MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-sixth Session
April 29, 2011

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:06 a.m. on Friday, April 29, 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 Jason M. Frierson, Assembly District No. 8
Assemblyman James Ohrenschall, Assembly District No. 12
Assemblyman Tick Segerblom, Assembly District No. 9

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Policy Analyst
Bryan Fernley-Gonzalez, Counsel
Judith Anker-Nissen, Committee Secretary

OTHERS PRESENT:

Terry J. Care, Ex-Senator
Kimberly M. Surratt, Family Law Practitioner
Robert W. Lueck
Joanna Jacob, City of Reno

Scott Anderson, Deputy Secretary, Commercial Recordings, Office of the Secretary of State
John Sande, IV, Nevada Bankers Association
John McCormick, Rural Courts Coordinator, Administrative Office of the Courts
Evan Dale, Administrator, Administrative Services Division, Department of Administration
Betty Hammond, Deaf Services Coordinator, Aging and Disability Services Division, Department of Health and Human Services

CHAIR WIENER:
I will open the hearing on Assembly Bill (A.B.) 91.

ASSEMBLY BILL 91 (1st Reprint): Enacts the Uniform Collaborative Law Act. (BDR 3-60)

ASSEMBLYMAN TICK SEGERBLOM (Assembly District No. 9):
These are what we commonly call Terry Care bills. Assembly Bill 91 deals with the collaborative process, which is a new concept for the Uniform Law Commission (ULC) of the National Conference of Commissioners on Uniform State Laws, and A.B. 109 deals with the Uniform Commercial Code (UCC), Article 9, which was the start of the ULC.

ASSEMBLY BILL 109 (1st Reprint): Enacts the amendments to Article 9 of the Uniform Commercial Code. (BDR 8-330)

TERRY J. CARE (EX-SENATOR):
Assembly Bill 91 relates to the Uniform Collaborative Law Act. The American judicial system is where warring parties frequently go when they have a dispute, and anybody who has practiced law has heard this from new clients: “I have been cheated. I do not care what it costs. I want to sue them for everything. I am going to take it to the Supreme Court, and then again, I do not care what it costs." Then in civil litigation, you get into discovery disputes, depositions, the costs of depositions and sometimes there are travel expenses affiliated with that. Then you get into motions, disputes over discovery and maybe motions for summary judgment, dispositive motions, even motions to dismiss, and soon the fees start adding up. That is when the client comes back and says, “Gee, is there another way we can do this? Is there some way we can get this matter settled?” The process of civil litigation for many people, especially those who have never been through it, is gut-wrenching. It is uncertain. You do not know

when you are going to get resolution. You may go to trial, or you may not go to trial for two or three years. Even if you have a trial, you may have matters on appeal, the case will be remanded and you have to do it all over again. There is no certainty to it. It puts a strain on marriages and personal relationships; people lose their appetites, and they lose sleep—not everybody, but this is quite common. So believe it or not, for decades, lawyers and judges have been trying to find a way that, at least in some cases, you do not have to go through trial and the expense of everything I just described. Thus, we have matters that go into arbitration—binding and nonbinding—and sometimes mediation.

The collaborative law process has been around for approximately 20 years, but all of the states have different approaches. The idea behind collaborative law —and what makes it unique—is that it is a method of alternative dispute resolution. You may be in litigation already, but all of the parties sincerely have a desire to resolve this matter without incurring additional expense and going through a trial.

What you have here in A.B. 91 is a Uniform Collaborative Law Act that recognizes the concept and would codify it in Nevada where the parties are free to retain new counsel solely for the purpose of resolving the dispute. If it does not work out—and you can back out at any time—then you can go back to your original attorney. You cannot use the attorney you just retained for the collaborative law process. The rationale is you may have an attorney who is competent to represent you in mediation or arbitration, but you still might want to mediate, but you want to get the best deal you can.

The collaborative law process is where willing parties mutually get everything on the table, be frank and candid with each other and then find a resolution that gets this matter behind them, getting on with their lives. This usually arises in the context of family law disputes, although in recent years it has also come up in matters involving insurance disputes. It has also begun to show itself in personal injury matters and disputes between business associates and closely held corporations. It is a relatively new act that Utah has adopted.

Four states, including California, have statutes that govern the collaborative law process. Other states' state bars have recognized the process, as well. It is fair to say it happens in virtually every state.

The bill came out of the Assembly unanimously. There was no opposition. The City of Reno had some concerns, and so is going to sign in neutral on the bill.

In your packet you have a letter from Professor Francis J. Mootz, III, Associate Dean for Faculty Development and Research, William S. Boyd School of Law, University of Nevada, Las Vegas (Exhibit C), who is also a Uniform Law Commissioner of the ULC. He could not be here today. It is his personal testimony. Not only does he support the A.B. 91 as a Uniform Law Commissioner, he used this process on a personal level and wanted to share the story with you as a demonstration of how the process worked for him.

CHAIR WIENER:
We do have Professor Mootz's letter, Exhibit C. We also have a letter from Michelle G. Carro, Ph.D., Nevada Psychological Association (Exhibit D). The letter is brief, but it is interesting in that it comes from a person in one of the social services.

KIMBERLY M. SURRATT (Family Law Practitioner):
I am one of the founding members of Collaborative Professionals of Nevada and an unpaid lobbyist with Nevada Justice Association. I have been practicing collaborative law for many years. In 2003, we began our first group meeting to get professionals together to investigate this method. It grew out of the need within the family law arena. It has been expanded now to personal cases, business litigation and other matters.

But family law had the greatest need. The need developed to provide a more holistic approach to divorces in which we had different components, a mental health approach, financial approach and legal approach. Mediation was falling short in many of these cases. In a mediation, one neutral professional works with the parties, and that neutral professional cannot give any legal advice or assist one party over the other. Many times we had one spouse who was weaker, less financially savvy, or more emotionally unstable, and that spouse's needs were not getting addressed. The spouse did not have anybody on his or her side to prop this spouse up and help with the process.

It is an approach similar to mediation—all of us are required to go through mediation training—but advocates for the parties on both sides still help them. Those advocates do not advise that if you do not do this, we will go to court. That power is taken away because we cannot litigate on behalf of the parties.

We can only help them through the collaborative process. The demeanor and approach to the case changes dramatically.

Attorneys, mental health professionals and financial professionals all get trained together. In divorce, a mental health component is helpful. It speeds up the process and makes it more efficient. Most often, the end is much stronger and has a better result when couples utilized mental health professionals. There are times when a child specialist is also in the team process. It addresses the needs for all three professions, not just attorneys.

CHAIR WIENER:
Is this a type of law on which you particularly focus so that you become not licensed or certified but a specialist? Are there attorneys building practices around this kind of service?

MS. SURRATT:
Absolutely. It is a specialized training, an intensive training process. It is probably the only training where lawyers have to train with other professionals at the same time. Much of the training is focused on telling lawyers to be quiet for once and listen.

Former Family Court Judge Robert W. Lueck is one of those who developed his practice around it. I have developed my practice around it. Approximately one half of my practice is developed around assisted reproductive work, and the other half of my practice is now developed around collaborative and alternative dispute resolution. I try not to litigate on behalf of my clients unless I have to because the devastation to families is too extreme. Without using the word specialization—because we cannot use the word—it is something on which people are focusing their practice.

SENATOR CARE:
I neglected to disclose that I personally do not practice in this area and have no intention of practicing in this area. I am unaware of any member or associate in my firm who practices in this area.

SENATOR COPENING:
Senator Care, you talked about the process of litigation and how it can become costly. At what point would this come into play? Is it after a civil suit has been

filed? I am trying to figure out if this slows it down or takes it out. What exactly does it do?

MS. SURRATT:
It can be approached at any stage of the process. In Nevada, depending upon whether it is civil litigation or family law, you can start the process before you start litigation. All the parties have to agree they want to attempt this process to resolve their dispute. If they sign an agreement and say to each other that instead of filing litigation or jumping forward and getting going on litigation, let us do this, resolve our dispute, file a settlement agreement with the court and be done with it. Some parties begin litigation when they realize their money is going down the drain, the process is taking too long, so they reach out for alternative dispute resolution methods. At that point, they may say to the court, "We want to attempt this method and step out of the litigation mode, step into collaborative mode and pursue that for a while and see if we can come to an agreement." In that method, this bill helps address that issue because we need tools for the court to utilize to stay the proceedings.

SENATOR COPENING:
You end up with three attorneys in the process. You have the attorneys for both sides. If the people who are being represented by the attorneys say, "Stop, this is getting too expensive; it is going nowhere." This will stop their present attorneys and bring in another one who will help resolve the issue. Without this bill, the attorneys they have retained would not have the right to drop them, correct?

MS. SURRATT:
Yes. There is an extreme disconnect as to what the role is for those attorneys who have become attorney of record. The privilege part of it becomes difficult where the attorneys who assist in the collaborative process could be forced to go into court and testify about what happened in the collaborative process. Nearly every alternative dispute resolution method that exists today —and especially mediation—relies heavily, and is dependent upon, the privilege that what happens in the alternative dispute resolution method cannot be utilized as evidence in court. In mediation, we have provisions to assist us with that within the law. But within the collaborative process it does not yet exist. That is why this bill is being proposed.

CHAIR WIENER:
At the stage where it is getting expensive and has gotten to the point where the resolution is not happening, both parties say, "Okay, I just want it resolved so I can go on with my life." Does each party retain the collaborative counsel? Collaboration itself means more than one, but in mediation often you will have a mediator. In this instance, are there two attorneys?

MS. SURRATT:
Yes, there are two collaborative attorneys. That is the premise of part of the system. However, there has been a large growing hybrid collaborative process where we are trained to use whatever is best for those parties. What is best for those parties is usually balance, because balance is significant when you are doing alternative dispute resolution. You learn that you get to resolution much faster when you have a good balance. Everything is fact-by-fact, case-by-case. Do what is best for the client and mold that team around them as needed.

CHAIR WIENER:
As you have done this throughout the years, has your success been meaningful? Have you turned out good results or outcomes for those for whom you have provided service?

MS. SURRATT:
Yes, absolutely. I have had one collaborative case fail, and that case ultimately failed because we learned one of the spouses had extreme mental-health issues. The concept of any form of reality was not there, and nothing was going to help that case in any way other than a judge enforcing it. My success rate has been extremely high, and I am extremely proud of the outcome. I feel that the end result was much more creative, more constructed around the children and the family unit, and these parties went on to be friends in a way that they never would have been through the litigation and court processes.

CHAIR WIENER:
It is probably more expedited than extending the process through litigation. It probably expedites the outcomes more often.

MS. SURRATT:
Yes, it is much faster and much more efficient. The process is controlled by the clients and what they want. At times it is a little slower, but it is slower because it is dictated by the parties. We allow them to do their homework. In

the beginning we set up a schedule as to how we are going to proceed as the parties dictate. They decide how long they want the process to take. If they feel they need more counseling, that part may take longer. It is not additional hearings and expenses because they are doing that on their own. I am sitting still and not doing anything and not spending money as their attorney.

ROBERT W. LUECK:
I have submitted written testimony (Exhibit E). I first heard about the collaborative model when I served as Family Court Judge in Las Vegas from 1999 to 2004. I read an article in a law journal about it and thought this was phenomenal. I started gathering articles and information and trying to promote it. But like anything that is this dramatically new, it takes time to take root and be accepted by other people in the community. Then I undertook the training and have been practicing it. The adversary system is a fighting-based system. It pits me against you. In a divorce case, it brings out raw emotions, anger, hurt, frustrations, disappointment and bitterness, and lawyers sometimes exacerbate that in the adversarial process. The system alone encourages people to try to win in court as opposed to this process.

The collaborative process is solution-based divorcing, similar to mediation. We are working and understanding what are the people's problems, concerns and fears for the future. Then we work hard to craft solutions. We are not here to fight with each other. Believe me, some of these cases are difficult and contentious, but we are focusing on solutions. That is why we use this method, and it has been growing by leaps and bounds.

We find that the adversary system is not only stressful and enormously expensive for clients, but the stress level for lawyers and judges is high as well. It is hard to do because of the constant stress. The collaborative process is developing into a remarkable system. The settlement rates overall are around 84 to 92 percent. We are consistent across the board. This is from a multiple number of studies of the collaborative process done in the last five years or so. We also find the fees are way down.

As a lawyer in the adversary system, I am going to be spending about one-half to two-thirds of my time in writing papers, motions, taking depositions and going to court—sometimes sitting in court for an hour waiting for my case to be called. We do none of that in the collaborative process. We eliminate 90 percent of the paperwork, and when we get a matter resolved, we are down to the

paperwork you need to get a divorce: the settlement agreements, the joint petition, decree of divorce or whatever we are filing. We take cases out of the court system; this helps streamline the courts. We have a higher degree of satisfaction with clients and less expense. There are many benefits to this process. That is why many lawyers are taking the classes, learning how to do the process and trying to switch out of the adversarial mode.

I am speaking from the heart. I have done divorce every which way there can be, and I have been divorced myself. The collaborative process is probably the best model and is the only model that formally involves somebody from mental health, somebody from a financial point of view, and if we need to, we will bring in a pension expert, a real estate appraiser or whomever we need in a team to help people solve their issues. I have written articles and have presented research on the collaborative process.

This is a nonpartisan bill with no costs to the State or counties. It will help keep cases out of the court system. One Canadian city where many people do the collaborative process has an 85 percent reduction in the number of trials in their courts. This system does work, and it is now well established. It is being introduced into approximately one-third of the legislatures this year.

We ask your support for this bill because it will help the citizens of Nevada, and that is the most important thing.

CHAIR WIENER:
The focus has been on domestic relations from our two witnesses. This collaboration process is also expanding into other types of cases. As we process A.B. 91 through this Committee, any way we can help alleviate the extraordinary ratio of cases per judges and cases per justice bottleneck would help.

Senator Care, you do not practice in this area, but you have done uniform laws since you came to the Legislature. This Act is from 2010, and this one seems to be moving very quickly, so there must be a movement in the Country that I have not seen on any other uniform act. Is that a fair observation to make?

SENATOR CARE:
First of all there is a study committee, then a drafting committee and then at its summer or annual conference, the ULC adopts or promulgates one of these

uniform acts. There is an immediate need for some of them, and this is one of those. I would expect this to be enacted in short order by many states.

SENATOR COPENING:
What happens if one side would like this alternative dispute resolution process and the other does not?

MS. SURRATT:
It has to be voluntary, and it has to be both sides. The collaborative process will not happen in that circumstance.

SENATOR COPENING:
If one side wanted it, could a court force the other side to agree?

MS. SURRATT:
No, absolutely not. Collaboration is a process that relies on voluntary commitment to the process, knowing what you are getting into because it relies on open disclosure of information. There is a complete sharing of all information. If you are holding back at all, the process will not work. You have to commit to it. The bill itself does have provisions that dictate it must be voluntary and that it cannot be forced.

SENATOR COPENING:
Could it work in a situation like construction defect litigation?

MS. SURRATT:
Absolutely, and there is experience across the U.S. with some construction defect litigation. Business litigation attorneys and business owners have laughed at this process because they said we have been doing this for centuries. What businesses look at is that in the end, they need to continue doing business. We may have a dispute with each other, but I need your services and you need mine, so businesses have done many of these. If we do not figure it out, we are not going to make money, and we conclude that we are still doing business together. That easily spills over into construction defect and personal injury cases because those businesses are technically going to do business together again.

JUDGE LUECK:
I would like to expand on Ms. Surratt's testimony. This would be a good model for construction defect and also medical malpractice. I do not do this area of law, but I know people who do. So much money is spent on lawyers, and by the time you do all of the development of expert testimony and so on, is there any money actually left over to fix anything? Our point is, if I had a construction defect case, I would say, "Okay, bring in neutral experts. See if there are code violations, or a high-tech plumbing defect. If there is, what do we do to fix it?" The beauty of this process is that we focus first on information gathering in an informal way, and secondly we head right toward solutions. What is it we are going to do to fix the problem? The same applies in medical malpractice. Doctors are scared to death to admit that they made a mistake, even when they did.

A few sessions ago, the Legislature had a bill to have the right to say that you are sorry to a patient without that apology being used against you. In our collaborative process, because it is private and consensual and cannot be disclosed outside of the process, a doctor could willingly go into the collaborative model and admit to having made certain mistakes and that certain things probably should have been done differently. That cannot be used against that doctor. Because of the protected privileged nature of communications, none of that could be used in any subsequent or alternative proceeding. Doctors are by law required to report to the Board of Medical Examiners when they get a medical malpractice complaint. These things are not litigation matters with a filed lawsuit. You could go in and do all of this in a collaborative model.

The same thing is true about construction defects. Much of the money goes to the lawyers, not into fixing what has happened. So, it has the potential of problem solving being the focus and not constant arguing and litigation.

MS. SURRATT:
We have collaborative lawyers for each party, but the other key element of the process is that whenever you need those other experts, you hire one. When we need a financial professional, we hire one. We do not have two—we do not have that extra expense—we do not have the battling reports. We let that neutral expert collect the information, report it and use it. In the construction defect scenarios, you hire one neutral expert; you are not hiring battling experts. The costs drop dramatically in that scenario.

JOANNA JACOB (City of Reno):
We have been watching this bill as it wound its way through the Assembly. I did have the opportunity and honor yesterday to speak with Senator Care about our questions. As the panel discussed, this is a developing area. We looked at the bill and thought how it could possibly be implemented in the area of municipal law. We had some questions because municipal disputes may involve private parties—a neighbor, for example, who is complaining about another neighbor's building permit. The City is the tribunal before which a dispute will be heard, but there is often City staff who also opines on the interpretation of the codes.

We wanted to clarify with Senator Care that if the collaborative process were to be implemented in the municipal law area, the city would be a party to any collaborative law effort and would obviously be at the table with the private litigants. The intent of the law is to be collaborative, so we would be considered part of that effort. I wanted to say that for the record.

CHAIR WIENER:
I will close the hearing on A.B. 91.

SENATOR ROBERSON MOVED TO DO PASS A.B. 91.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR WIENER:
We heard the opening remarks for A.B. 109 from Assemblyman Segerblom at the beginning of the hearing on A.B. 91.

SENATOR CARE:
The UCC is probably the best known product of the ULC. It has been around for decades and has been adopted by every state with a little tweak here and there. There have been amendments along the way, and it governs the world of commerce in this Country. You will find the UCC in *Nevada Revised Statute* (NRS) 104. When I say the world of commerce, that includes sales, leases, negotiable instruments, letters of credit, warehouse receipts and secured

transactions which is part of Article 9 of the UCC. Article 9, in and of itself, has seven parts. If you are in litigation and you get into a matter where a borrower has defaulted, you are probably going to find yourself involved in this world, not to a great extent, but it will be there.

What do I mean by secured transactions? Briefly, the simple concept is: a business that needs to borrow money must have a willing lender. The lender is not going to take the word of the borrower who is going to promise to pay back the loan. That is not going to be good enough. The lender is going to want a secured position of collateral owned by the borrower. That collateral can be equipment, inventory, accounts receivable—the collateral that the business owner presently owns, or after-acquired collateral. That is not the end of it. You have probably seen a UCC Financing Statement, Form UCC1. The debtor has to sign off, so the lender becomes a secured party. And then you go through an exercise called perfection. That document has to be filed with the Office of the Secretary of State. That puts the entire world on notice here is some collateral over here, and there is a lender who has a secured position in that collateral. That is important for the entire world to know because there may be another lender out there who is thinking about floating a loan to this same debtor who is not necessarily going to take the debtor's word for it. This is all a matter of public record. And then, if the debtor defaults and you have two lenders who have a secured position in the same collateral, you get into the game of priority, determining which secured party has the priority over the other secured party.

As for the amendments, the ULC last promulgated amendments to Article 9 in 1998, and all 50 states adopted those amendments. Every time they do it, technology changes—we are in the world of e-commerce now—you get evolving case law situations arising. A standing committee with the ULC does nothing but watch the developments as to Article 9 and secured transactions. That committee felt it was time in 2010—at the annual conference in Chicago

—to promulgate additional amendments to Article 9. They are not extensive, but nonetheless they are here.

Page 35, section 25 of A.B. 91 shows the effective date is not until July 1, 2013. The reason for that is the ULC is hoping all of the 50 states will adopt this measure prior to that date, with the same effective date in all 50 states so that when the clock strikes midnight on June 30, 2013, everybody is playing by the same rules the following morning.

Beginning on page 2, sections 2 through 9, transition provisions say that when the clock strikes midnight on June 30, 2013, everything that you are already doing to perfect a security interest or the already perfected security interest remains in effect. You do not have to go out and start all over again.

Page 6, section 10 are the definitions, and there are three revisions with brand-new definitions. The revisions on page 7 authenticate the certificate of title and registered organization. The one new definition is on page 15, line 10, "public organic record." The people who drafted these amendments thought it was time to come up with a definition for a public organic record. An organic record is a document that is filed and goes to the formation or organization of a business entity. Documents like certificates of good standing do not really go to the formation of the organization; these would be nonorganic records as opposed to articles of incorporation.

Page 18, section 11 is a control of an "electronic chattel paper." Chattel paper is where there is a monetary obligation and a security interest. There is such a thing in the world of e-commerce as electronic chattel paper. The drafters felt that it was time to elaborate on control of electronic chattel paper.

Page 18, section 12 relates to perfection and priority. The only change on page 19 adds clarifying language about the location of a debtor. The change is the additional language beginning on lines 28 through 32. The language is more specific about the location of the debtor in certain circumstances.

Page 21, section 14 speaks to the effective perfection of the change in governing law. On page 22, subsections 8 and 9 are substantive. It may happen that a debtor has changed location—has moved to another state, which is addressed in subsection 8, and it may happen in subsection 9—but you have a different debtor; maybe corporations have merged and there is still an

obligation, but the surviving party of the merger has assumed the debt. These two sections say that if you are already perfected, you remain perfected for at least four months, and then after that you are going to have to do something about it in the other state, unless there is a provision in the other state that already addresses the issue of perfection.

Page 24, section 16 is clarifying language.

Page 28, section 19 was a subject of some discussion with the drafters and in the Assembly. It refers to the names of the debtor and the secured party. The name of the debtor is important because you have these documents, and a potential lender or somebody who is thinking about suing a debtor wants to know what sort of assets he or she has. One of the things you might want to research through the Office of the Secretary of State is the name to see if there is already somebody ahead of you in the event you were to get a judgment against him or her. The drafters of Form UCC1 toyed with what we call Alternative A and Alternative B. The Business Law Section of the State Bar of Nevada thought this over; they reviewed this extensively. We had discussions with bankers, and on the Assembly side we went to Alternative A. Alternative A says in certain cases if it is an individual, you are going to look at a current driver's license (DL), and that is it.

I propose an amendment (Exhibit F). Nevada is a state different from other states. We have a large transient population. There are people who move here, and they never get a Nevada DL. Many people will use a work card issued in Clark County as identification (ID). That does not happen in other states. That was the reason for the language on page 29, lines 29 through 35, which is about DL or ID card or a federal government ID card. The same thing is on page 30, lines 22 through 28. I am at fault for the proposed amendment, Exhibit F. The ULC took exception to my saying we can use a DL or other ID issued by the State or by the federal government. The ULC wants it restored to say, it is going to have to be the DL; that is the reason for the amendment, Exhibit F. And to confuse matters even more, I spoke with Ms. Eissmann—there is one little mistake on the proposed amendment, Exhibit F—and that is, as to page 30, lines 22 through 28 the second line down reads, "has issued to a natural person more than one driver's"—it should say license—the strikethrough on the word "license" is not appropriate and is not supposed to be there.

CHAIR WIENER:
As you are addressing this, there are people who may be engaged in some of these secured transactions because in your earlier version the DL or ID issued by the State allowed it. There are those who are not drivers who can get an official ID card from the Department of Motor Vehicles (DMV). How would that be handled because it is an official ID that is issued by DMV? Many seniors have those, so how would we address that if they do not have a DL?

SENATOR CARE:
For this purpose—for the ID of a natural person—that card would not work. It has to be the DL. I have had some discussions with the ULC on this issue. This bill will not become effective until July 1, 2013. We have four enactments so far and nine introductions, and I do not know that any other state has this same issue as we have in Nevada. In the event the Legislature decides to pass this bill restricting it to the DL and then it turns out that becomes an issue, that can still be corrected in 2013 prior to the effective date of the bill. But to answer your question: no, that card would not be sufficient.

CHAIR WIENER:
I must state for the record that I have concerns about that because there are people who do not drive. We have many people who have DMV-issued ID cards. They would be excluded.

SENATOR CARE:
With respect to the DL's provision on page 29, line 36, which says, "If the debtor is an actual person to whom paragraph (d) does not apply, only if the financing statement provides the individual name of the debtor or the surname and first personal name of the debtor; and (f) in other cases: ... ." I may be wrong on that and will see if I can correct it. The ULC wanted the original Alternative A, DL, in there.

CHAIR WIENER:
Could you ask them if an ID card issued by the DMV would be satisfactory? I do not know how much closer you can get to have an ID card if it is issued by the same agency.

SENATOR CARE:
I will do that. Page 30, section 20, beginning at line 37 goes to the effect of certain events and effectiveness on a financing statement. There is language

replacing the word "change" with "filed financing statement." This becomes seriously misleading. That can happen where a debtor's name is changed through the court process.

Page 33, section 23, beginning on line 38, goes to a claim concerning an inaccurate or wrongfully filed record. Somebody can file a financing statement without authorization. Conversely, a mischievous debtor might file an unauthorized amendment to the financing statement. This adds language that the drafters felt was needed for that situation.

I am not an expert in the area; I do not practice in this area. I sometimes run into it in the course of litigation where there is a defaulting lender. But it has been reviewed extensively by the drafters and the Business Law Section of the State Bar of Nevada. As to particular questions, you have already given me one on section 19, and I will have to report back to this Committee.

CHAIR WIENER:
Because it is issued by the same agency that issued DL—maybe that would give some clarity to it—we could put that language in statute. I do not know what other states do, but we do have that provision.

SENATOR GUSTAVSON:
For the record, I share your concerns with the ID card. I would like to have an answer one way or the other.

CHAIR WIENER:
There are essential issues to move this forward. It is not something that would necessarily hold up a measure, but it would be nice to clarify that issue and include it.

SCOTT ANDERSON (Deputy Secretary, Commercial Recordings, Office of the Secretary of State):
There was an amendment we felt necessary to put through in the Assembly. Since that time, there have been some changes with the forms and the body that governs those forms. We have spoken with Senator Care, and we are amenable to take that amendment back out again. We would urge the Assembly [*sic*] to concur on ...

CHAIR WIENER:
And the reason for the reprint was your amendment?

MR. ANDERSON:
Yes.

CHAIR WIENER:
So, we go back to the original version?

MR. ANDERSON:
It is not a huge deal. It is similar to the …

CHAIR WIENER:
Is this the safe harbor provision?

MR. ANDERSON:
No, this is a statement of claim. It is a terminology change in the form. It is not a big deal because of the effective date of July 1, 2013. We will have the opportunity to change this. If you want to let it go the way it is, we will change it in the 2013 Session. It was our understanding that the ULC wanted it changed to an information statement, and we were willing to do that. We would be happy to do whatever Senator Care would like to do. Again, it is a nonissue because of the 2013 date, and we will make sure that will get changed the next Legislative Session.

SENATOR CARE:
I have discussed this with Chicago. We are willing to defer to the Secretary of State. There is an organization called International Association of Commercial Administrators (IACA), which is basically the filing officers nationally and from Canada. They are debating this issue and were waiting for the ULC, and the ULC was waiting for IACA. It is probably not a substantive issue. It is more a matter of style. We are perfectly willing to defer to whatever Mr. Anderson would like.

MR. ANDERSON:
For convenience and timing, it may be better to leave the amendment we submitted, and then we can change it in the next Session.

CHAIR WIENER:
If need be ...

MR. ANDERSON:
The IACA will be discussing this at its summer conference. Right now, the language is as we have presented it.

CHAIR WIENER:
We are going to keep it the way it is?

MR. ANDERSON:
That would be correct.

JOHN SANDE, IV (Nevada Bankers Association):
We have the same concerns with the Nevada ID card and DL. People come in from other states do business here, especially with the transient nature in the Reno-Tahoe area and Las Vegas being close to the border. We would like to see that expanded, but we understand the need for uniformity, and we do not have a problem with that. If we do find it to be a problem, we could work on it in 2013. I just wanted to put that on the record.

CHAIR WIENER:
We will close the hearing on A.B. 109 and open the hearing on A.B. 355.

ASSEMBLY BILL 355: Revises provisions relating to the Fund for the Compensation of Victims of Crime. (BDR 16-597)

ASSEMBLYMAN JASON M. FRIERSON (Assembly District No. 8):
Assembly Bill 355 is the product of a work session of the Advisory Commission on the Administration of Justice held on June 23, 2010. At that work session, the Commission approved 17 recommendations, 15 of them calling for drafting legislation. Seven recommendations were identified for consideration in future work sessions to be held later in the year. Recommendation No.10 was to draft legislation to amend NRS 217.260 to provide that any remaining money in the Fund for the Compensation of Victims of Crime (FCVC) at the end of a fiscal year remain in the fund and not revert to the General Fund. Section 2 of A.B. No. 114 of the 75th Session sought to provide that any money in the FCVC at the end of the year remain in the FCVC. That section was deleted before the bill

was passed. Recommendation No. 10 was to redraft that section. That is what A.B. 355 represents.

In the 2009 Session, there was confusion about the intent of the measure. People were interested in any money that exceeded the amount designated for this fund staying in the fund and not reverting to the General Fund. This bill does not propose to do that. This bill proposes to codify what the actual practice is, that the administrative assessment fees that go into the FCVC stay there. They already stay there; however, anything over the designated amount would not necessarily stay there and would be subject to our budgetary decisions. Assembly Bill 355 proposes that the money in the FCVC stay in that fund.

There has been testimony submitted in writing from Bryan Nix, Coordinator, Victims of Crime Program, Department of Administration, which administers the FCVC. The funds are generated over time, and sometimes the process of applying for relief out of this fund takes time; if there is a document missing or something goes wrong, the process has to start over. We are trying to avoid the funds being gone by the time the process is complete. That way, if there is a victim of a crime who has medical injuries and is going through the process, there is a stable source. The people who are applying for relief out of these funds know this process sometimes takes several months and that it is going to be steady. The bill does not propose to change anything; it proposes to codify what is law today.

SENATOR COPENING:
Could you tell us about the FCVC? For example, how the monies get into the fund, and how do you end up with excess monies in the fund?

JOHN MCCORMICK (Rural Courts Coordinator, Administrative Office of the Courts):
The money comes into the FCVC through administrative assessment revenue, which is found in NRS 176.059, and there is also bail or bond forfeiture money. People who are victimized by a crime can apply to the fund for medical expenses to be reimbursed to make them whole again. Because it is an ongoing process, the money comes in monthly, but at the end of the fiscal year, extra money might come in. Since many claims have to be processed in the following fiscal year, you want to maintain the money in the FCVC to pay compensation to as many of those victims as necessary.

SENATOR COPENING:
Have you had the experience of monies being used by the State and being in a position where you could not compensate a victim of crime because the money was not there?

MR. MCCORMICK:
To the best of my knowledge that has not happened because existing practice has been to leave these funds in the FCVC. However, A.B. 355 would place that in statute to remove any doubt and any chance those funds may at some point be used to address some unrelated budgetary issues.

SENATOR GUSTAVSON:
How much is in the FCVC now, and has it ever been to the point where it has been depleted?

MR. MCCORMICK:
I would have to defer to Mr. Nix for the specific numbers.

EVAN DALE (Administrator, Administrative Services Division, Department of Administration):
I am in charge of the bookkeeping for this operation. To answer your question, the FCVC has never been fully depleted. However, as projections show that the fund is getting low, the payments to victims are adjusted so we could pay less than 100 percent of the amount for which they might qualify.

SENATOR GUSTAVSON:
I want to make sure we have the money available for the victims.

SENATOR BREEDEN:
How are victims notified that these funds are available?

ASSEMBLYMAN FRIERSON:
There is a Website that advertises and describes the program. I was contacted a few days ago showing updates that go into great detail about how to apply for these funds. The Website is <http://www.voc.nv.gov>. There are ongoing efforts to determine how to make sure people understand. I also know from my practice as a Clark County Deputy Public Defender that in criminal law, district attorneys and victims' advocates who are in court with the victims are able to provide information about obtaining relief.

SENATOR BREEDEN:
And is it all types of crimes or certain crimes?

ASSEMBLYMAN FRIERSON:
The FCVC is set up as a process of requesting relief. Not all requests are granted necessarily, but they are granted across the board. I do not believe there are any limitations as to who can request funds, but it goes through a process of being vetted to make sure it is an appropriate request and to obtain relief.

SENATOR ROBERSON:
Mr. Dale, I did not hear you answer Senator Gustavson's question. How much money is in the FCVC now?

MR. DALE:
I do not have today's balance in the FCVC, but I can tell you that the annual budget is approximately $10 million. So, the balance is somewhere between zero and $10 million. That is not a good answer, but today I do not know the exact dollar amount. I can provide that to the Committee as soon as I get back to my office.

SENATOR ROBERSON:
Thank you. We would like to know.

ASSEMBLYMAN FRIERSON:
Mr. McCormick had intended to provide independent testimony outside of the questioning.

MR. MCCORMICK:
I wanted to state on the record that I am here today on behalf of the Honorable Justice James W. Hardesty, Associate Justice, Nevada Supreme Court, who is a member of the Commission. Justice Hardesty wanted to put his support of the measure on the record.

SENATOR COPENING:
I will close the hearing on A.B. 355. I will open the hearing on A.B. 194.

ASSEMBLY BILL 194: Revises provisions relating to court interpreters for persons with a communications disability. (BDR 4-85)

ASSEMBLYMAN JAMES OHRENSCHALL (Assembly District No. 12):
I am here to present A.B. 194, which came out of a conversation I had with Ex-Speaker of the Assembly, Barbara Buckley. Assemblywoman Buckley and I were contacted by people in Washington, D.C., at the Civil Rights Division, Department of Justice who are concerned about Nevada law that could have been construed to conflict with the Americans with Disabilities Act (ADA). Assembly Bill 194 attempts to correct that potential conflict, and it also provides greater access to the courts for the hearing impaired in terms of their ability to have an interpreter.

In the Assembly hearing, we had quite a few witnesses. One gentleman who spoke to the issue is not able to be here today.

SENATOR COPENING:
Please tell us what that section does. Is there a charge that is happening now?

ASSEMBLYMAN OHRENSCHALL:
The potential for a charge is happening now. Most of the judges in the State did not try to assess a charge against someone who needed a hearing interpreter because they were aware of the federal law requiring that these hearing interpreter services be provided at no charge, and the fact that federal law is supreme over state law when there is a conflict under the U.S. Constitution supremacy clause. There was one justice of the peace who attempted to assess a hearing-impaired person for the cost. That is what got the U.S. Department of Justice people interested in this. They were hopeful we would correct this potential conflict rather than go to court.

SENATOR COPENING:
Are we budgeted for interpreters for these particular reasons, and who bears the costs when an interpreter is used?

ASSEMBLYMAN OHRENSCHALL:
It would be the court. I can pull up the fiscal notes, but most of them were very small amounts.

SENATOR COPENING:
I have them in front of me. In the future biennium, Carson City's costs will be $2,000, Churchill County's will be $20,000, and Eureka County's will be $1,500; they are relatively small.

ASSEMBLYMAN OHRENSCHALL:
In the Assembly Judiciary Committee hearing, there was testimony from Clark County and Washoe County that they are already providing this, so it may be a smaller burden to the smaller counties. It seems like the larger counties are already providing this and complying with the ADA.

SENATOR MCGINNESS:
What is the practice now for language interpreters? Are they charged to the witness?

ASSEMBLYMAN OHRENSCHALL:
I believe they are, but I am not 100 percent sure. I would defer to anyone here who could answer that question. I do not want to give you misinformation.

SENATOR BREEDEN:
When I worked for the school district in human resources and someone needed a language interpreter, the district bore the costs under ADA, and there was no charge to an applicant or employee.

SENATOR COPENING:
A communications disability could be anything from a physical disability such as a deaf person to a person who has trouble understanding the English language. Is that what falls into this category?

ASSEMBLYMAN OHRENSCHALL:
As I understand it, a communications disability would apply to the deaf, but there could be a broader definition, perhaps. I could defer to legal counsel on that.

BRYAN FERNLEY-GONZALEZ (Counsel):
I will look up the legal definition. The definition of a person with a communications disability is, "because a person is deaf or has a physical speaking impairment cannot readily understand or communicate in the English

language or cannot understand the proceedings." It sounds like it is a physical impairment, not necessarily an inability to understand the English language.

BETTY HAMMOND (Deaf Services Coordinator, Aging and Disability Services Division, Department of Health and Human Services):
I will read from my written testimony (Exhibit G).

SENATOR COPENING:
From your professional experience, is this an important bill for those who are dealing with communication difficulties?

MS. HAMMOND:
Yes. I do believe it is covered by the ADA, and as I said to Assemblyman Ohrenschall a few minutes ago, many people do not question the ADA when referring to a ramp for the disabled to enter a building. But the problem for many agencies with interpreting is that it is hard to budget. You do not know when a deaf person is going to show up. It is a disability-access issue, and it has to be covered.

SENATOR COPENING:
From the standpoint of somebody's ability to pay, I do not know if there are any statistics when dealing with impairment. Generally these demographics find people who are in more challenged financial situations and are unable to pay for these services.

MS. HAMMOND:
Prior to my position now, I worked as a vocational rehabilitation counselor. Because I am proficient in sign language, many people in my caseload were deaf. It is very difficult for employers to want to hire deaf people because if these employees attend meetings and do other things like that, the employees are obligated to provide interpreters. Deaf people face a lot of employment discrimination.

SENATOR MCGINNESS:
I am looking at this definition and—perhaps because of your background—a person with a communication disability means a person who is deaf or cannot readily understand or communicate in the English language. Does a person who does not speak English have a disability?

MS. HAMMOND:
No, that is not the case. Many people who are deaf from birth have difficulty grasping the English language. It is a difficult language to grasp even if you can hear, but being unable to hear or speak puts people behind the eight ball. The educational opportunities are not always what they could be for people who are deaf. It is very complicated. Often, but not always, sixth grade is the highest level of English a deaf person might achieve.

SENATOR MCGINNESS:
I do not have a problem with the part about the deaf, but it says, "or has a physical speaking impairment, cannot readily understand or communicate in the English language." So we are saying that anybody who cannot speak English has a disability?

MS. HAMMOND:
No. But there are people who may be unable to communicate. An example would be someone who is autistic and nonverbal but who can use sign language. Sign language is not English, and that is the sticking point. It is American Sign Language, and it has a different grammatical structure than English.

SENATOR COPENING:
For clarification so we do not get on the wrong track, this bill's intent does not deal with people who do not have a grasp of the English language, but rather it is in the Aging and Disability Services Division, Department of Health and Human Services, for those who truly have a disability, is that correct?

MR. FERNLEY-GONZALEZ:
Yes. The way the definition reads, it would be the inability to understand or communicate in English or understand the proceedings as a result of being deaf or having a physical impairment.

SENATOR BREEDEN:
Can you share with us the hourly rate interpreters charge? I know there are different levels of interpreters. Is the highest one a 4?

MS. HAMMOND:
The community interpreters are not graded on level 1, 2, 3 or 4; that is more in the educational arena. The interpreters who are appropriate for this setting are

usually certified by the Registry of Interpreters for the Deaf, which is a national professional organization for interpreters. There are legal interpreting certificates for people who have studied that. The rate ranges from $35 per hour, which is low for a court setting, to $75 per hour.

SENATOR COPENING:
I will close the hearing on A.B. 194. The meeting is adjourned at 9:35 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. 91	C	Ex-Senator Terry J. Care	Letter from Francis J. Mootz, III
A.B. 91	D	Chair Valerie Wiener	Letter from Michelle G. Carro, Ph.D., Nevada Psychological Association
A.B. 91	E	Robert W. Lueck	Written Testimony
A.B. 109	F	Ex-Senator Terry J. Care	Proposed amendment to A.B. 109 (R1)
A.B. 194	G	Betty Hammond	Written Testimony