysis. Its findings substantiated our suspicions that many entities are improperly or falsely claiming a home-based business exemption. We will make that report available to you, and I encourage you to read it.

My office also conducted its own internal investigation. The Commercial Recordings Division of my office does not have any investigators, so I diverted investigative resources from the Securities Division of my office that did a survey on a limited number of businesses and could not find a single instance of where the identified businesses were properly claiming this exemption. We found a bowling alley, a resort, a mining company and other businesses claiming this exemption that clearly are not operating out of a personal residence and not making less than $27,000 per year.

My office notably is in the process of negotiating a settlement with a commercial registered agent who was collecting the $200 Business License Fee from clients, placing a check mark on the form indicating they were subject to an exemption and pocketing the difference.

You will hear testimony in opposition to this bill; that lobbying effort thus far has been framed as being antibusiness legislation or antientrepreneurial. I could not disagree more. This is probusiness legislation because it standardizes the process and provides a level playing field so that all businesses are subject to the same fees, and we do not have individuals improperly claiming the exemption and gaining an unfair advantage.

Those sole proprietors we talked about—the direct sellers, the woman selling Tupperware out of her house and the child with the lawnmower business—would still qualify for this exemption under our proposed language. However, they could not claim the exemption the second they decide to incorporate, become an LLC or a corporation. If they want to avail themselves

of the protections of our corporate laws, then they would have to pay the fee in order to support the services that we provide.

You may also hear testimony that this legislation would drive many businesses to incorporate in other competitive states, such as Wyoming. We have heard this claim throughout the years. Many of you are probably familiar with it, specifically in 2009 when the fee was raised from $100 to $200.

Important economic reports (Exhibit I) prepared by Applied Analysis, Las Vegas, clearly show that the decline in the filings is mainly due to the result of the recession. But more important, our overall revenue is up significantly on new filings over the last couple of quarters and annual list filings on a report we released yesterday. New filings are up 12 percent this quarter as compared to this quarter a year ago. Annual list filings, the businesses that renew, are up 8 percent, so we are on the rebound. This legislation enforces the same exemptions in place from 2003 to 2009. If we did not see a significant flight of businesses moving to Wyoming and pricing ourselves out of the market, we will not see it now.

Many of you remember the legislative opposition when the fees were increased from $100 to $200, suggesting that would lead to a flight of businesses moving to Wyoming. In reality, many of these businesses did not get an increase from $100 to $200 because we allowed for this expansion of exemptions to occur; instead of paying $100, they ended up paying zero, getting a $100 deduction. The suggestion that a decline in filings beginning in the last quarter of 2005 has to do with Nevada's fee structure is blinded by the record. If you look at the facts, that is clearly demonstrated.

A legal argument has been raised. The opponents are arguing that the use of the term "person" means that it applies to Title 7 under these LLCs and corporations, and the legal argument suggests the Legislature could have defined it as a natural person. What the opponents fail to acknowledge is that in 2009, the statutory language relating to the exemptions remained unchanged. The state business license provisions were just moved from the Department of Taxation in NRS 360 over to our office. The exact same language has been in place from 2003 to 2009; nothing has changed.

Continuing LLCs, corporations and other Title 7 entities to improperly claim the home-based business exemption is unfair advantage to the businesses that

comply with the law because it puts them in a competitive disadvantage. This protects Nevada businesses if they play by the rules and invest in our communities.

There is also a suggestion that instead of changing the language and continuing this, we should instead go after the bad actors and allow this windfall to occur. I urge you to look at the Executive Branch Audit Division report because it encouraged our office to look at the cost benefit analysis of validating the exemptions. Under our current process, all that has to be done in order to claim this exemption is check a box and say it is a motion picture company, a governmental entity—of which we are seeing a lot of fraud and abuse—or that it is based out of a home and making less than $27,000 per year. The Executive Branch Audit Division recommended a look at this to see whether or not it is worth the resources to begin validating them.

If this does not go through, the options I am left with are not good. One is to aggressively enforce violations. When people fill out these forms and claim they are home-based businesses making less than $27,000 per year, if they are lying, they have filed false documents with SOS and perjured themselves. Criminal penalties have not deterred most of these bad actors, but there are penalties we could possibly enforce. In order to do that, I would have to divert resources from the Securities Division that are already investigating serious cases and tracking down significant numbers of people who are cheating the system. We would have to do it for the $200 annual fee; that is not a good option.

We have another option. Because we collect such limited information—we only know the entities' names, certain officers and often just the registered agents' addresses—we do not have enough information on file to verify whether these people are accurately claiming a home-based business exemption. The other option is to move to paper-based filings, eliminate the opportunity to file electronically and start collecting all kinds of information so that we can verify proper exemptions. We would collect tax information and affidavits that the people do operate a business from a home, as opposed to hanging a shingle at a commercial address, and compare records with local tax agencies. These are all options the Executive Branch Audit Division recommended the SOS put into practice. That is antithetical to everything we want the SOS to become.

We are second only behind Delaware in the number of filings we have per capita because we have become so efficient. This Legislature had the foresight to put into place an efficient processing system. If we want to revert back to paper filings and put government in the place of collecting tax information and verifying all of this, it will significantly increase processing times and become much more burdensome for business. We are putting in place the Nevada Business Portal, which will streamline that process and put Nevada at the leading edge of becoming much more efficient. If this legislation does not pass, I will not turn a blind eye to all of the progress occurring; it will leave me with a few of these bad options.

At a time when the State is looking at raising taxes, reducing services, closing prisons and campuses, in my opinion, our first attention should be focused on collecting uncaptured revenue. Time and again we debate the need for increased taxes and fees, but I am a strong believer that if we collect the revenue already owed to the State, this becomes a much different debate. We feel strongly that the fees we charge to corporations and LLCs to incorporate cannot be raised any further without putting Nevada at a competitive disadvantage. In order to meet the revenue obligations this legislative body and our State expect, we have to collect the fees already on the books.

I want to briefly address a couple of other sections of the bill that I would characterize as mainly cleanup provisions. Section 1 adds nonprofit as it is formed under NRS 81, but having the same characteristics as those under NRS 82, to the list of nonprofit organizations exempt from the state business license.

Sections 4, 6, 8, 9 and 11 through 24 are cleanup provisions from last Session. In that Session, we put into place a provision that would allow us to seek civil penalties for businesses operating in Nevada but not in good standing with our office, having not paid the appropriate fees. That language was pulled from a few other states. The Executive Branch Audit Division took a look at that, pointed out that we do have significant issues with businesses coming to Nevada not filing and not paying any of the fees, yet engaging in business. Since that was put into place in 2009, our office has not brought forward a single civil claim through the Office of the Attorney General (OAG) to seek a court action collecting that penalty. All this bill does is remove the word "neglects" from the penalty provisions. As it was written last Session, two separate standards said if the business willfully fails or neglects to file with

SOS, we can pursue a civil penalty. This makes it clear that only a willful violation would make that penalty applicable. This is where the business intentionally does not file with our office that we would be able to go after a penalty.

Sections 5 and 7 remove the requirement that a foreign corporation submit a certificate of good standing from its jurisdiction of incorporation when it files to qualify to do business in Nevada. This is a cause for processing delays and rejections of the initial qualification filings because the corporation has not obtained that certificate. Many states now require only an affidavit or declaration that the corporation exists in its home jurisdiction, and this provision just removes the barrier.

Section 10 adds the declaration language, which we are proposing in section 5 to foreign LLC corporations. Sections 25 and 26 change the name of the International Association of Corporation Administrators to reflect the administration's name change to the International Association of Commercial Administrators.

SENATOR COPENING:
Is section 1 where homeowners' associations are exempt from being part of the Business License Fee?

SCOTT ANDERSON (Deputy for Commercial Recordings, Office of the Secretary of State):
That is correct. Many NRS 81 nonprofits have to file a separate application business license with us, where NRS 82 nonprofits are specifically exempt from the business license. This would bring NRS 81 nonprofits under the same coverage as NRS 82. Nonprofits would not have to file with us other than submitting their annual list of officers.

SENATOR MCGINNESS:
What was the bottom line on the revenue this would produce?

MR. MILLER:
It does not generate any additional revenue. We are part of the Economic Forum. When we forecast our numbers after the transfer of the state business licensing to the SOS, we expected to bring an additional $30 million to $31 million in revenue by the number of entities the fee should have collected.

We actually collected approximately $20 million more, so we inadvertently created this gap. It is approximately $12 million if the sunset is lifted, and if the sunset goes into place and the business license reverses from $200 back to $100, it would be about $6 million.

SENATOR MCGINNESS:
But if you remove the exemption, that will capture those home-based businesses, correct?

MR. MILLER:
If we were to remove the exemption and have it apply to only natural people, LLCs and corporations would no longer be able to claim it. As I said, of the over 66,000 businesses and entities claiming the home-based business exemption, about 60,000 of those are Title 7 entities that would no longer be able to claim the exemption if we reverted back to the way this was always enforced. That would be about $12 million in revenue, if the fee stays at $200. If it reverts to $100, it would be $6 million.

SENATOR ROBERSON:
I want to make sure I am clear on the SOS's position. Under statute, do you believe that home-based corporations and LLCs making less than $27,000 qualify for the exemption today?

MR. MILLER:
No.

SENATOR ROBERSON:
If you do not believe that, I wonder why there is not a two-thirds majority vote on this, because it would seem to me it raises revenue. Why not a two-thirds vote, and where is the fiscal note?

MR. MILLER:
Maybe I misunderstood your question. Under existing law, do I believe they are entitled to claim the exemption?

SENATOR ROBERSON:
Yes.

MR. MILLER:
No, because consistent with the Department of Taxation's policy in 2003 and 2009, they were never allowed to claim that exemption. As I pointed out, the regulation in 2004 specifically codified that also. This bill does not raise any additional revenue; it is further clarifying the original intent of the legislation.

SENATOR ROBERSON:
You are saying it was simply a misunderstanding. At some point, the SOS was under the impression these people were able to take advantage of this exemption. But you are now saying that was not the case, they never should have been allowed to have the exemption?

MR. MILLER:
We are saying that during the early transition in 2009, we made a mistake and allowed all entities to claim this exemption. And the fact that we made a mistake should not necessitate that we continue to make that mistake in the future.

SENATOR ROBERSON:
I just wanted clarification. I appreciate your coming forward and bringing this legislation. My concern is for the little guys who are making under $27,000 per year, a home-based business. This legislation puts them in a Hobson's choice. They can take advantage of the legal liability protections of an LLC, but if they do that with this new legislation, they will have to pay even more money. If they do not, they will not have that personal liability protection as an officer or member of an LLC. It puts the little guys in a tough position; they already pay. I know the fees used to be $75 to incorporate or organize an LLC; those fees may have gone up since then, and there is an initial list of officers or members, which is another $125. They already pay at least $200 per year; they are not making a lot of money. They are home-based businesses, and to continue to have the protection of an LLC statute, we are effectively doubling the amount they have to pay every year. Philosophically, I am concerned about that.

MR. MILLER:
I understand your concerns. What I would point out is that failure to pass this bill or the interpretation you are suggesting would be a policy change and one we have never had in place. From 2003 to 2009, those little guys that you refer to were never allowed to claim this exemption, and this simply reverts back to the practice in place from 2003 to 2009. In 2009, we inadvertently allowed this

group of people to start claiming this exemption. I understand the concerns that you would not want to penalize those businesses that are home-based, and $200 could be a lot of money if they are making less than $27,000 per year.

It is abundantly clear from the Executive Branch Audit Division report and the investigation my office led that the overwhelming majority of the businesses claiming those exemptions are not based out of the home and are not making less than $27,000 per year. We will have a real problem of fraud and abuse on our hands if we put that policy into place, if we say that going forward, we want to allow LLCs and corporations to claim this exemption if they are based out of the home and making less than $27,000 per year.

I only have a few bad options in order to validate we are not having the kind of fraud that we presently have. One of those is to revert to paper-based filings to force anybody who wants to claim that exemption to submit tax records to show they are making less than $27,000 per year, to compare those records and significantly increase our processing times. I do not think that is in the State's best interests.

SENATOR ROBERSON:
I understand the issues with the companies that are fraudulently claiming this exemption. And maybe you mentioned this before and I did not hear it. Before 2009, were most of these truly home-based businesses making under $27,000? Were they paying the fee or were they obtaining the exemption? I can understand if all along they were paying this and maybe there was a little blip between 2009 and now where some of these people were not paying, but if they were paying all along, it is really not a change. If they were not paying pre-2009, we are putting another burden on them, that for right or wrong, they were not incurring previously.

MR. MILLER:
When we looked at the numbers in 2009, we had about 300,000 entities on file—Title 7 entities, LLCs and corporations. At the time, we did not collect information from sole proprietors and general partners. The Department of Taxation was supposed to be collecting the State Business License Fee from everybody, and the exemption did not apply to LLCs and corporations. The Department was collecting the fee from about 155,000 entities. So I would imagine the vast majority of the 155,000 entities the Department was collecting from were Title 7 entities that were paying the $100 Business License Fee.

BRYAN WACHTER (Retail Association of Nevada):
We support A.B. 78 and appreciate Mr. Miller's leadership on the issue. We come at it from a fairness issue. If an entity has not been paying and the State has been expecting it, then it is not to suggest there is an increase; that entity was probably always liable for the Business License Fee. What this does is clarify that blip which happened in 2009 and what happened in 2011. Our position is we need to look at these abatements and take a policy look at how they should be applied. If a business wants to have the legal protection of having filed or incorporated, then having a fee associated with that user activity is inappropriate. We take a broader issue than the SOS in that we are not sure the exemptions should exist, period, but we are comfortable with his amendment.

We testified neutral on the Assembly side because the "willful" language was taken out and because there were extra fees associated with certifying and copying. Since then, these fees have been taken out of the bill, and now we are happy to support the issue. If there is an argument that these companies might leave the State because they have to be required to act like all of the other businesses, that is unfortunate. We are not sure that is a true possibility.

SAM MCMULLEN (Las Vegas Chamber of Commerce):
First, I would like everyone to know that we did not testify in the Assembly because there was some information late in the game that we needed to check. We intended to testify in favor, but we wanted to take a serious amount of time to look at some of the opposition issues and policy concerns. We have now resolved those issues, and we fully support this bill.

I would like to talk about history. Our issue will not be revenue; that is a legislative issue. The bottom line is that you can decide about the level of the fee and whether that is appropriate. In the history of this, you have already heard that there was some discussion at the Department of Taxation to make sure the legislative intent was followed. For those of you who have been around enough to know, in 2003 there was little legislative history on certain issues, and on certain other ones, there was some real discussion.

Having participated in that, it is our opinion the way it was expressed, not only in the regulation but by the SOS today, is correct. And to help you understand, the original fee of $25 was not necessarily for revenue. We found out later that it was not covering the cost of the system we were imposing, and that is why it

was raised to $100. The theory would have been—besides the fact that all of us agreed that there were craft workers who might work out of their homes and do flea market sales or the kinds of things the SOS testified to—there really was not any sympathy or incentive or even any approval from any of us in the business community to give corporations or anybody else the advantage of a $25 fee.

Our primary objective in this is that the Nevada Taxpayers Association—and also the rest of us as a group of 30 to 50 business entities and representatives—looked at all of these things and came to a lot of joint decisions. It was originally called a business registration fee. The reason we thought this was so important is that when we went through debates on tax effects on businesses in Nevada, we had an inadequate database. Separate and apart from the revenue attached to this, that is a key feature for us. We could not even get adequate data on what the taxes were doing and to whom.

The original theory was not that this would raise revenue, but that it would raise the level of data and information and allow competent decisions and analysis on the effect. Consequently, the exemptions were to be limited; they were to not punish or penalize people working out of their homes on limited revenue. But we wanted to discover out-of-state businesses, in-state businesses and all of the people who had not been captured under the normal routines then available. That is first on our list of objectives. The people who are not reporting are exactly whom we want to know about, revenue or cost aside.

Our second concern—and this was evident in 2003 and in 2009—is a level playing field. Many businesses we represent are paying their full fees, doing everything right and complying. From that point of view, there should not be any allowance for anybody to have made either intentional, unintentional, negligent or—as might be the case in many of these—almost fraudulent representations to get out from under a $200 fee or a $325 combined fee. Our businesses are not supposed to do that, and that should be consistent across the board. This clarifies it.

Our third issue has been—and it was a fundamental objective also in 2002 and 2003—the coordination of information between all of the agencies about reporting mechanisms and not compartmentalizing them. It was to trade information, such as finding somebody who registered as a business in Nevada but did not fulfill another requirement such as unemployment compensation or

something else. That system is working, but it only works if you have the tools. We want to make sure these people are doing the same things that our businesses are doing.

Just because it was changed in 2009 to a different enforcement agency—and I would have answered this for Senator Roberson if he were here—does not mean there was any intent to change the interpretation. If you took it that way in 2009 and did not change it, you were taking it with the understanding to whom it was meant to apply. We have gotten into an awkward situation where the form has a little box that somebody can check and does not have to pay $200, but that should not be the overriding concern. What ought to be are the objectives we have talked about.

The issue of paying $200 to us has always been an issue of what value you get. You can be a sole proprietor and subject yourself to all of the liability of being directly attackable by your customers or anyone else. But if you try to shield yourself by utilizing the vehicles provided by you as Legislators in this State—for liability and protection from being sued and your personal assets being protected behind a corporate shield—then that is value worth paying something for. The issue we should not address is whether people will not come to Nevada because they are afraid to pay a $200 Business License Fee and $125 incorporation fee. You need to question whether that is the economic development we want. No one wants economic development or is interested in it more than we are, but it has to be the right time.

SENATOR MCGINNESS:
We are not going to put a damper on people coming to this State. We are going to put a damper on the Avon lady. We have lost sight of those people in this discussion. Because some people have erroneously taken the exemption, we are now going to punish them. Is that how this works?

MR. MCMULLEN:
I do not know whether that is how it works to the extent that we have talked about that in the past, but we have always tried to protect the craft lady, the Mary Kay person, the Avon person and the other people who are sole proprietors working out of their homes. If they choose to grow bigger than that, and then want to avail themselves of all of the corporate protections and compliance, then they have moved up a level in the business hierarchy. This law would not change any impact on any individuals who have sole proprietorships

and are trying to make a little extra money. They will not have to pay that fee under this revised bill; they did not have to pay it before. That is not a change.

JOHN GRIFFIN (Independent Gaming Operators Coalition):
I will not reiterate what has been said. I will make a point that is frustrating to the independent operators who make up the small gaming operators throughout the State, many of whom are struggling and barely making it, and many of whom have recently gone out of business. The frustration from the small gaming community is with issues like this wherein a small property pays a gross gaming tax, a slot tax, a property tax, a sales tax, a liquor tax, the Live Entertainment Tax, a room tax, the Modified Business Tax, local licensing fees and the State Business License Fees. It is frustrating to them to look at something like this for a corporation that comes into Nevada, avails itself of our corporate laws, and then tries to exploit a $200 loophole.

MATTHEW TAYLOR (President, Nevada Registered Agent Association):
We are a nonprofit trade organization consisting of incorporators that represent roughly half of the corporations and LLCs in the State. Throughout the entire process, I have been strongly opposing A.B. 78 as written on behalf of our members and the clients we represent.

This is my first term as the president of the association; it is my second session as an unpaid lobbyist. I am not being paid to be here; I believe in this issue and in this process. And while it may be said that I am naïve, I have been disappointed as I have watched this process. The people we are talking about in this process are not members of the chambers of commerce; they are not in the gaming community. These are simply companies that are in the small business demographic. They are home-based businesses that earn less than $27,000 per year.

It has been said on numerous occasions where people should not be incorporating or have a LLC trying to protect their home-based business. Many times they are forming companies, which in many cases are disregarded for tax purposes—the Internal Revenue Service does not even make them file a separate return—with S corporations and LLCs, especially LLCs. All they are trying to do is protect this part-time business or this way to bring extra income or a second income into the home from the liabilities that may occur with that. They are trying to make sure their house or their spouse's wages do not come under jeopardy. There is no question that the people who qualify for this

exemption do not have many options. They cannot afford many protections, and up to that point, they had a reasonable cost of being able to file for articles of organization or articles of incorporation to protect their home-based business. Those are the only companies we are talking about today.

During this process, I have seen the original language of this bill altered to the point where only legitimate home-based businesses are being affected by this, while wrongdoers—both sole proprietors and corporations that are fraudulently filing—are being ignored. I have heard testimony that this bill will raise new revenue by an individual who has gone on record. I have press releases saying that changing one word will raise between $5.5 million to $11 million, depending on whether this stays as a $200 or $100 fee. I have seen a constitutional requirement because that same argument is being ignored even though this bill was specifically designed to change this law; it is rewording the law to capture that revenue, and it is increasing revenue. We have concerns about that. I even heard a statement read on the Senate Floor stating this bill needs to be passed into law in order to prevent businesses like bowling alleys from claiming home-based business exemptions when clearly they are not earning less than $27,000 per year, they are not home-based and these entities should not be able to apply for this exemption. We are not arguing that point.

In its original form, we generally supported this bill. It helped to address the concerns regarding abuse. It gave the SOS the ability to investigate, and if businesses are found guilty of willfully failing to file or renew business licenses, the SOS would fine them $1,000 to $10,000. It would have given the SOS that third option, which would have been more attractive to enforce. We would have supported the efforts to see a portion of that revenue go to fund enforcement of this business license requirement.

This language is inspired by other statutes that put that same burden or standard on corporations and LLCs that are operating in the State: if companies do not register with the SOS and they are corporations or LLCs, these fines apply. However, if someone fails to obtain a business license because it was amended out of the language, there is no civil penalty. Our choices are to either ignore it or to pursue felony charges on these individuals. A civil solution might be a better option.

The mechanism for investigating and applying this will potentially raise well over $5.5 million or $11 million, depending on which numbers you are looking at. It

is by the investigation and the application of these fines for people who are willfully ignoring the requirement to have a business license. Not only does this address corporations and LLCs that may be improperly claiming the exemption, but it also addresses sole proprietors and partnerships. By the same audit review, 19,000 estimated companies that are sole proprietorships and partnerships have to apply for a business license. Yet there is still no mechanism for penalizing those individuals for failing to file.

The only thing left is the section in this bill that removes the exemption passed in 2003, confirmed by the Legislature in 2009 and designed to protect those home-based businesses. It made no mention of corporations, LLCs, sole proprietorships or partnerships; it was designed based on the size and location of the business.

It has been represented that the remaining language of the bill is only to clarify existing language or these exemptions. However, it always read, including in 2003, a person who operates a business from his or her home—"or her home" was added in 2005 as a clarification. A person is a legal term; it is recognized throughout the statutes, and it is recognized in this section. There is a significant difference between a person versus a natural person. A corporation or a LLC is a creature of State law; it is an artificial person that is widely recognized. It has the same rights and responsibilities as an individual does, and within this section the exemption shows that a natural person is the requirement to qualify on a different exemption.

For example, take section 1, subsection 2, paragraph (c), a person who operates a business from home versus paragraph (d), a natural person whose sole business is the rental of four or fewer dwelling units. This is not an unintended thing; this specific wording goes back to 2003. Granted, it is true that an internal Tax Commission hearing made the determination or had the opinion that this should only apply to natural persons.

In 2009, it was specifically reviewed by the SOS and the OAG. We received written confirmation, the exact quote is: "After careful review of the statute and after discussion with the AG's Office, it has been determined that home-based business exemption applies to Title 7 entities due to the definition of person in Title 7." This was reviewed; this was not an unintentional mistake, and this was not something that was done on their own. This was reviewed with the OAG and whether that calls into question the original Tax Commission

hearing was an appropriate interpretation of that law. I am not an attorney and I cannot address that, but we have specific legal opinions to back that up. It is still agreed that "person" and "natural person" are two distinct terms.

While it may seem innocent to change or add a word—"person" to "natural person" and "home" to "personal residence"—it does constitute a significant change in law. It affects tens of thousands of qualified home-based businesses that this was designed to protect.

We are concerned about this, and we have honest and legitimate concerns that this is a new fee. This is a change to the qualifications. The *Constitution of the State of Nevada*, Article IV, section 18, subsection 2 says:

> Except as otherwise provided in subsection 3, an affirmative vote of not fewer than two-thirds of the members elected to each House is necessary to pass a bill or joint resolution which creates, generates, or increases any public revenue in any form, including but not limited to taxes, fees, assessments and rates, or changes in the computation bases for taxes, fees, assessments and rates.

This is clearly a change in the computation of who qualifies for this business license and a change in that fee, yet there is still no two-thirds majority vote requirement.

The home-based business exemption is not new; in 2009 it was not changed. It read essentially as it always has since 2003; it did not create an unintended loophole. It follows the worded intent that still exists today in statute. The statute has never been changed. All this exemption does, if we leave it alone, is to help protect home-based businesses and give them a chance to grow.

That said, we would like to give that option to the SOS to have the ability to apply some teeth to this law. We would like to introduce a proposed amendment (Exhibit J) to help enforce this law. We are submitting the original version of A.B. 78 as it was introduced to take us back to the original design of the bill (Exhibit K). We would like to reinstate the proposed penalties for failure to file or renew a business license. We would also like to adopt the sponsor's original amendment placing the willful standard as the burden to enforce this penalty. And finally, we would remove the changes to the exemption language that would harm small businesses who can least afford it.

I respectfully request the Committee adopt our proposed amendment, Exhibit J, or at least vote against A.B. 78 in its current form. It is bad legislation that does not achieve what it was stated to do when originally proposed. This bill needs to be amended so we can do some good for our State, or it should die here before it can do any harm.

CHAIR WIENER:
Committee, you will note that you do have a copy of the proposed amendment, Exhibit J, submitted by Mr. Taylor attached to a copy of the original bill, Exhibit K.

TREVOR C. ROWLEY (Executive Vice President, Nevada Corporate Headquarters, Inc.; Executive Vice President, Corporate Service Center, Inc.):
Our firms are listed as Commercial Registered Agents with the SOS. Combined, we represent more than 9,000 active business entities. Over the years, we have had more than four times that many business entities that we have assisted in registering with the SOS.

I have been employed in this industry for the last 18 years, working with business owners who incorporate their businesses in the State. Our firms promote Nevada; we spend over $125,000 in advertising every month to promote the advantages of utilizing Nevada entities. This kind of expenditure is necessary because we compete with other states for business filings, specifically Delaware and Wyoming. Our efforts have produced, on average, about 363 new entity filings in the State per month over the last six months. We would like to think our firm has played a huge role in the modest first quarter increase in statewide filings referred to by Secretary of State Ross Miller.

In our 20-plus years of serving entrepreneurs across the United States, we have learned a few things about their behavior. First, they look long and hard to identify the most favorable jurisdiction for the filing of their new entities. Key factors in making this decision are strong statutory protection of the corporate veil, statutory indemnification, overall low costs of filings and taxes.

Fortunately for the State, lawmakers over the years have consistently taken steps to lock in a Nevada advantage in these key decision-making areas. As a result, we see as many as 90 percent or more of our entrepreneurial clients coming to Nevada from other states. The number of new filings based on the

State's population shows that we are bringing people here from other states who choose Nevada when they have a choice. The revenue produced by these filings comes from out of state, with no need for additional State services. These people do not use the roads or schools, and they do not need health care. It is a golden goose.

One of our 100-plus employees personally takes time with each client we bring to the State to help the client understand the need to be in complete compliance with all State filings, business licenses included. We use information published by the State regarding state business license requirements so our clients can make an educated decision as to whether they are required to secure a license or whether they may be exempt.

Because we take so much time with each client, we have learned a lot about them, as opposed to some large, nationally based companies whose clientele consists of large corporate businesses. We have found our client base consists largely of smaller mom-and-pop types of businesses and entrepreneurial individuals who have hopes of achieving the American dream in owning their own businesses. An extremely high percentage of these individuals start their businesses out of their homes and operate on a shoestring budget. As they read the State business license requirements, many believe they qualify for the home-based business exemption.

If it were not for this exemption, they have expressed to us that they would probably choose to incorporate somewhere else where the overall costs would be lower, or they would choose not to incorporate at all and risk the possibility of never achieving their dream. Neither one of these possibilities would be good for the State nor for our businesses, as they would represent lost revenue. For this reason, it is critically important that this exemption continue to be made available.

If A.B. 78 passes, the State can reasonably expect to immediately see significantly fewer new corporate filings as people choose to take their businesses elsewhere or just decide to not incorporate at all. This will translate to less revenue for the State.

We have a tremendous amount of respect for Mr. Miller and his staff and always have and will continue to engage in dialogue to promote the best interests of the State. However, we believe this bill falls short of that standard.

We would respectfully ask the Committee to consider our statement and ask that this bill not advance.

CHAIR WIENER:
You said you have been in business 20 years. What was your filing history from 2003 to 2009?

MR. ROWLEY:
There was a significant reduction in the number of filings, probably starting about 2006; 2003 to 2006 was an upswing period where we had many new filings. We saw a hit from the recession starting about 2006, 2007. We are just starting to see some turnaround, some increase in filings now. There is probably some pent-up demand; however, the individuals whom we have talked to are extremely price-sensitive, and that is a big factor in determining where they are going to incorporate.

CHAIR WIENER:
Are many of these out-of-state entities—and many of these under what has happened since 2009—filing in Nevada because there is not a $200, $125 and other fees to consider? Is that part of the upswing?

MR. ROWLEY:
Many of these people come to Nevada for the statutory indemnification and corporate veil protection. They do not plan on doing business in Nevada per se, many of them never do. They will take their entity, they will file it in their home state and they want to take the advantages of Nevada with them. Many of these businesses do not reach the level of the $27,000 per year, which is approximately the 66.67 percent as it stands, of the revenue. They are coming here, they are paying fees by incorporating, but they are saying that if they had to pay more and the value seems less, they will go somewhere else.

JED BLOCK (State Agent and Transfer Syndicate, Inc.):
Previously, there was a $25 one-time Business License Fee for corporations that did not do business in the State. In the late 1980s, early 1990s, my predecessor—my mother—helped the Department of Taxation come up with that form to collect the $25. At some point after 1987, the Department of Taxation decided if corporations pay it, so should LLCs. Until about 2001, the Department of Taxation decided it should include family limited partnerships.

In the 2003 Legislature, the Registered Agent Association came up with ways to change fees at the SOS to make Nevada more advantageous. At that time, a business paid $175 for the base filing fee and paid $165 for the initial list. Businesses were also paying the $25 one-time fee. The Registered Agent Association decided that maybe it would bring people back if we got this back to the 1987 level of $75 and $125 for an initial list; but the annual list at the time was $85. We took the initial list from $165 down to $125 and bumped the $85 up to $125.

In that bill we thought we would be proactive and work with the Legislature and the State to increase fees and make it reasonable for people to come to Nevada. We thought, why not take that one-time fee of $25 for corporations, LLCs and limited partnerships (LPs) and make it a $50 annual fee collected through the SOS with a $25 penalty? As we know happens in the eleventh hour, that language was pulled out of our bill. A bill for the Department of Taxation was introduced to make it a $100 annual fee with 100 percent penalty collected through the Department of Taxation, which did not make sense.

If we jump forward to 2009, there were roughly 319,000 entities in the State. With 155,000 business licenses, about 163,163 companies in Nevada and outside of Nevada did not have state business licenses. If we take that $100 a year times six years, it is roughly $97 million. If we add the 100 percent penalty of $100, that is $1,200 per entity times 163,163, which is roughly $195 million.

But in 2009, we decided to forgive the bad taxpayers, the nontaxpayers, and penalize the people like myself who paid $600 over the years to be in compliance. We doubled the business license from $100 to $200 to make a $30 million increase while leaving $195 million on the table. That is how I recall the 2009 Session, and the three of you might recall that as well.

I was also the first person in the family—we have had a family-run business since 1910—to get the dubious honor of being the first owner of State Agent and Transfer Syndicate, Inc., to lose $9,000 in the first quarter of this year. In 2006, we were forming on average 110 corporations, LLCs, LPs, closed corporations and everything under Title 7 per month. Last month we formed 25 entities. I have seen a decrease of over 80 percent in my business. In 2006, I had five employees, excluding myself. At the present time, I have two employees, and payroll has been cut by more than 50 percent. I have also

taken a 50 percent pay cut. I get to work seven days a week and live the dream, and I do not get a day off. Last year, I cut expenses by $25,000. I thought an advertisement in the *Nevada Magazine* would be cool at $20,000. I got a call from the Las Vegas Chamber of Commerce saying please join us for $600. Well, I am sorry; I can only afford the $260 that the Carson City Chamber of Commerce has offered. Once again, it is price.

In 2006, we received about 100 orders per month for service work, which we call doing amendments, good-standing certificates, certificates of existence, dissolutions and reinstatements. Now we are between 20 and 30 orders per month. I looked at the numbers last night, and we are doing about 10 reinstatements and 20 dissolutions per month. In the last 16 years that I have been in charge of this business, our retention has been remarkably the highest in the industry or right up at the top at 85 percent. What that means is I lose 40 companies per month because of death, the great deal did not work out, they cannot make any money, whatever. I lose 40 entities per month and gain 25. I thought I had one more year to keep fending off losing money.

You can definitely say, and it has been said many times, that revenues are up at the SOS. Well, of course they are. The SOS is collecting $200 more, or if the business license exemption goes away, we increase money because businesses will be forced to pay the $200. Maybe I heard this wrong, but Secretary Miller did say about 60,000 entities are not paying the Business License Fee, and if the exemption goes away, they collect $200 more, which would mean a significant increase. But what if those companies are multilevel marketing companies? If you take that 60,000 and multiply it by $125 per year, that is a loss of $7.5 million. By the way, this year you can do filings and articles of incorporation online. They do not need expedited service, so the special fund—that would keep up to $2 million and the rest of it would be scraped off to the General Fund—is nonexistent. I can say to my client, hey, I can save you the $125 from the expedited fee at the State and file it online for you. Yes, we need to do that, but the timing is poor.

In the 2009 Session, there were 319,000 entities. Before the business license even took effect, before anything happened, 15,000 businesses did not renew. I was told last year the SOS lost 15,000 entities or 15 percent. With all due respect, I am confused at the numbers; 319,000 at the start of January 2009, and now there are 321,000 companies, and I am at an 80 percent loss? I have not even seen the 2 percent uptick that happened in November that we saw in

the quarterly report, and I hear it is coming up again. In the past, when the resident agent industry started coming to life, everyone knew the recession was over. But at this point in time, people are getting laid off, they cannot borrow money, they cannot even pay $125 to form a legitimate company to protect their own assets.

I have been doing this for 16 years. I cannot give legal advice because I am not an attorney. I rely on attorneys every single day, and I refer my clients to them. Why should people incorporate? It is the right thing to do. We are telling the Mary Kay ladies, the Avon ladies and the Amway marketing people that they have to pay this if they want to protect themselves; and because incorporating is the right thing to do, they have to become sole proprietors. It is contrary to what the legal profession has always told me and what most everybody in the room looks at now.

I used the analogy between the Las Vegas Chamber of Commerce and the Carson City Chamber of Commerce; I cannot join the Las Vegas Chamber of Commerce because it costs too much money. I have an attorney who wrote blog entries for my Website about the charging order of protection, how great Nevada is and that it is the strongest in the Country. But there is a $200 business license the attorney cannot get around. Well, there go 30 of the entities that I represented for him, and he has gone to Wyoming. I know we are not Wyoming, but the economy is so horrible, and that is why our numbers have dropped. Since 2007—I looked on Wyoming's Website, where it is easy to find the numbers—Wyoming has had a 3 percent drop. When a person calls their SOS's office, someone answers right away and says, we are going like gangbusters; we cannot believe how busy we are. One of our association members says if someone squawks about $200, the answer is, we can set up that person in Wyoming for $100, and we have already saved you $200.

Why does Wal-mart make so much money? It is not because it has the highest prices. Why is every member of that family worth $20 billion? Because Wal-mart is the low-price leader. How do people do it in business? If they lower their prices, what happens? They increase their volume. If they raise their prices, volume decreases and they do not make money. Since 2003, every two years we have two association members or former association members who have quit the industry. Meanwhile, we have to sit here and defend the industry because the State on average brings in $100 million to the General Fund.

In 2005, the SOS was making $100,000 per employee. Why did the SOS leave $195 million on the table for this license to go for $30 million and then get rid of exemptions and not want to sunset the exemption back to $100? I paid my Modified Business Tax for myself and two employees—it was $300. I would be glad to pay that. I would be glad to pay five times that amount if I could get my business to increase 10 percent. They say these cuts are draconian. I am living the dream—draconian cuts in my own business.

I have to support my mother. My father gave me a 1932 corporation, a security investments company started by a Carson City attorney named George Sanford. Mr. Sanford died in 1995, and my father kept this company alive every year. He paid the annual list fee of $5, $25, $85, $125. To have an exemption, he gave me the company last year because he could not see paying the $125 fee.

To me, it is frustrating because I see where it is $400 here; it is $100 in Wyoming. I see people going there all of the time. I urge you; please do not hurt our friends and neighbors who are multilevel marketing companies. When they call my office and ask if they are exempt, we say we do not know. In my mind there is a big difference between being a home-based business and doing business out of the home, but that person needs to consult an attorney or accountant to get the real answer. We are not one of those who are promoting fraud or telling our clients things they should not do. Let us go after the ones who are doing that; let us make examples of them. Let us go after the bad people and stop harassing the good people and driving away business.

CHAIR WIENER:
I will close the hearing on A.B. 78. The meeting is adjourned at 10:53 a.m.

RESPECTFULLY SUBMITTED:

Judith Anker-Nissen,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE:

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
A.B. 291	C	John Cahill	Letter from Charles W. Deaner
A.B. 291	D	John Cahill	Notice to Heir Finders
A.B. 291	E	John Cahill	Letter from Tina M. Walls
A.B. 291	F	Chris Ferrari	Proposed Amendment
A.B. 291	G	Chris Ferrari	How Heir Finders Serve a Critical Check & Balance for Nevadans
A.B. 72	H	Annette James	Written testimony
A.B. 78	I	Ross Miller	Quarterly Economic & Business Activity Report by Applied Analysis
A.B. 78	J	Matthew Taylor	Proposed Amendment
A.B. 78	K	Matthew Taylor	Original Assembly Bill 78