MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-sixth Session
March 1, 2011

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:02 a.m. on Tuesday, March 1, 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:

Senator Sheila Leslie, Washoe County Senatorial District No. 1

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Gary Milliken, Nevada Self Storage Association
Travis M. Morrow, President, Nevada Self Storage Association
D. Carlos Kaslow, Self Storage Association
Greg Welsh, StorageOne, Nevada
Mike Mieras, Chief, Washoe County School District Police Department
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association

Ronald P. Dreher, Peace Officers Research Association of Nevada
Todd J. Rathner, Knife Rights, Inc.
Orrin J.H. Johnson, Deputy Public Defender, Washoe County Public Defender's Office
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada
Janine Hansen, State President, Nevada Families; Nevada Eagle Forum
William Sharp, Stillwater Firearms Association
Lynn Chapman, State Vice President, Nevada Families; Nevada Eagle Forum

CHAIR WIENER:
I will open the hearing on Senate Bill (S.B.) 150.

SENATE BILL 150: Revises certain provisions governing liens of owners of facilities for storage. (BDR 9-907)

GARY MILLIKEN (Nevada Self Storage Association):
Most states have self storage lien laws. In the past few years, Arizona, California, Utah and Michigan have updated their lien laws. This year there are 12 other states doing updates. The purpose of S.B. 150 is to update Nevada's self storage lien law.

TRAVIS M. MORROW (President, Nevada Self Storage Association):
Senate Bill 150 was originally crafted in 1983. Our purpose today is to modify and streamline present procedures.

On page 2, section 2, lines 4 through 8, we added the definition for electronic mailing, and primary e-mail, giving the storage facility the opportunity to contact tenants when they are late with payments via e-mail, if the e-mail address is on file and we have receipt the e-mail was received by the tenant.

On page 2, section 3, lines 9 through 20, we added the definition for protected property. In the lien process, and because of the nature of the business, tenants are allowed to store firearms, pharmaceuticals by pharmaceutical representatives, liquor from liquor stores, etc. By the protected property definition, we are protecting ourselves in the event a tenant defaults on the agreement and we are left with a unit that has a firearm or cases of alcohol, or a doctor's office leaves behind files. That is something we cannot sell to the general public at auction. If we are left with a unit full of personal information,

we need to have the ability to get our unit back into production. We are proposing tenants disclose in the rental agreement they are storing protected property in the unit. When we are notified they are in default, we can go to the unit, find the protected property and remove it from a sale.

Also in S.B. 150, if the tenant does not disclose the storage of protected property, and we accidentally sell the protected property, it does not transfer to the buyer upon sale. If the buyer finds a box of firearms or some other form of property designated as protected property in the unit, that property does not convey to the buyer. It is the buyer's responsibility to return the property to the storage operator to be properly destroyed, whether the property is personal documents to be shredded or firearms to be turned over to the appropriate State or federal authority. The storage operator cannot be held liable for accidentally selling a firearm. If the buyer of that unit does not return that firearm, then the buyer is in violation of law, not the storage operator.

SENATOR COPENING:
Is management present after the sale of the unit to discover those protected properties? You mentioned if the new buyers do not turn these items over, they are in violation of the law. Is it done on a trust system?

MR. MORROW:
After a sale is conducted, the on-site manager, who in many cases lives on the property, is at the facility doing normal business operations throughout the day. After the sale, buyers unload the unit. They have 24 hours, or depending on the facility, by the end of the day, to empty the unit. During this time, if they discover something, they go to the office and give it to the manager.

SENATOR COPENING:
The storage operator does not supervise the removal of the protected property; this is done on a trust basis, and they will return the items to the storage operator?

MR. MORROW:
Correct.

CHAIR WIENER:
In the storage rental agreement, tenants are to reveal they have protected property. Are they also to reveal what the property is?

MR. MORROW:
We propose a requirement added to the rental agreement which acknowledges if you intend to store client information, firearms, alcohol or pharmaceuticals, so the rental agreement does not become too cumbersome. When a unit goes into default and we go through the lien process, we will check that portion of the agreement and note the protected property. We will locate the protected property and remove it so we can sell the remainder of the contents.

CHAIR WIENER:
Is the form going to list the items individually so you know what you are looking for?

MR. MORROW:
There will be a check box in a category.

CHAIR WIENER:
My concern is protected, personal documentation. If a doctor's office stores items at the storage facility, then defaults in payment, those are people's personal records, which the law requires be maintained for four to five years.

MR. MORROW:
That is one of our concerns as well. For our personal liability, one of the other options we have used in the past is—if, for example, the doctor's office defaults and we find this box of personal information—we do not throw the box in the dumpster. There have been stories of storage operators in other states to whom this happened; the news media found the dumpster, and it was not a positive outcome. You contact professional organizations doctors are required to ...

CHAIR WIENER:
Licensing boards ...?

MR. MORROW:
Correct. Oftentimes the licensing board will take the items or not. We indicate we have personal information, we do not want to throw it away, what do you want us to do with it? Sometimes the board will tell us to destroy it.

CHAIR WIENER:
You used two different descriptions—throwing away in the dumpster is what gets people in trouble, destroying would make sure the information does not get into the wrong hands.

MR. MORROW:
Correct. With S.B. 150, we require it be destroyed.

SENATOR COPENING:
Would management be in violation of the law if it sold the unit? I am trying to establish why this bill is here.

MR. MORROW:
There are instances where we could violate the law. There is liability if we sell a unit with firearms as part of the contents. There is no prohibition who can attend our auction, i.e., forbidding a felon who by law is not allowed to own a firearm. We could inadvertently sell a firearm to a felon, and we would be in violation. That firearm could be used to commit a crime.

Regarding personal information, there is potential for liability on documentation being thrown away and not destroyed that could harm the operator.

On page 2, section 4, lines 21 through 23, is the definition of storage space and the facility.

CHAIR WIENER:
In previous testimony, you used the word buyer. I interpret buyer as the person who attends your auction to purchase goods. When you talk about the unit itself, you are talking about a person who takes occupancy of the unit, the renter or leasing party—or are you referring to the tenant?

MR. MORROW:
We call tenants, renters or customers renters of units; buyers are attendees of an auction who purchase goods.

On page 2, section 5, lines 24 through 27, is a definition of verified mail. In 1983, the only option a storage operator had to prove having sent a letter to the tenant was by certified mail through the United States Post Office (USPS).

The original law specifically stated certified mail; we are changing it to verified mail.

SENATOR GUSTAVSON:
In section 3, subsection 1, you refer to protected property. What if someone rents a storage unit and is foolish enough to put a social security card or other identifying items in the unit. Would this make the items protected property?

MR. MORROW:
This section specifies legal records relating to clients. It is not the tenant's personal information we are referring to, but businesses with clients or customers who have clients' personal information.

On page 2, section 6, lines 28 through 31 refer to the value of property stored in the storage unit. In many cases, storage operators have a limited value, such as $5,000, they place on units in the rental agreement. Tenants claim they store more than $5,000 in the event damage occurs to their property. This section allows the storage operator to place a limit on the value of the property so tenants are aware of the limit at the time they sign rental agreements.

CHAIR WIENER:
If tenants can prove certain value, will you work with them, or do you limit the value to discourage certain items being stored in the units?

D. CARLOS KASLOW (Self Storage Association):
Storage operators do not control the storage of the property itself; they are renting spaces for that purpose. Tenants put what they want in the unit. The primary goal of having a reliable per space limit is aggregate liability. In the past, the limit has been $2,500 to $10,000. It tends to be higher in urban areas and less in rural areas. The primary goal is to control aggregate liability. Operators need that ability for insurance purposes. For instance, if there are 100 spaces, they may need a $250,000 or $500,000 limit policy. If it is a larger complex, you may not only need a first layer of insurance of $1 million, but also umbrella coverage. It is helpful if they have both contracts and statutes to rely upon. The aggregate insurance limit is the focus.

CHAIR WIENER:
The renter would be noticed by the agreement of the maximum recovery for damage to the protected property?

MR. MORROW:
Yes, that is included in the rental agreement.

On page 3, section 10, lines 8 through 11, the definition of personal property adds motor vehicles, boats and personal watercraft.

On page 3, section 11, lines 12 through 16, "an individual space in" was deleted and replaced with "one or more storage spaces at" a facility. The purpose is tenants rent more than one unit. There are times they will default on one but be current on another. Because of the way the law is now, each unit has an individual rental agreement. This clarifies the tenant and facility have a rental agreement for one or more units. If the tenant sent in a $75 payment and they owed $50 on two units, it is difficult for the storage operator to split the payment. This allows the storage operator to apply the whole amount to the account. Then the storage operator can lock the tenant out of both units as incentive to pay the arrears.

CHAIR WIENER:
My concern is a tenant who has ten units with $100 in arrears; the contents of all ten units are at risk.

MR. MORROW:
My example is the tenant who has two units full of personal household items, takes the best property out of one unit and consolidates it into the up-to-date unit. The tenant defaults on the unit in arrears. The tenant uses the storage unit as a trash facility and does not want to deal with it. The tenant does not want to move the items or pay the arrearage and lets it go to auction. This happens quite regularly in the business.

CHAIR WIENER:
That is presuming the tenants are local. My concern is the people who incorporate in Nevada but do not live in Nevada full time. Putting multiple units at risk because of a delinquency that would not rise to that level is a concern. It could be a modest sum, but all units are then in jeopardy because of one in arrears.

MR. MORROW:
Our goal is not to auction a unit. We have the ability, but we want to get the unit back into service. Storage operators do everything they can to get the

existing tenants to pay their rent. When you auction the property off, you do not receive anywhere near what is owed to you. To begin the lien process on multiple units helps the storage operator motivate the tenant. Then all of the units are current.

CHAIR WIENER:
You just stated they are in arrears on one unit out of ten. So nine are not, yet you are putting them in jeopardy. If one is in arrears, you could make money off the sale of nine other units, depending on the property in the unit.

SENATOR MCGINNESS:
Are each one of these units on a separate rental agreement?

MR. MORROW:
Yes. Each unit has a separate agreement.

SENATOR MCGINNESS:
You want to change that?

MR. MORROW:
We want to have one rental agreement for multiple units.

SENATOR MCGINNESS:
If I rented one unit, then two months later decided I needed another unit, would those be separate or would you combine them?

MR. MORROW:
Our software has the ability to combine them by updating the rental agreement to reflect both units.

SENATOR MCGINNESS:
Does the tenant make that decision or the storage operator?

MR. MORROW:
It would be the storage operator.

SENATOR ROBERSON:
For clarification, you provide a separate rental agreement for each unit. Is that your policy or law?

MR. MORROW:
By law, each individual unit has its own rental agreement.

SENATOR ROBERSON:
The agreement would say the unit you are renting, and any others you rent in the future, will be subject to this one rental agreement. If you default on one, you default on all of them? The important thing is notice. When people come in, they know exactly what the situation is.

MR. MORROW:
That is correct.

SENATOR COPENING:
This situation is similar to the HOA bills I have pending. Many homeowners are in default because they defaulted on their assessments. If they paid the amount in arrears, it would be applied toward late fees rather than their assessments. That puts them further behind, then it goes to collections and then foreclosure. We want to change that to ensure the fees they pay go toward the assessment so they do not default. I see this as a similar situation. You use the example of $75. My recommendation is to call the tenants, ask if they want $50 out of $75 applied toward the arrears so they do not go into default. It is protection for those who rent the units. Just as homeowners did not realize when they were paying assessments that because of existing law, the payments go toward fines and fees, not the assessments.

MR. MORROW:
On page 3, section 13, lines 30 through 37 amend *Nevada Revised Statute* (NRS) 108.4573 as follows: Add the word “possessory” to the word “lien”; to the words “from the date the rent for a storage space at the facility is due and unpaid,” add “including protected property”; change “at the facility” to “in the storage space”; and change “necessarily” to “reasonably.”

On page 3, section 13, delete subsection 2 and replace with the paragraph: “The lien must not impair any other lien or security interest in existence at the time the storage was commenced, unless the lienor or secured party knew of and consented to the storage of the personal property.”

On page 4, section 14, subsection 1, paragraph (c), lines 11 through 13 are an addition requiring the occupant to disclose to the storage operator when items of protected property are added to the unit.

CHAIR WIENER:
In section 14, subsection 1, paragraph (c), you added the words "each time." What is the recourse if the tenant does not disclose added, protected property to the storage operator?

MR. MORROW:
There is no recourse for tenants. We want them to notify the storage operator of the protected property. We are not doing anything to harm the tenant. For example, if tenants brought firearms to the storage unit, they would check, initial and date the checklist on the rental agreement, adding those items to the rental agreement. Some storage operators have created a form that allows for that update.

CHAIR WIENER:
By that update, they receive notice the burden lies with them, not the storage operator?

MR. MORROW:
That is correct. Many facilities have, in addition to the rental agreement, a list of rules specific to each facility, which are given to the tenant at the signing of the rental agreement.

SENATOR GUSTAVSON:
Storage units are available 24 hours per day; however, the storage unit office is not open 24 hours per day. How soon does the tenant need to notify the storage operator of additions to the protected property?

MR. MORROW:
We do not contemplate that subject in S.B. 150.

MR. KASLOW:
It is hopeful to realize today that none of this takes place. This legislation is looking into the future. In a contract, you have an obligation to notify another party within a reasonable time. Is that 24 hours, 48 hours, etc? Because it is in the rental agreement, the tenant is aware of the need to notify the storage

operator of any changes. The obligation is an ongoing part of the rental agreement until it is cancelled.

The storage operator tries to put parameters in the rental agreement. Senate Bill 150 reflects property that has been a problem in the past. Storage operators have found some items are not easy to sell or they do not want to sell at auction. Also, some items are classified as dangerous if they enter ordinary commerce through an auction sale.

No, it does not specify a certain date, but contracts generally reflect a reasonable period of time.

SENATOR GUSTAVSON:
I want to ensure that is covered in the amendment to S.B. 150.

MR. MORROW:
On page 5, section 15, subsection 1, lines 1 through 9 address the process of the lien by changing the words from "individual" to "storage" space; delete the words "for storage" and add "for which charges are owed"; and change the word "certified" to "verified."

On page 5, section 15, subsection 2, lines 20 through 25 define last known address. This section allows the storage operator to contact the customer by sending correspondence to multiple addresses, for example, a physical address and an electronic address. In many instances, we will work with the tenant because the process of the auction is time-consuming and the result may not be as good as bringing the tenant current. For example, the tenant has $400 worth of items in the unit in arrears. The storage operator suggests the tenant pay $200, pick up the items and vacate the unit. The storage operator can then rent the unit to a new tenant willing to pay the rent.

On page 5, section 16, subsection 1, paragraph (c), lines 34 through 44 further define the process of protected property.

CHAIR WIENER:
And the working document is the checklist and any updates?

MR. MORROW:
Correct.

SENATOR GUSTAVSON:
Nevada has many men and women serving in the military. Under section 14, are there any provisions in the rental agreement which protect them so they do not lose everything because you could not contact them?

MR. MORROW:
I will let Mr. Kaslow explain.

MR. KASLOW:
Military personnel and their spouses are protected under the Servicemembers Civil Relief Act. Storage operators cannot use the self-help remedy this law provides. Under federal law, they are required to file suit in state court prior to foreclosure on the goods. The federal statutes protect the interests of the military personnel and spouse for a period after discharge to adjust to civilian life.

SENATOR GUSTAVSON:
You hear horror stories. I want to ensure they are protected.

MR. KASLOW:
These instances occur when storage operators are not familiar with federal protections. Self storage associations such as ours ensure storage operators understand they would violate federal law and be subject to severe liability under those statutes.

SENATOR ROBERSON:
Under section 16, subsection 1, paragraph (c), regarding protected property, the storage operator has the option of either destroying the property in an appropriate manner authorized by law or surrendering the property. In the case of personal records, you have the option of destroying them. I know not everyone on this Committee would be comfortable with that. If you have personal medical records, I am not sure we want those destroyed. Please elaborate on the intention of this section.

MR. MORROW:
Our first option regarding personal records is to contact the licensing bureaus and professional boards that regulate the tenant. Companies charge $10 per box to destroy documents. Destroying documents in a way you can certify is not inexpensive. The storage owner pays that fee on top of what the tenant

owes in arrears. We do not destroy personal records first, because that is an expense the operator will not recoup.

MR. KASLOW:
The Association's recommendation to members is when you are dealing with regulated business clients who have personal information on clients, you would first look to the regulator. If regulators are willing to take possession of the property, that is always the first choice. Regulators can apply pressure not only on the people they regulate but on others, if there is a partnership involved, for example. There is power of persuasion through the licensing process. You run into a roadblock when the property cannot stay in the unit, as a practical matter, for four or five years. There has to be a point where the storage operator can confidently destroy the property.

CHAIR WIENER:
My concern is medical records of people not aware their records are in jeopardy. I would suggest stronger language in the form of an amendment. So much has been done to protect that information statutorily by requiring providers of care to maintain records. A requirement of "must" not "may" should be added—they must contact the regulatory or licensing board affiliated with the personal records.

It should not be discretionary whether the board who has authority over the licensed person is contacted. That is critical information. We can then decide at what point the records can be destroyed. If it is not practical to keep the records for five years, something can be added to that effect. Our job is to protect the public. Senator Roberson, would that address your concerns?

SENATOR ROBERSON:
Yes. I am cognizant of putting too much burden on storage operators and sensitive to overregulating and overburdening them. They are small business people, and we are also here to protect small businesses.

CHAIR WIENER:
I will work with the proponents of the measure for the proper language that addresses your needs and concerns, as well as protecting those people who do not know they are being affected by this action.

MR. MORROW:
We look forward to adjusting the language.

On page 6, section 16, subsection 1, paragraph (d), lines 1 through 9 add an option for the storage operator in the event of a vehicle stored at the property. The current process with the State Department of Motor Vehicles (DMV) is for the storage operator to perform the auction, which can be cumbersome and time-consuming. This process requires record checks in multiple states and departments of motor vehicles.

The main focus in this section is to put the unit back into production. After 60 days of unpaid rent or charges, the storage operator has the ability to have the vehicle towed from the storage facility property. The vehicle is taken through the lien and auction process by the towing company.

CHAIR WIENER:
Specifying boat or personal watercraft sets statutory intent that everything else is excluded, including a motorcycle. Is that correct Mr. Wilkinson?

BRADLEY A. WILKINSON (Counsel):
I am not sure it is intended to include only those items listed. Typically, we would say, "including without limitation."

CHAIR WIENER:
In three to five years, there may be types of motorized vehicles we do not know about.

MR. KASLOW:
We are suggesting titled property, that is, registered vehicles where the process is fairly difficult for storage operators. The delinquency rate of vehicles tends to be relatively low. It occurs infrequently and creates an administrative burden for the storage operators. The tow truck and garage owners are more familiar with these types of procedures and know how they work, because they do it on a regular basis. The idea was to have the vehicle towed as would any other place where a vehicle is parked improperly.

CHAIR WIENER:
Would you have a problem including "without limitation"?

MR. MORROW:
No.

On pages 6 and 7, section 17, subsections 1 through 4, are replaced to read: "If five or more bidders who are unrelated to the owner are in attendance at a sale held to satisfy the lien, the sale and all proceeds from the sale are deemed to be commercially reasonable." In order to have a successfully reasonable sale, this puts the onus on the self storage operator to procure five or more bidders at the auction. This also gives the storage operator the flexibility to find the best way that will occur. Many auctioneers have people who follow them from auction to auction and they bring five or more bidders with them. In smaller communities, facilities themselves have their own followings of auctions. This puts the burden on the storage operator for the best way to put out the notice. Once you obtain that, then your sale is commercially reasonable.

CHAIR WIENER:
Because you seem to be deleting references to the declaration of opposition, would you clarify how that works and why are you striking it?

MR. MORROW:
The declaration to opposition is a form sent with the lien notice letter giving the tenant the ability to oppose the lien. It requires the storage operator to go to court to receive a judgment against the tenant. This requires additional time and expense on the storage operator's part. The declaration to opposition only exists in one other state.

MR. KASLOW:
The declaration in opposition to lien sale came from California. There are 49 jurisdictions that have self storage liens. Not one, other than Nevada, has such a document. If you look in chapter 108 of the *Nevada Revised Statutes* at other statutory liens, you will find none of those liens have a declaration in opposition. The way the form is designed creates situations where it can be sent back if it is incorrectly completed or misunderstood. This puts the storage operator in limbo. However, the forms do not come back that often. It has a difficult impact on the smaller storage operators who do not have background dealing with these situations. It exponentially increases the cost of enforcement. In my experience, it has not made a big difference.

SENATOR GUSTAVSON:
I also noticed in the stricken language the mandate that the storage operator shall advertise the sale. Why are you removing that?

MR. MORROW:
Storage operators are required to have a minimum of five people at the auction, whether by advertising, posting advertisements on the Internet, followings of auctions or notices at the town hall.

SENATOR GUSTAVSON:
That would make it permissive instead of mandated?

MR. MORROW:
Yes.

SENATOR ROBERSON:
A tenant can be 14 days late, you can get five bidders together and sell their property?

MR. KASLOW:
Two notices are required to be sent to the delinquent tenant. The first one cannot be sent until rent is 14 or more days past due. That is followed by a second notice with another 14-day waiting period. It is not only sent to the delinquent tenant, but if the tenant provided a name and address of an alternate person in the rental agreement, it is also sent to that person. There needs to be a request and space in the rental agreement in order to have a valid lien.

The idea is to provide a broader platform to facilitate the public notice aspect. In 1983, there was only one method for giving public notice. Today, we live in an electronic age where there are many Websites and a variety of ways public notice is given. The storage operator has more flexibility to make that decision. This is a functional approach and one that has been adopted by Arizona and Washington. This procedure will let us decide, from an operating standpoint, the bidders who will fulfill the public policy function of a fair auction and generate a fair price within the commercially reasonable standard.

SENATOR ROBERSON:
I understand what you say, but even with notice a tenant can be a month late and their property is gone.

MR. KASLOW:
Realistically, it is a 60- to 65-day period. When you are talking about a statutory time limit, you always add three or four extra days to every step so you cannot make an error. The delinquency is 65 to 70 days before the lien sale is held.

SENATOR ROBERSON:
I understand what you are saying, but these are personal possessions.

MR. KASLOW:
We realize this is the property of others and a sound statutory procedure is needed.

MR. MORROW:
In S.B. 150, it is not our intent to make any changes to the time line which already exists in the current lien process. On page 6, section 16, subsection 2, lines 10 through 25 set out the time line and procedure.

On page 5, section 15, subsection 1, line 3 indicates that on Day 1 rent is due, and if the tenant does not pay, Day 14 comes and access is denied to the unit. There are six weeks before the sale takes place.

SENATOR BREEDEN:
You send the occupant a notice, and it is verified by mail. My concern is the e-mail process you want to change and eliminate any type of written correspondence.

MR. MORROW:
Section 16, subsection 2, states “send the occupant a notice of a sale to satisfy the lien by verified mail.” The verified mail is only addressing the items which can be sent via the USPS. The proposed amendments (Exhibit C) eliminate the original definition of verified mail or electronic mail with an electronic confirmation receipt. We want to ensure we send one hard copy notice through the USPS to the tenant. The first step is to send an e-mail. Then hard copies are sent through USPS by verified mail.

On page 7, section 19 further discusses protected property. If a buyer at an auction buys the contents of a unit and finds a protected item, the buyer does not own the item—it must be turned over to the storage operator.

CHAIR WIENER:
Where is there assurance it is returned to the storage operator? The successful bidder does not own the protected property. Where are the steps you talk about regarding "must contact"?

MR. MORROW:
That does need to be clear. It will be added if we cannot find it in S.B. 150. We still have the proposed amendments, Exhibit C, to discuss.

MR. KASLOW:
The first proposed amendment, Exhibit C, is to restore NRS 108.4753, subsection 2 to language which existed with respect to vehicles. It is clear DMV has priority and the language needs to stand; the change was inadvertent.

The second proposed amendment, Exhibit C, is to modify the definition of verified mail, creating a distinction between electronic mail and using USPS. We propose a period where indicated for evidence of mailing on Exhibit C, then change subsequent sections where "verified mail" appears and add "electronic mailing." I drafted Exhibit C; there was no intention on Mr. Morrow's part to include "or electronic mailing" in NRS 108.476, subsection 2.

MR. MORROW:
In the second portion of Exhibit C on page 2 where "verified mail or electronic mailing" exists, this needs to be struck so we do not remove the hard copy mailing section. It was not our intent to remove sending hard copy letters to the tenant.

MR. KASLOW:
If electronic mailings are retained, it will require the storage operator to send notices of a pending sale of property to the tenant's last known address. If the storage operator does not receive a response from the tenant, the storage operator must send a notice of the sale to the tenant by verified mail. There would be an option to utilize both methods, but operators have to confirm the tenant received the electronic mail. If they cannot confirm this, they would have to go through the verified mail process. One method would be cleaner.

CHAIR WIENER:
Would that satisfy you if the word "and" was inserted instead of "or" in all places? It is very complicated ...

MR. KASLOW:
We would prefer to have "or" in the first notice and an "and" in the second notice since there is a two-notice process.

CHAIR WIENER:
That presumes tenants received the first notice. We are talking about giving people a short period of time before their property is sold. Consider adding "and" rather than "or."

GREG WELSH (StorageOne, Nevada):
Our company owns and operates approximately 25 self storage facilities in southern Nevada. We are not in business for selling people's property. When the changes were first brought to me, I was reluctant because I am tenant-based. We want to sell tenants' property, but we need to find a better way to communicate: electronic e-mail and USPS provide us the tools for communicating with our tenants. No one puts property in storage to lose it. Many times people use the word "abandon" because tenants stop paying for the unit. However, that does not mean they do not value the property. This change would allow us to communicate with our tenants better.

SENATOR ROBERSON:
How big of a problem is it for a small business owner? What is the percentage of tenants who do not pay for their units and you resort to selling their property?

MR. MORROW:
For the facilities that I operate, we auction three to four units per facility on a quarterly basis. But for some people, it is much greater.

We have 15 to 20 units a month that are in some phase of a lien process. Some people are routinely late. Some people are in the process to some degree but do not make it to auction.

MR. WELSH:
Last month I had 16,000 customers, and we sold approximately 30 units, so it is an average of 25 to 30 per month.

SENATOR ROBERSON:
It sounds like you receive your money before you resort to selling a tenant's property, is that correct?

MR. WELSH:
Yes, we try to communicate with tenants. Out of the 30 units that had property sold, 70 to 80 were slated to be sold. Storage operators diligently try to contact people through whatever means available to negotiate with them to not have to sell.

MR. MORROW:
You mentioned we get our money. The reality is we are lucky to get 30 cents on the dollar. That is why we work with the tenants to bring them current. There are many plastic hangers and trash bags stored in the units.

SENATOR ROBERSON:
That is very good to know. You see reality shows on television, and it appears to be big business to auction people's property.

MR. MORROW:
Reality television can somewhat be skewed to ratings.

CHAIR WIENER:
We will close the hearing on S.B. 150 and open the hearing on S.B. 171.

SENATE BILL 171: Revises the provisions governing the possession of dangerous weapons at certain locations. (BDR 15-867)

SENATOR SHEILA LESLIE (Washoe County Senatorial District No. 1):
I was approached by the Washoe County School District to submit S.B. 171 after a stabbing occurred at Reno High School. Senate Bill 171 is similar to a bill that was introduced by Assemblyman Kelvin D. Atkinson in 2007 with testimony regarding education reform, budgets and the impacts on our students. The focus for S.B. 171 is school safety. There are many sides to this issue. The school district representative will testify why schools think it is needed and what has happened over the past four years.

MIKE MIERAS (Chief, Washoe County School District Police Department):
In 2007, under NRS 202.265, we brought the bill forward because of school safety. The No. 1 goal of S.B. 171 is school safety and prevention. In our district, we provide prevention measures by educating parents and children on what is appropriate to bring to school and what to wear. Part of that is the category level of weapons which you can or cannot bring to school through all grade levels.

The measure passed in 2007 and child care facilities was added to NRS 202.265. We will refer to our proposed amendment to S.B. 171 (Exhibit D) and photos of knives (Exhibit E).

On page 2 of S.B. 171, section 1, subsection 1, lines 1 through 17 define what and where weapons are not allowed while on the property of the Nevada System of Higher Education, a private or public school, child care facility or in a vehicle of a private or public school or child care facility.

We want to add the following under section 1: sword, ax or machete, hatchet and any other deadly weapon. Originally the words "any blade length with two-inches or longer" would fall under NRS 202.265.

After 2007 and hearing concerns, amendments were crafted working with school districts and the Sheriffs' and Chiefs' Association. The concern was, what is a school-sponsored activity? If students are selling cookies at Wal-Mart for cheerleading, would that be a school-sponsored activity?

Under section 3, lines 22 through 35 of Exhibit D, we have defined this area. We have many events which occur off school grounds. The events include dances at a community center or convention center and graduations, etc. These facilities are leased by the school district. If the minors participate at an event, for example, at a bowling stadium for a prom, the building is leased by the school district and closed to the public.

Under NRS 393.410 is a provision for trespassing or loitering on a school ground. That provision states anybody in possession of a knife with a two-inch blade length or longer could be subject to arrest, but there is nothing regarding a student on the school grounds or attending the school that would prohibit them from this act. There have been two incidents this year where students were

stabbed and attacked with knives, which fall under the current law, that were not illegal to have on the school grounds.

FRANK ADAMS (Executive Director, Nevada Sheriffs' and Chiefs' Association):
The Association has worked with Chief Mieras on S.B. 171. Chief Mieras is a member of the Nevada Sheriffs' and Chiefs' Association and is included when I speak of the Association.

We understand the problem presented. When I went to high school, we did not take a weapon to school. Now it is a problem, and the school district police are working to get the issue under control. I spoke to the chief of the Clark County School District regarding this issue. We are trying to get these dangerous weapons off school grounds.

One issue we dealt with was a dangerous knife, the length of that knife, and who can and cannot possess it.

There are many areas throughout our State that when a person gets up in the morning and dresses, he puts on his boots, hat, belt and buck knife. That is life in rural Nevada. However, the way we read S.B. 171 would put this person in jeopardy of being in violation of the law if on a school campus for a legitimate purpose. Exhibit D addresses that on page 2, section 3, line 22. We request to delete the term "a person" and insert the words "a minor or pupil of a private or public school." The reason we put "minor or pupil" in high schools is you could have an 18-year-old who is a pupil of that school; we want that to apply.

On page 2, section 3, line 28, if we insert the proposed amendment, Exhibit D, there would be no need for language stating when an adult could possess a knife on school grounds.

The Association agrees the "leased property" in regard to the school district holding events would make S.B. 171 more applicable and practical.

CHAIR WIENER:
What is the definition of "other deadly weapon" in section 1, line 15?

MR. ADAMS:
The district attorney will define these issues. You can define almost anything by the way it is used as a deadly weapon, for example, mace, a stick with a chain

and ball on the end. A fingernail file could be considered a dangerous weapon. The officer can use discretion in looking at the implement that you may not think is a deadly weapon but could be used in a deadly way.

CHAIR WIENER:
My assistant has a plastic cup of implements on the desk. Every thing in there could be used as a deadly weapon. Would the language "other devices that are used for deadly purposes" ...

MR. ADAMS:
I would need to defer that question to the Legal Division.

CHAIR WIENER:
We have had this debate in this Committee before. We all want to look out for the well-being of children. I chaired the Commission on School Safety and Juvenile Violence and worked with drafters to develop a school safety plan. I want to be sure we capture the right issue.

MR. WILKINSON:
Deadly weapon enhancements have arisen in the past in a number of different statutes. Some statutes, such as NRS 193.165, have a specific definition of deadly weapon. The Nevada Supreme Court adopted "the functional test," which looks at how an instrument is used and the facts and circumstances of its use. In the absence of a specific definition, it is how it would be interpreted.

CHAIR WIENER:
The Committee's intent is to ensure our children are safe. However, it is a top priority to not create consequences we did not expect.

MR. ADAMS:
Our intent by the proposed amendment, Exhibit D, was not to place people in jeopardy for having a knife that would be considered legal in other circumstances. The intent of S.B. 171 is to ensure minors or pupils do not have dangerous items.

CHAIR WIENER:
We have received several pieces of correspondence to ensure you are not the only one with that same concern.

RONALD P. DREHER (Peace Officers Research Association of Nevada):
I spoke with Mr. Adams about this issue yesterday. We support S.B. 171 with the proposed amendments, Exhibit D, as presented by the Nevada Sheriffs' and Chiefs' Association.

As a retired Reno Police Department homicide and major crimes detective, issues such as dangerous weapons and what is defined as deadly weapons can be many different things. An example is a baseball bat or crowbar. When you asked the question, what constitutes a dangerous or deadly weapon or if there was a definition in the NRS, I asked Orrin Johnson. He clarified for me what is a deadly weapon. If you tried to include every conceivable weapon, you could write an entire book. However, for this issue, the safety of children at school and the public, we strongly support S.B. 171 with the proposed amendment, Exhibit D.

TODD RATHNER (Knife Rights, Inc.):
I will read from my written testimony (Exhibit F).

I reiterate the letter, (Exhibit G), which I submitted to the Committee: The hijackers who attacked our country on the tragedy of September 11, 2001, were using one-inch box cutters, which would be legal to possess under S.B. 171. This illustrates how little sense S.B. 171 makes. I also point out we are concerned about the idea of banning swords, not because we want to see children carrying swords, axes or hatchets to school. The problem is there is no definition of a sword or ax, and we do not know where a pocketknife ends and a sword begins.

I will conclude by pointing out on the Nevada Legislature's Website, opinion is over 130 to 1 against S.B.171. Please listen to your constituents and vote no on S.B. 171.

ORRIN J.H. JOHNSON (Deputy Public Defender, Washoe County Public Defender's Office):
Our office represents not only adults accused of crimes but also juveniles accused of delinquent acts under S.B. 171. Senate Bill 171 will not only create unjust arrests for innocent, noncriminal activity and increase costs, but will need to be litigated and do nothing to increase the safety of our schools.

Tierra Jones, Deputy Public Defender, Clark County Public Defender's Office, is also opposed to S.B. 171 for the same reasons.

I grew up in a small town in South Dakota. Ms. Jones grew up in Hawthorne. I am thankful S.B. 171 was not in statute when I was growing up because I would have spent time in jail. The reason was not because I brought weapons to school, brandishing them or threatening to stab anyone, but because I spent time camping and doing other outdoor activities. Many times, my friends and I would keep our camping gear in our vehicles. We had knives and hatchets, etc., on school property.

To keep things in perspective, I measured my car key, which is approximately two inches long. I carried a pocketknife from sixth grade on. It was very common and was not a big deal. But if someone took it out and used it in a threatening manner, it was.

With the proposed amendment, Exhibit D, and understanding times have changed, this criminalizes a huge range of innocent behavior. I graduated from high school when I was 17 years old; this would have applied to me as a minor. That is not what we want to arrest people for—spending time in jail or being punished.

Children who forget to take pocketknives out of their pockets after a camping trip the previous weekend go into the system. It is difficult to begin extricating from the juvenile criminal system. It creates blemishes on their records and begins a cycle.

I teach a class for children who get into minor trouble. I tell them to stay out of the system to the extent they can because once they are in, it is very difficult to get out. We do not need the increased cost, expense and detriment to children who are not engaging in actual bad behavior.

In the exhibits on the Nevada Electronic Legislative Information System under S.B. 171 are pictures of three weapons with a cover page (Exhibit H), which indicates they are legal under current law, except they are not. Each one of those weapons has been confiscated. If they were legal, they would not have been confiscated. Since they are confiscated, the schools have the tools to take weapons they consider dangerous. The middle weapon in particular is a hidden dagger concealed in a walking cane. That is illegal for anybody to carry

anywhere in Nevada; it is a gross misdemeanor. The idea these weapons are rampant all over school and there is no law to protect minors or pupils is not the case. I submit the impetus for this—the stabbings referenced—is already illegal. The crime is battery with a deadly weapon. It is a felony, which comes with incredibly severe sanctions.

The laws already on the books did not deter that behavior nor deter the minors from bringing the weapons to school or committing those acts. There is no need to criminalize innocent behavior of campers, hunters, etc. As noted before, I commonly carried a hatchet in my vehicle to chop firewood; it is in my camping gear. The idea this will only address the weapons you see on Exhibit H, which were already confiscated, is an overreaction.

Deadly weapon is a broad term. I have seen a baseball bat, and not just any baseball bat, used as a deadly weapon. In softball season, I have a baseball bat in the trunk of my car; many minors do. I have also seen a baseball bat charged as a short novelty bat, called a billy club; fishing tackle charged as a dangerous or deadly weapon; a vehicle if someone tries to run somebody over is a deadly weapon. I have also seen some ridiculous things charged, for example, ice in a glass thrown in somebody's face charged as battery with a deadly weapon; a pair of shorts thrown at someone; a tire iron—certainly every vehicle has one of those; a multitool, I have a Gerber multitool and had a similar one in high school. I was not allowed to drive without some tools in my car because the vehicle could break down. Every one of those tools, including a hammer or a pair of pliers but certainly a knife, could be used as a deadly weapon; any tools at school in woodshop, although understanding the proposed amendment, Exhibit D, would allow children to handle those if they were specifically authorized; and chemical mace. In fact, as Mr. Adams said, almost anything can be charged as a deadly weapon, up to and including a fingernail file.

Let us not turn our schools into the airports where the Transportation Security Administration (TSA) pats us down and confiscates our pocketknives. Let us have common sense and look at what children are doing, not necessarily at what they have in their backpacks, whatever it might be.

The problem is not just in schools. The breadth of the locations includes day care facilities. If not amended, the bill includes school activities, when I pick up my daughter at day care and have a pocketknife or an in-home day care

where people have common tools—under S.B. 171 that all could be criminal behavior. That is not what we are trying to do.

This will not deter violence. School rules are already adequate to address this. Keep the children safe and put them on detention or expel them if warranted. We do not need to add another layer of criminalizing this behavior. Putting children in the system—the need for lawyers, in front of a judge, incarcerating them—for a case where they have knives in their pockets from a camping trip is all too common.

This will lead to unjust arrest of noncriminal behavior and will not deter a single criminal, dangerous behavior. We strongly oppose S.B. 171.

SENATOR MCGINNESS:
What kind of vehicle do you have?

MR. JOHNSON:
In high school, I had a 1979 Honda Civic Hatchback. Right now, I have a 2008 Honda Accord.

SENATOR MCGINNESS:
You have many items in the trunk.

MR. JOHNSON:
I do not always carry them now, but I grew up in a place before cell phones where there were blizzards and other bad weather, and we had to be careful.

SENATOR MCGINNESS:
When I was growing up in Fallon, we always had a shotgun in our truck in case we hunted ducks after school. Would the addition of "a person shall not knowingly carry or possess" help S.B. 171?

MR. JOHNSON:
It would certainly be better than making it a mistake. In these cases, minors often have weapons they say they did not know they had or forgot to leave them home. That is a question of fact for a judge. Children do not have as much credibility as the school police officer arresting them. However, it will not change the fact they are in jeopardy of losing their liberty or will come into the

system. You can still argue they knowingly put weapons in their backpacks or took the objects out.

As I said, I carried a small pocketknife with me frequently, on purpose. I kept it in my car, knowingly doing so. I drove my car to school, it was on school property and this would have been a crime under S.B. 171.

REBECCA GASCA (Legislative and Policy Director, American Civil Liberties Union of Nevada):
The State owes it to school administrators, business owners who own private facilities, and law enforcement officers to be specific when creating legislation they are expected to enforce. Senate Bill 171 does not do that and there is no way to do so responsibly.

JANINE HANSEN (State President, Nevada Families; Nevada Eagle Forum):
I agree with those who have testified. I work and live in rural Nevada. I live some miles outside of Elko. As S.B. 171 is written, we could be in serious trouble. My husband has an ax in the vehicle. When he is out and about, he can gather sagebrush as kindling to use in our woodstove. If he or I need to use his vehicle to pick up our grandchildren from school, I could be violating S.B. 171.

On page 2, lines 36 through 37 concern me where, even with the proposed amendment, Exhibit D, someone is guilty of a gross misdemeanor, for instance, children in school who carry their two-inch pocketknives. I grew up with four boys, I have a son; that is an everyday occurrence. My husband always has a pocketknife—thank goodness, because we have used it a million times to rescue ourselves. Even I have carried one in my bag. But because of TSA security at the airport, I cannot when I travel. A pocketknife is an important and useful tool.

But these children would be guilty of a gross misdemeanor. I appreciate the testimony regarding keeping children out of the system and not putting them in the juvenile system because of these acts; that is critical.

As stated previously, the parent should be called to take care of the issue. We want to engage the parents more in this system; we want to involve them with their children, and we should invite them to participate in these issues rather than turning the children over to law enforcement.

My son was picked up by law enforcement for shooting a potato gun behind my business; he was then taken into custody and became part of the system. It was a serious issue—not that he did not deserve punishment for his foolish youth, but the system is a problem when your child is involved in it.

The definition of a deadly weapon that can be anything is another concern, including the issue of identifying what a dangerous knife is. Never in our society, from the beginning until now, have we considered a two-inch pocketknife a dangerous weapon unless it was used in that manner. Women carry scissors more likely than pocketknives, but many people carry pocketknives just as part of the useful things they need every day. To identify them as dangerous is absurd unless they are used in a dangerous manner.

We appreciate much of what has been done in the proposed amendment, Exhibit D, and taking adults out of it improves it, Exhibit D. It is a great improvement, but it does not resolve all of the issues in S.B. 171. It is an improvement for parents dropping their children at school and others who would have these items in their vehicle.

Regarding child care facilities: Does that include a home child care facility or is it an institutionalized child care? This might make a difference in how S.B. 171 is interpreted. We agree with those opposing S.B. 171.

WILLIAM SHARP (Stillwater Firearms Association):
I am associated with Stillwater Firearms Association. We oppose S.B. 171. This legislation will create a number of problems and will resolve neither those covered by law or regulation nor the ability of the schools to control students. There was a letter sent by our Association (Exhibit I).

MR. WILKINSON:
You asked about the definition of a child care facility. It is defined in S.B. 171 where it refers to chapter 432A of NRS. The definition in chapter 432A of NRS is an establishment operated and maintained for the purpose of furnishing care on a temporary or permanent basis during the day or overnight to five or more children under the age of 18 years of age if compensation is received for the care of any of those children. That does not include the home of a natural parent or guardian or a home in which the children who receive care are related within the third degree of consanguinity or affinity by blood or marriage to the person operating the facility. It would cover home child care facilities under

some circumstances, but it depends on the number of children, their relationship and age.

LINDA J. EISSMANN (Policy Analyst):
Nevada Revised Statute 202.265 states possession of dangerous weapons on property and vehicle of a school or child care facility in exceptions. Subsection 3 states the section does not prohibit the possession of a weapon listed in subsection 1 if the property is (b) a child care facility which is located at or in the home of a natural person ...

MR. WILKINSON:
That is true. Child care facility is used in different sections in this statute of NRS, but for NRS 202.265, subsection 3, the new provision would be accurate.

CHAIR WIENER:
For clarity, what you read will reference part of S.B. 171, and what Ms. Eissmann shared would reference another part of S.B. 171? Are both applicable in certain parts of the measure?

MR. WILKINSON:
Yes. The provision Ms. Eissmann refers to pertains to a dangerous knife. But we also have the general weapons section in subsection 1, which also applies to child care facilities to make it more confusing.

LYNN CHAPMAN (State Vice President, Nevada Families; Nevada Eagle Forum):
I am neutral in S.B. 171. Although I am not crazy about S.B. 171, I did like the proposed amendment, Exhibit D, the Nevada Sheriffs' and Chiefs' Association presented, but I also have problems with it.

I grew up in East Palo Alto, California. I went to a high school where there were many fights after school. I want to show you what I carried in my purse because we could not have a switchblade or anything similar. It was a nail file that is very similar to what I am showing you. I brought different ones with me today so you can see they are longer than two inches. I never used the nail file in a fight, but I always felt more comfortable and safe because I had something. Anything can be made into a weapon.

CHAIR WIENER:
I will close the hearing on S.B. 171. The meeting is adjourned at 10:06 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
S.B. 150	C	Travis M. Morrow	Proposed Amendment to S.B. 150
S.B. 171	D	Mike Mieras	Proposed Amendment to S.B. 171
S.B. 171	E	Mike Mieras	These Knives Will be Banned
S.B. 171	F	Todd Rathner	Testimony Opposing S.B. 171
S.B. 171	G	Todd Rathner	Letter dated February 27 to Senator Wiener from Knife Rights
S.B. 171	H	Orrin J.H. Johnson	Photos of Dangerous Weapons
S.B. 171	I	William Sharp	Letter dated February 27 to Senator Wiener from J.L. Rhodes, Stillwater Firearms Association