

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-sixth Session  
March 30, 2011**

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:05 a.m. on Wednesday, March 30, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 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 Ruben J. Kihuen  
Senator Mike McGinness  
Senator Don Gustavson  
Senator Michael Roberson

**COMMITTEE MEMBERS ABSENT:**

Senator Shirley A. Breeden (Excused)

**GUEST LEGISLATORS PRESENT:**

Senator Moises (Mo) Denis, Clark County Senatorial District No. 2

**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Sally Ramm, Elder Rights Attorney, Aging and Disability Services Division,  
Department of Health and Human Services

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Orrin J.H. Johnson, Deputy Public Defender, Washoe County Public Defender's Office

Bill Uffelman, President/CEO, Nevada Bankers Association

Tierra Jones, Deputy Public Defender, Clark County Public Defender's Office

Adam Kilbourn, President, National Association of Insurance and Financial Advisors, Southern Nevada Chapter

Kenneth Truman, Past President, National Association of Insurance and Financial Advisors, Southern Nevada Chapter

Jesse Wadhams, Attorney, Jones Vargas

CHAIR WIENER:

I will open the hearing on Senate Bill (S.B.) 347.

**SENATE BILL 347**: Authorizes the issuance of a subpoena to compel the production of certain financial records as part of an investigation of the exploitation of an older person. (BDR 15-1075)

SENATOR MOISES (MO) DENIS (Clark County Senatorial District No. 2):

I received a telephone call several months ago about issues dealing with elderly persons who had financial troubles. As agencies were trying to investigate matters and get the information they needed, they were finding stumbling blocks. I understand there is permissive language in the law, but because it says "may," applicable agencies cannot always get the information they need to go after the people who prey on elderly persons and their finances.

Senate Bill 347 indicates the language proposed. You will hear from different people on the separate sides of the issue. Hopefully, you will see there is an issue which needs to be addressed. I am not sure the language proposed is perfect; however, it is a good starting point.

CHAIR WIENER:

Senator Denis, in reading S.B. 347, I see it does not have an effective date. Did you want it earlier?

SENATOR DENIS:

This is an ongoing problem, whenever we get it fixed will be great.

CHAIR WIENER:

We will default to October 1, then?

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SENATOR DENIS:  
That will be fine.

SALLY RAMM (Elder Rights Attorney, Aging and Disability Services Division,  
Department of Health and Human Services):  
I will read from my written testimony ([Exhibit C](#)).

*Nevada Revised Statute* (NRS) 200.50984, subsection 1 allows Elder Protective Services with the Aging and Disability Services Division to inspect all records pertaining to the older person on whose behalf the investigation is being conducted, including financial records. This can specifically be done without the consent of the older person if consent cannot be obtained, there is no appropriate guardian or the duly appointed guardian is the person of interest in the exploitation.

Additionally, NRS 427A.1234 allows the specialist for the rights of elderly persons to issue administrative subpoenas for records.

In spite of these statutes, some financial institutions are still reluctant to produce records. We have no way of forcing them to comply, short of taking them to district court, which is time-consuming. Because these investigations are so time-sensitive, it is not a viable solution.

ORRIN JOHNSON (Deputy Public Defender, Washoe County Public Defender's Office):

We oppose this bill because it is unconstitutional under the Fourth Amendment. To take this information as a search and seizure within the Fourth Amendment and issue a subpoena, instead of obtaining a search warrant without the consent of the people involved, goes beyond the scope of power the government is entitled to use when they are investigating a criminal matter.

The Fourth Amendment protects us and allows us to be secure in our papers — it specifically uses that word—and from unreasonable searches and seizures. The U.S. Supreme Court has said any search and seizure without a warrant is presumptively unreasonable, which means there has to be other exigent circumstances that justifies it, such as speed or similar action. Speed exists in this particular case, as we understand it is of a time-sensitive nature, but obtaining a search warrant is not difficult. Often, we see warrants obtained telephonically in less than one hour, on the side of the road. You do not need to

go to district court; usually warrants are issued by justices of the peace. While we usually see them in drug interdiction cases, nothing stops that warrant from being obtained in a timely fashion. If the banks do not feel comfortable turning over the information, and agencies are not able to obtain the information with a subpoena, the remedy is to obtain a search warrant. That has been the remedy for over 200 years, and we ask that protection not be thrown away so lightly.

In testimony, we heard 209 cases were substantiated out of over 1,000 accusations; that is a relatively low percentage. The idea that for all 1,000 cases is we should, without any judicial review, start digging into someone's financial records without their consent is chilling. There are cases where such searches are necessary and justified, and in those cases, we ask the law be left in place to require the 200-year-old protection of a magistrate justifying the search. It is not that difficult to obtain. In our experience, most judges will sign off on the warrants readily because they want to make sure the investigations are done. We ask for the protection of a criminal defendant but also for the system itself.

If the search is done without the warrant, it will be litigated; the determination will be made whether the search was valid. It may be the person trying to exploit the elder person is not held accountable because of a short-circuited warrant process and invalid conviction. We would rather see those justifiable convictions stand and be done right the first time.

We ask the warrant requirement be left in place.

BILL UFFELMAN (President/CEO, Nevada Bankers Association):

I will leave it to the attorneys to figure out whether the subpoena or warrant is the correct way to go. My problem is when we passed the elder financial abuse law in a previous session, we did joint training with the Department of Health and Human Services along with the banks. We encouraged everyone to cooperate. Today is the first time I heard someone was not cooperating. If I had a previous telephone call, I could have gone to the banks. They all agreed to the process. If we need to go back and retrain because new people are involved or if there is a particular issue with a particular bank, I would have liked to have known about it. We try to operate within the limits of the Nevada law, not push or stretch it. It is in the bank's best interest that its customers be protected if people are trying to deplete their savings or turn them into people who are wards of the State. I would like to get the problem solved.

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TIERRA JONES (Deputy Public Defender, Clark County Public Defender's Office):  
I agree with all of the items previously stated.

SENATOR DENIS:

Obviously, there is a problem; we heard that of 1,000 cases, agencies can only substantiate 200 because they cannot obtain the information. One of the issues brought forward was that in order to obtain the subpoena, you need probable cause. In these instances, the information is needed in order to get to the probable cause. There is a catch-22 here.

As far as the language referenced from a previous bill, the language is permissive, which constitutes the issue. This might not have been communicated to Mr. Uffelman directly, but the people working on the issues have talked to several of the banks and have had problems.

There is a section in the bill which states the police department or sheriff's office; I do not know if that needs to be in there because they are not the ones doing the investigation, it is the Department of Health and Human Services or the county office for protective services.

CHAIR WIENER:

Senator Denis, would you be willing to work with the parties who have concerns and let us know the status?

SENATOR DENIS:

Yes, I was hoping someone would have come forward before. I will definitely work with all parties involved and get this matter resolved.

CHAIR WIENER:

I will close the hearing on S.B. 347 and open the hearing on S.B. 348.

**SENATE BILL 348**: Eliminates limits on the amounts of certain property that is exempt from execution. (BDR 2-779)

SENATOR MICHAEL ROBERSON (Clark County Senatorial District No. 5):

I am here to introduce S.B. 348. I do not have to tell any of you the financial struggles Nevadans are facing. We lead the Country in bankruptcies and foreclosures, and Nevadans are losing their life savings. No longer can many of

our constituents rely on the equity in their homes or the value of their 401(k)s to protect them.

As a result of the bursting of the housing bubble and record unemployment, scores of honest, hardworking Nevadans are unable to pay their bills and are under the constant threat of losing their life savings to lawsuits and other actions by their creditors.

Yesterday in this Committee, we heard a bill that was introduced in response to the housing crisis facing Nevadans. The bill sought to protect Nevadans from lenders seeking deficiency judgments on homes which the homeowners could no longer afford. We heard strong testimony for and against that bill and concerns as to whether the bill would be constitutional in that it sought to retroactively alter existing contracts.

Whether or not this Committee ultimately determines the bill is good policy, I do not question the motivation of the sponsors of that bill, which is we need to do what we can to help struggling Nevadans.

Similarly, S.B. 348 seeks to provide the citizens with more security as they save for the future and attempt to rebuild their financial solvency.

Senate Bill 348 eliminates the limits on the amount of certain property that is exempt from execution by creditors. Existing law exempts from execution by creditors any benefits arising out of a life insurance policy to the extent the annual premium paid for the policy does not exceed \$15,000.

Existing law also exempts from execution by creditors any annuity benefits payable to an annuitant up to \$350 per month.

Senate Bill 348 would eliminate the caps in place under existing law. Senate Bill 348 would provide Nevadans with a means of protecting their assets and securing their retirement income. In recent years, 13 other states have eliminated such caps and it is good policy for Nevada to do the same.

Finally, S.B. 348 would put Nevadans in the life insurance and annuity business on a level playing field with the growing number of states that have already enacted legislation similar to S.B. 348 and increase the insurance premium tax revenue generated in this State, thus improving the State's bottom line.

ADAM KILBOURN (President, National Association of Insurance and Financial Advisors, Southern Nevada Chapter):

I am a certified financial planner and a chartered life underwriter in Las Vegas. Right now, Employment Retirement Income Security Act plans get full protection from creditors. If you are saving in a 401(k) or a 403(b) plan or an individual retirement account, you have full protection from your creditors if someone sues you or you declare bankruptcy and lose everything. What you will not lose are your savings for retirement. Those have been protected by federal law for many years.

Unfortunately, those plans are at risk to market fluctuations. No one has to be reminded of what happened in 2001 with the stock crash, the tragedy of September 11, 2001, as well as what has recently happened with the housing crisis. It has not just affected the housing crisis, it has spilled over into everyone's retirement accounts. No longer is it a 401(k), it is now a 201(k).

We would like to see a leveling of the playing field with other alternatives to retirement plans. Life insurance cash values as well as annuity cash values have traditionally been utilized as alternatives. Unfortunately, they are not as well situated from the creditor protection side as the 401(k) values. Participants in 401(k) plans get the creditor protection, but if you go outside your employer and try to save and do the responsible thing on your own, you are at a loss. Those funds are subject to the claims of creditors. We would like to see the caps removed from those funds.

As Senator Roberson mentioned, 13 other states have moved to do this in recent years. Nevada is at a level playing field with those states. We lose business to other states when people go to purchase contracts. We have a potential for customers to move their business to another state versus keeping the business in Nevada. We would like to see Nevada lead with the rest of the states and put these protections in place against creditors.

KENNETH TRUMAN (Past President, National Association of Insurance and Financial Advisors, Southern Nevada Chapter):

I support S.B. 348; I have been in the business for many years, and it is disheartening to see someone come after a person's cash value for life insurance or annuity values in a credit situation.

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CHAIR WIENER:

Mr. Kilbourn, we do have the letter ([Exhibit D](#)) you submitted to the Committee. It is supportive information that will help us in proceeding with the measure.

SENATOR ROBERSON:

Mr. Wadhams can speak to the history of this legislation, which has been in the building previously.

JESSE WADHAMS (Attorney, Jones Vargas):

This bill was presented as an amendment to S.B. No. 388 of the 75th Session in the Senate Commerce and Labor Committee. There was bipartisan support for adding these protections. The bill passed unanimously from that Committee, but received a strange rereferral to the Senate Committee on Finance and was changed to a different bill with a much more limited look. However, no one seems to have an issue with the concepts we are presenting today.

CHAIR WIENER:

Based on the history you shared, most of us did not know what happened with



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the measure in prior sessions.

I will close the hearing on S.B. 348. The meeting is adjourned at 8:31 a.m.

RESPECTFULLY SUBMITTED:

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Judith Anker-Nissen,  
Committee Secretary

APPROVED BY:

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Senator Valerie Wiener, Chair

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

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 347	C	Sally Ramm	Written Testimony in Support of S.B. 347
S.B. 348	D	Adam Kilbourn	Written Testimony in Support of S.B. 348