

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

**Seventy-Seventh Session
February 8, 2013**

The Committee on Judiciary was called to order by Chairman Jason Frierson at 8:04 a.m. on Friday, February 8, 2013, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Jason Frierson, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Richard Carrillo
Assemblywoman Lesley E. Cohen
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Wesley Duncan
Assemblywoman Michele Fiore
Assemblyman Ira Hansen
Assemblyman Andrew Martin
Assemblywoman Ellen B. Spiegel
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Dianne Harvey, Committee Secretary
Gariety Pruitt, Committee Assistant

OTHERS PRESENT:

A.G. Burnett, Chair, State Gaming Control Board
Adriana G. Fralick, Senior Research Specialist, Administration Division,
State Gaming Control Board
Peter C. Bernhard, Chair, Nevada Gaming Commission
Chris Frey, Deputy Public Defender, Washoe County Public Defender
Steve Yeager, Attorney, Office of the Public Defender, Clark County
Kristin Erickson, Chief Deputy District Attorney, Washoe County District
Attorney

Chairman Frierson:

[The roll was called. Committee protocol and rules were explained.] We have two bills on the agenda for today: Assembly Bill 7 and Assembly Bill 10. The stakeholders in A.B. 7 have asked if we would allow them more time to vet the bill, so in the interest of moving forward with fully vetted pieces of legislation, we will do that. We will only look at A.B. 10 today. We will put A.B. 7 on the agenda when it is ready.

I am going to invite Chair A.G. Burnett of the State Gaming Control Board to come forward to give the Committee his presentation. I want to thank you for your patience and your willingness to talk with me in preparation of getting started with the session. It was very insightful.

A.G. Burnett, Chairman, State Gaming Control Board:

First, I would like to introduce Adriana Fralick. She is the senior research analyst with the Gaming Control Board and is also an attorney who is assisting me in shepherding all of our matters through the Legislature this session.

I am honored to appear today to give you an introduction and overview into the State Gaming Control Board and the Nevada Gaming Commission and our regulatory and statutory duties. In addition, I will discuss Assembly Bill 10, which addresses certain crimes involving gaming. We presented you with some slides ([Exhibit C](#)) that are an overview of the agency and revenue.

If I can direct your attention to slide 2, which is entitled Gaming Regulation in Nevada, you will see there is a two-tiered oversight system in Nevada. The first

body to regulate gaming is called the Gaming Control Board and its full-time duty is to investigate applicants and audit licensees. It makes licensing recommendations to the Nevada Gaming Commission in addition to enforcing gaming laws and collecting licensing fees and gaming taxes.

The Board is comprised of three people. I am the Chair of the Board. Also sitting on the Gaming Control Board with me is Board Member Shawn Reid and Board Member Terry Johnson. The Gaming Commission is comprised of five members. They are the final authority on gaming matters. The Commission is chaired by Peter Bernhard. Members of the Commission are John Moran, Tony Alamo, Joseph Brown, and former Senator Randolph Townsend.

The Gaming Control Board will conduct its day-to-day activities utilizing the offices that I will explain in a moment. I serve as the Chair of the Board and the Executive Director of the agency. We have a staff of over 400 people that conducts regulatory activities on a day-to-day basis. When there is an issue or a problem, the Board acts as the prosecutor and the Commission acts as the judge and the jury.

On slide 3, you will see a regulatory structure chart. As indicated by Chairman Frierson, A.B. 7, regarding the Gaming Policy Committee is being delayed so some matters may be worked out. That body is a statutory creature that is rarely used. However, last year Governor Sandoval elected to reactivate the Gaming Policy Committee in order to address some of the issues that we are dealing with today in the Internet gaming sphere. On this chart you also see the Gaming Control Board and the Nevada Gaming Commission. We have offices in Carson City, Elko, Las Vegas, Laughlin, and Reno. The Gaming Commission serves part-time. They are essentially laymen; they have other full-time occupations and duties. Their main office is located in Carson City and they have one half-time employee that assists in research matters.

Slide 4 is an overview of the Gaming Control Board's Mission. Our actual internal mission policy is much larger. In essence, our dictates are to govern Nevada's gaming industry through strict regulation of all persons, locations, practices, associations, and related activities. We protect the integrity and stability of the gaming industry, and we ensure the accurate and timely collection of gaming taxes and fees.

Slide 5 gives you an overview of our total full-time and part-time employee positions and where they are located throughout the state. Again, we have offices in Carson City, Elko, Las Vegas, Laughlin, and Reno for a total right now of 407.5 positions. The .5 is the person who serves on a half-time basis for the Gaming Commission. Listed among them are the three Gaming Control Board

members who are full-time, but excluded from that number are the five gaming commissioners.

As shown on slides 6 through 9, we have six divisions in the Gaming Control Board. I will just give you a brief overview of what they do. We have Executive Offices and an Administration Division that provides administrative and support services such as human resources and training to the entire Board staff. The Audit Division is made up of approximately 50 percent certified public accountants (CPAs), and they audit the records of Group I licensees for compliance with audit laws. Group I licensees are essentially your big licensees that bring in about \$5.9 million in gross gaming revenue per year.

On slide 7 you will see the Enforcement Division which conducts criminal and regulatory investigations; some of them covert. They handle disputes between patrons and licensees, gather intelligence on organized criminal groups, and they make recommendations for excluded persons. They are trained through the Peace Officers' Standards and Training (POST). The agents are all certified peace officers in Nevada.

Assemblywoman Spiegel:

Would you please clarify how many groups there are and what the differences are between the groups?

A.G. Burnett:

There are two groups. Group I licensees are your larger groups. They are about \$6 million and above in revenue. Group II is anything below that amount. Later on in the slides you will see that our Tax and License Division conducts the auditing for those matters. The Audit Division and Tax and License Division are spread throughout the state for auditing purposes.

Assemblywoman Spiegel:

Is that the difference between a restricted license and a nonrestricted license?

A.G. Burnett:

No, a nonrestricted licensee is one who has 16 or more gaming devices. A restricted location has 15 or fewer gaming devices. In addition, a nonrestricted licensee can have tables and other types of games such as baccarat. Think of it as those in Group I bring in the most money to the State in terms of gross revenue; those in Group II bring in the least amount. Restricteds are your small locations: convenience stores, bars, taverns.

Assemblywoman Spiegel:

So the restricted tend to be in Group II and the nonrestricted in Group I?

A.G. Burnett:

Absolutely. Slide 7 shows our Investigations Division. It is comprised of agents throughout the state who investigate applicants for findings of suitability. They investigate those who apply for restricted and nonrestricted gaming licenses. They are staffed in Las Vegas and in Carson City. They monitor, investigate, and analyze the company's and individual's activities after the licensing.

Slide 8 shows our Tax and License Division. They collect and deposit all gaming taxes, fees, penalties, interest, and fines. Again, they audit Group II licensees. They perform forecasts of gaming taxes. We also have an economic analysis section within that Division that conducts economic analysis for the Economic Forum and press releases, and monitors Indian gaming in Nevada.

On slide 9 is the Technology Division. That Division has a very streamlined process for review of what the independent test labs do in accordance with certification to Nevada standards on gaming devices, technology, and equipment. The Technology Division is staffed with extremely smart individuals who all have higher degrees in engineering and computer software; some are mathematicians. They review and make recommendations for approval based on results from the independent test labs. They perform random inspections of gaming devices and associated equipment and they monitor the technology trends that we are looking at now as a state and as a board. They provide forensic assistance to other divisions with investigations, criminal or otherwise, related to software or other forms of technology.

On slide 10, you will see Board Funding by Source. You will see that the column on the left indicates what amount the Board and Commission draw from their General Fund appropriations. In the middle is a category called other funds. The Gaming Control Board has been self-funded for years. We draw funds from investigative accounts when our agents are performing their investigative duties. If an applicant comes into Nevada and wishes to have some sort of approval, we bill that applicant for our investigative time. When our agents travel, and when our staff conducts research on that applicant, those are all hourly billable rates charged to the applicant. Postlicensure, many of the larger companies, most of which are Group I licensees, have revolving accounts with the Gaming Control Board that our agents utilize to draw from in order to conduct further investigations.

Unless there are any questions, I will move on to Revenues Collected in FY12 shown on slide 11. Our total revenues collected for fiscal year (FY) 2012 were

over \$850 million. We have broken down where those revenues came from. Nearly 90 percent of those revenues come from Clark County. The remainder of the revenues came from Washoe County, South Lake Tahoe, Elko, and the Carson Valley.

Chairman Frierson:

Mr. Burnett, I believe Mr. Hansen has a question.

Assemblyman Hansen:

My question is in regards to total revenues collected. What was the total gross gaming revenue for Nevada? Do you have that number?

A.G. Burnett:

I do not have that figure in front of me, but I can provide it to you if you like.

Assemblyman Hansen:

I would like to get that.

A.G. Burnett:

On slide 12 is listed the Collections by Category in Fiscal Year 12 and where those numbers came from. The percentage fees are the largest majority comprising over 75 percent with the remainder being collected in regards to the live entertainment tax, annual slot tax, and then we get into some other slot taxes for restricted and nonrestricted locations.

Some more financial figures are found on slide 13. You will see an interesting listing of gaming collections going from FY 2002 to FY 2012. We have broken them down so that you can see the total tax and fee collections. You can see the annual percentage fees in relation to that and the live entertainment tax and annual slot tax after that.

Slides 14 and 15 list some changes that the Gaming Control Board and the Gaming Commission have experienced over the years. Years ago we had smaller corporate ownership structures that were very simple. The only licensees that we encountered were in Nevada and national corporations. There were fundamental business transactions that the Board's various divisions looked at, analyzed, and approved. In Nevada you cannot share a stake in a gaming company without approval from the Gaming Commission. Slot machines and some table games were the only types of games that were out there. The slot machines were not that complex. Casino transactions were primarily tracked manually and gaming was conducted only within the casino. Nevada's only other competitor was Atlantic City at that time. Traditional gaming events were available at the casino locations only and we did not have

such things as mobile and Internet gaming. There was also limited pari-mutuel race wagering and that was conducted only from within Nevada.

On slide 15, you will see what we look at in today's world. We have experienced an influx of publicly traded and multinational companies that have come in for approvals. Much of that includes private equity transactions. Over the years we have seen complex mergers and acquisitions and unfortunately, starting in 2008, we had some restructurings because of the dire financial straits that some of the companies found themselves in. In addition, we had some bankruptcies that we had to understand and, in essence, bend our regulatory structure in order to accommodate them. We have seen complex securities and financing transactions as a result of those. Slot machines are essentially technology-based where we have multigames, multidenominational games, ticket-in ticket-out wagering accounts, and server-based gaming systems across properties. We now have computerized tracking of casino and patron transactions, and statewide linkage of gaming systems. Gaming has moved away from Atlantic City now and has spread not only throughout the United States, but throughout the world. As such, the regulators around the world have come to Nevada to visit and sit down with us. I am happy to report that Nevada remains the gold standard of gaming regulation in the world. Other regulators from around the world look to us for guidance. I currently sit on the International Association of Gaming Regulators Board of Trustees and am also the treasurer of that body.

Chairman Frierson:

I am curious as to whether or not the expansion of gaming throughout the country and the world is threatening Nevada's status. I appreciate that we are considered the gold standard, but with Indian gaming and other states and countries expanding, how does that affect our ability to flourish?

A.G. Burnett:

I believe you said the words "threatens our status." I am very confident that it does not threaten our status as far as being the gold standard in regulation. However, on a fiscal basis, the spread of gaming throughout the United States has certainly decreased the amount of revenues coming into Nevada. I think some of the impact was mostly felt in northern Nevada as the entities that operate in Reno and Lake Tahoe have struggled to maintain their competitive nature. Some of the Indian jurisdictions are located within a relatively close distance to northern Nevada. It is interesting to note that many of those that have helped the Indian casinos operate are Nevada casinos or other large operators. Las Vegas, in my opinion, will always be Las Vegas. I have traveled all around the world many different times and visited every major gaming jurisdiction in the world including Singapore and Macao. And while those

operations are very impressive, in my own humble opinion, there is no substitute for Las Vegas. We can certainly speak more on this topic if you wish, but when you look at jurisdictions such as those found in Asia, those regions are very highly populated, and culturally the people who live in those regions love to play baccarat; they love to gamble. In essence, if you open up a casino in some parts of that region of the world, you cannot lose. There are literally billions of people within a two-or-three hour flight radius from Macao, for example; whereas, within a two-or-three hour flight radius from Las Vegas, there are only tens of millions of people. In my own opinion, Las Vegas is irreplaceable. It is its own entity, and it always will be. Does that answer your question?

Chairman Frierson:

It does. Thank you, Mr. Burnett.

A.G. Burnett:

The only other item on slide 15 that I would like to focus on is the fact that we are now on the verge of legalizing Internet gaming. We have already legalized intrastate gaming within Nevada and you were an important part of that. And now in 2013, there has not been any federal clarity that we were all hoping for. There is a bill that you will hear this session regarding interstate gaming. Over the last four or five years, the Board and its staff have worked very diligently in understanding this new technology and this new industry. It is interesting to call it new because, in reality, Internet gaming is not new. It has been around for many years, and in other jurisdictions around the world it is something that is a comfortably regulated industry. In Nevada and in the United States, we are still calling it new and trying to understand it.

Chairman Frierson:

Are there any other general questions for Mr. Burnett?

Assemblyman Ohrenschall:

Mr. Burnett, last session we had a heated discussion in this Committee on a bill that dealt with the tickets that are abandoned. Do you have any information on how that is working in terms of revenue coming back to the State versus revenue being lost from your licensees?

A.G. Burnett:

Yes, that was the bill where tickets that were not collected would essentially escheat back to the State. We enacted some regulations in accordance with that bill and our Tax and License Division and our Audit Division went about regulating that. I can provide you with some facts and figures. I cannot speak to direct numbers, but I do believe that that process is up and running and it has

been successful. In terms of the amounts of dollars it has escheated back to the State, I would be happy to provide you with that information if you like.

Assemblyman Ohrenschall:

I was involved in gaming legislation with Assembly Bill No. 279 of the 76th Session that authorized independent testing labs. How has that been working? Have you seen independent testing labs come to Nevada? Have they brought the jobs they promised? What is happening with your lab and with those employees?

A.G. Burnett:

After the enactment of A.B. No. 279 of the 76th Session, we again crafted some regulations in order to find suitable independent testing labs and subsequently have some form of regulation of them after that suitability finding. We did that and we received two applications. One was from a company known as BMM International, LLC (BMM), and the other one was Gaming Laboratories International, LLC (G.L.I.). Gaming Laboratories International is much bigger than BMM. Both of them were found suitable to conduct independent testing certifications pursuant to our Nevada standards. I know both have located their offices to Las Vegas. I cannot speak to the direct number of employees they have, but we do have that number and I can get that for you if you like. Again BMM is small and I would guesstimate they have five to ten employees in Las Vegas and G.L.I. would be a bit more than that.

As you will recall, since the enactment of A.B. No. 279 of the 76th Session, product has to be submitted to the independent testing labs first before their initial certification process. After that process is complete, there is a certification back to the Nevada Gaming Control Board's Technology Division. We have streamlined our operations since A.B. No. 279 of the 76th Session within our Technology Division to where the certification process in our own lab takes about five days. After that, if all goes well in the process, the product can be deployed in the field for play. We did downsize the Technology Division after that, and some of those employees went to BMM and G.L.I. Others found employment within and outside of the industry. I can report to you today that the process is working; it is up and running. We do have facts and figures as to how long the process has taken on average with the independent testing labs; how much it has cost the industry; and how long it has taken within our lab to get to that five-day period.

Assemblyman Ohrenschall:

Do the independent testing labs that are testing under the supervision of the Technology Division have offices in Nevada?

A.G. Burnett:

Yes, that is correct.

Assemblyman Ohrenschall:

There is no independent testing lab that solely has a testing lab in another state or another country?

A.G. Burnett:

No. We have received some other applications from entities that wanted to come into Nevada; however, for business reasons or economic reasons they decided to opt out of that. Today there are only two of those labs in Nevada. To my knowledge neither of them have their headquarters in Nevada. I believe G.L.I. is located outside of Nevada on the east coast. I believe that BMM is an Australian-based company.

Assemblyman Ohrenschall:

How many employees do you currently have in the Technology Division?

A.G. Burnett:

We have 24 employees; 22 are located in Las Vegas and two in Reno.

Assemblywoman Dondero Loop:

Can you tell me where the kiosk gaming fits within these? I see a lot of listings of different things on slide 15, but I do not see that unless you are calling it something else.

A.G. Burnett:

Are you referring to the Changes for 2013 slide? Kiosks fit into what we call our associated equipment category. That is a category for gaming equipment that is not a gaming device such as a slot machine or a gaming table. It is a separate entity. Kiosks are currently found throughout the state and are used for a variety of purposes. They are essentially a new entity that the lab is working with. The operation of kiosks is conducted in some nonrestricted locations and in some restricted locations.

Assemblywoman Dondero Loop:

I understand they are an associated gaming piece, not an actual gaming device?

A.G. Burnett:

They do not meet the statutory requirements for a gaming device and, as such, are categorized as associated equipment which takes them into a different category. They do not have e-prongs or random number generators. They essentially facilitate the play of another type of game such as sports wagering.

Assemblywoman Dondero Loop:

This might be another bill we need to clean up.

Chairman Frierson:

I do not know that everyone is familiar with a kiosk. Would you please give a general summary of what kiosks are and how they are used?

A.G. Burnett:

Generally, they are just what the name implies: a small stand-alone box type of location or piece of equipment that a patron can access. You can insert your identification into it after you register with a casino for play. Those pieces of equipment can either be found in the sports book in a large casino or sometimes in a restricted location. You can conduct certain forms of sports wagering with that. You may enter the bet that you would like to place and, in some cases, you can see if you win or lose there and receive a ticket. You can then take that ticket to the sports book for your remuneration. They are an extension of a sports book right now.

Chairman Frierson:

Are those typically owned by the facility where they are located? Are these in restricted establishments as well as nonrestricted establishments?

A.G. Burnett:

Yes, and that was because of the initial determination that they are associated equipment. Some are found in restricted locations; the majority are found in nonrestricted locations. Some are owned by the large establishments and others are owned by separate stand-alone companies such as William Hill or the old Leroy's, and Cantor Gaming, for example. I know that name is familiar to you.

Assemblyman Hansen:

On A.B. No. 279 of the 76th Session, I actually voted against that because we were tired of all our jobs being shipped overseas. You mentioned BMM and G.L.I. Gaming Laboratories International (G.L.I.) is an east coast American company. You said that BMM is from Australia. Has there been a net loss or gain in the industry here in Nevada as far as jobs that are actually on the ground for Nevada citizens?

A.G. Burnett:

I believe the only jobs that were transferred or shifted were from the Technology Division itself. I do not know that the industry lost any jobs because of this. I would imagine that there were some jobs gained because of the office locations being set up and the operations that had to be conducted by

BMM and G.L.I. I can have our staff research what we know as far as a net loss or gain, but the independent test lab process, I believe, was inserted to help streamline things and to realize some efficiencies. As to whether that is the actual case, I am not sure.

Assemblyman Hansen:

I would also like to be included in the ticket-in, ticket-out financial information.

Chairman Frierson:

Are there any other questions for Mr. Burnett? I see none. Does that conclude your presentation before we get into the bill?

A.G. Burnett:

It does, Chairman.

Chairman Frierson:

I also want to welcome Ms. Fralick.

Adriana G. Fralick, Senior Research Specialist, Administration Division, State Gaming Control Board

Thank you, Mr. Chairman.

Chairman Frierson:

I see no additional questions. Mr. Burnett, again I appreciate your availability and your willingness to be available as a resource to answer questions. I am certain that we will be in contact, as will many members of the Committee, throughout this session as the need arises.

A.G. Burnett:

Thank you. I welcome any dialogue or questions that any of you may have.

Chairman Frierson:

At this time I am going to open the hearing on Assembly Bill 10.

Assembly Bill 10: Revises provisions relating to certain crimes involving gaming. (BDR 41-329)

A.G. Burnett, Chairman, State Gaming Control Board:

I agree that this is a fairly straightforward bill. I would essentially call this a cleanup bill as we are trying to clean up some of our criminal statutes regarding cheating devices and obtaining unlawful advantages in gaming play. I find these fairly simple changes, and I am happy to explain them in further detail. In summary, the first change is in regards to *Nevada Revised Statutes* (NRS)

465.075 which we have amended in order to clarify that it is unlawful for any person, either solely or in conjunction with others, to use or possess certain devices in order to essentially cheat in gaming. We have submitted some new additional language to NRS 465.075 that also brings into the criminal realm some cheating activities that may occur utilizing software, hardware, or a combination thereof that are offered by licensees or affiliates in regards to interactive gaming ([Exhibit D](#)).

Nevada Revised Statutes (NRS) 465.080 has also been amended in order to clean that language up to clarify that it is unlawful to possess any cheating devices, or to utilize cheating instruments that are intended to be used in gaming play.

There are two other simple clarification matters that are regarding legal tender. In other words, you cannot use counterfeit paper money in cheating activities. Would the Chairman like further comment or detail on those?

Chairman Frierson:

Would you go over the kinds of cheating devices or instruments that are typically found?

A.G. Burnett:

When you had the old slot style gaming, you had what we call light wand or optical wand usage which were wands that were fashioned to essentially fool the infrared computerized systems that recognized coins. We have shifted away from that and are now more in the technology world where we are worried about software being used or inserted into games. Still there are attempts to cheat utilizing fake gaming chips or somehow still fooling the game using equipment that we have made unlawful for many years. The intent here is to clarify that you cannot do that alone or in conjunction with others. One of the reasons we wanted to clarify that was specifically in regards to the definition of "advantage" that you see being stricken from that paragraph or from that section in NRS 465.075. We found that language was initially meant to clarify what we were trying to capture, but it made it too vague. We wanted to make sure that it now captures the possession and use of those types of devices.

Assemblywoman Spiegel:

If someone has a strategy, either on their smartphone or on a piece of paper, is that considered illegal?

A.G. Burnett:

That is not considered illegal. However, what we wanted to do is to clarify the fact that those types of things outside of that realm cannot be used to gain unlawful advantage. As long as everyone has access to the same type of advantage, that is fine. If not, we want to tighten that down a bit.

Assemblyman Ohrenschall:

Did a particular case or prosecution lead to this amendment to the NRS? If so, would you tell us about that?

A.G. Burnett:

A particular case did lead to this. I believe it was in Clark County and I can get you the citation for that and some more detail on the name of the case and the facts surrounding that case. Essentially the judge found that while the language was still constitutional, and I am speaking specifically to the term "advantage" that we had in NRS 465.075, he indicated that the language might be a little too vague. Immediately after that we decided that we wanted to clarify the statute in accordance with the judge's discussion in that matter.

Assemblyman Ohrenschall:

I would definitely like any facts or citations that you could provide to the Committee. We have gone over a couple of scenarios when we were reading this bill. Let us say that someone has counterfeit chips they keep at home in a safe as a novelty to show off to their friends and they have had them there for five or ten years. The friends call the Gaming Control Board and say that John Smith has a big stockpile of counterfeit chips he keeps in a safe at his house. Do you envision John Smith being prosecuted under this statute? He does not go into the casino, but he does keep them at his home and in his possession.

A.G. Burnett:

That is a very good question. I will direct your attention to the amendments in NRS 465.080 that we intend to make. Again, those make possession or use of such items illegal; however, we are clarifying that in section 2, subsection 1, paragraph(a) where it reads "Possess, sell, or manufacture counterfeit chips, counterfeit debit instruments or other counterfeit wagering instruments that are intended to be used in a gambling game. . . ." If the person has the intent to use those, then they may find themselves running afoul of this statute.

Assemblyman Ohrenschall:

You would have to prove that they were not just keeping them as a novelty, but there was some intent to go into one of your licensee's properties and use them. That answers all of my questions.

Assemblywoman Fiore:

Can you give me an example of what a cheating tool is?

A.G. Burnett:

I will use the light wand device as an example. There are several different types of games on the gaming floor. In reality, people who cheat on gaming devices or cheat on a gaming floor come up with such a wide variety of ways to do so. To clarify the light wand example, a slot machine would have an infrared light inside that would essentially understand when a coin was dropped and passing through that light indicating that it was a quarter, a dime, a nickel, a penny, or what have you. The light wand users were able to insert a fiber optic wand or light in order to confuse that infrared indicator into thinking that a coin, or coins, was being passed through. This is a very simple example and I know our enforcement team would be happy to share some more interesting and complex examples with you. A cheater could utilize that light wand by sticking it in his or her arm sleeve. Eye-in-the-sky cameras may not be able to detect that but all of a sudden the slot machine has credits being popped on it and the person could play that machine.

There are other methods. Some are known to the public and some are not. Another known method that occurred years ago was a person who was cheating who was actually an ex-employee of the Gaming Control Board. That individual was prosecuted and sent to prison. He was able to insert a software gaff into the slot machine and then dictate when that slot machine would award a prize or credits. He would then have his accomplices go out onto the floor at certain times and make those wins. We constantly have to stay up to date and our technology and enforcement staff is constantly working with staff at the casinos as well to understand new areas of cheating and new methods of cheating. They are so variable it would take hours to discuss all those with you.

Chairman Frierson:

Mr. Burnett, it is certainly more complicated than the old coin with the string on it that I think a lot of people imagine.

A.G. Burnett

Those were the old days. Now the slot technology has progressed to these technology-based, software-based cheating implementations. We have had to accommodate that.

Chairman Frierson:

How frequently do people get arrested or convicted for this particular offense?

A.G. Burnett:

I do not know the numbers offhand, but I receive them on a weekly basis. There are more than you may imagine.

I failed to note, Mr. Chairman, that the Chair of the Gaming Commission is in Las Vegas right now waiting to testify. Chair Peter Bernhard is a mentor to me and someone I look to for advice and guidance. This week has been hard on him as the Board and Commission have had to testify to our budgets and, now today, to our first bill. He is an attorney in Las Vegas and he has been conducting depositions all week. I am sure that he would be happy to answer any questions regarding the Commission that you may have.

Chairman Frierson:

Thank you for pointing that out. Chair Bernhard, if you have anything to add before we go on, I would certainly welcome that as part of some introductory comments.

Peter C. Bernhard, Chair, Nevada Gaming Commission:

I am here primarily to respond and provide moral support for Chair Burnett. I think you can understand the wisdom of the Governor in selecting A.G. Burnett to be the Chair of the Gaming Control Board and to be the face for Nevada regulatory leadership. He is a remarkable person and has done a remarkable job in the short time that he has been the Chair. I think he would be the first to give credit to Ms. Fralick and the rest of our staff for preparing him and board members, as well as the commissioners, to stay on top of issues that are so incredibly significant for the biggest industry in our state. I would be happy to go through any other questions about the Commission and how it functions. I am very proud to be able to serve Nevada and to serve with people of the caliber of Chair Burnett and others who have gone before him in that position.

Chairman Frierson:

If you have any general comments about the overview, I would welcome that at this time.

Peter Bernard:

I would like to supplement a little bit of what Chair Burnett has already told you. In our regulatory structure we of course have our primary duty to protect the interest of the public, and the interest of the state of Nevada, but we also have a duty to provide flexibility to the entrepreneurs in the industry who are very creative in so many different ways. We want to give them a framework that gives them limits on what they can or cannot do, but also lets them operate within those limits the way creative business people do in order to make the

Nevada casino market much more attractive to people from other jurisdictions. I appreciate the Chairman deferring A.B. 7 while a few things are worked out. I think it is indicative, and you will hear more when that bill comes before you, of the incredible sophistication of the gaming industry and the requirement that people in our industry be educated in the latest technology, accounting standards, and the sophistication involving the ingenuity of criminal minds as you see in A.B. 10. We have seen an incredible increase in the quality and caliber of the executive level management teams and even line level employees in our casinos. I think that is a credit to the Legislature for setting up the structure to the regulatory system which allows entrepreneurs to be flexible and creative. It also is part of adding legitimacy to the gaming industry throughout the world. I think a lot of the work that has been done in this state over the last 50 years in gaming regulation is something we can look back on with pride.

The only other comment that I would make is with respect to the sophistication of the criminal element out there and how important it is that our regulatory staff stay ahead, or try to stay ahead, of the criminals. In prior days, most of you are familiar with what was known colloquially as the Nevada black book. That is actually a list of excluded persons that used to contain people who were from organized crime or other backgrounds in which money was being taken out the back door. The State was harmed because that type of money was never taxed and, of course, it was used to support other illegal activities of those organizations. In recent years, almost all those who have come to our attention to be placed on that list of excluded persons have been slot cheats. They do use a variety of very sophisticated devices. There is a lot of coordinating work with accomplices where machines can be gaffed in order to provide a greater return, or even more credits, as Chair Burnett said. We find that with the technology becoming so dominant in the industry, there may be a greater risk of the State losing revenue, and criminal elements taking advantage of the system through manipulating the electronics in a back room, as opposed to what we used to know about the organized crime elements who would use tactics of intimidation and that kind of thing. Frankly, you can take a lot more money from a casino from tampering with the electronic accounting systems than even was done back in the old days when we had skimming issues that came before us as regulators. Both the sophistication of the industry and the education required to be successful business people in that industry is remarkable to me.

One other example is that there is an anecdote throughout the industry that Jackie Gaughan, who is one of the icons in Nevada gaming, could walk on the casino floor with a little piece of paper and a pencil and make notes and know exactly what returns his machines were giving to him, and know exactly what was going on at the tables. I know that Mr. Gaughan is very well respected and very intelligent, but I submit today that that kind of system just will not work.

All of the other sophisticated technology aspects of providing accounting and credibility has been implemented through the guidance of this Legislature so that our licensees have a valuable license. They know that any improper reporting on the management side is going to affect the license which is much more valuable than the minimal amount of money that can be taken out from there.

Again, we are very appreciative of all that you do and what the Legislatures have done in the past. We think it gives us the tools to be effective in carrying out our responsibilities. Thank you for your time.

Chairman Frierson:

I believe Mrs. Diaz has a question.

Assemblywoman Diaz:

Thank you for shedding light on this subject. Something that piqued my interest was the counterfeit money. How prevalent is this issue? How often are we seeing people using counterfeit money to make wagers and gamble at tables? Also, how much money are we potentially losing because criminals are giving us counterfeit money and we are giving real money out?

A.G. Burnett:

Yes, there has been counterfeit money used in casinos. There have been times where that money has been detected and, in some cases, found to have been coming in from foreign countries and from counterfeiters that do such a good job. There was an incident called "super notes" that came through Las Vegas a few years back which were \$100 bills that were so hard to detect it was absolutely amazing. I believe that the information promulgated at that time was that they were manufactured by a foreign country. Both the Gaming Control Board and the casinos that operate the gaming floors are constantly working at detecting counterfeit notes. The first line of defense is at the casino cage.

Over the last decade or so, the casinos themselves have been subject to federal and state requirements in regard to that very topic. Some of them are required by an organization called Financial Crimes Enforcement Network (FinCen) which is a federal group. There are other requirements that come from the Internal Revenue Service's Criminal Enforcement Division. The Gaming Control Board has excellent relationships with those two federal agencies in working through these issues. The casinos are subject to very strict reporting standards. As we sit here in 2013, I cannot speak to what we do not know; however, I can speak to our attempts to work with those agencies and the casinos' attempts to work with us. It is my opinion that we are all working together in a very favorable fashion to detect these types of instances.

I do want to highlight one thing that the Commission does that I am not sure was highlighted enough in my presentation. The Commission enacts the regulations to which Nevada licensees are subject. Over the last two years, after the guidance came from the Legislature regarding independent testing labs and interactive gaming, the Commission has been very active with the advice and recommendation of the Board in enacting new regulations. I would like to report to the Legislature that the regulations regarding independent testing labs and interactive gaming are up and running now. I believe they can accommodate whatever may come in the next session.

Chairman Frierson:

When I recently read the bill, I noticed it is silent on penalty. Does that mean it is a misdemeanor? Are you familiar with the penalty for violation of this bill?

A.G. Burnett:

The overall penalty can be found in NRS Chapter 465. There are various penalties; they are found in NRS 465.088. That statute indicates a person who violates any of the provisions found in NRS Chapter 465 is guilty of a category B felony and can be punished for the first offense either by imprisonment or fine and, for the second offense, by imprisonment and a fine that is of a substantially higher nature.

Chairman Frierson:

It looks as though that is nonprobationary.

A.G. Burnett:

I am not sure how the criminal laws would work, but if you look at NRS 465.088, subsection 1, paragraph (b), there is a sentence that indicates that the court shall not suspend a sentence of imprisonment proposed pursuant to that paragraph or grant probation to the person convicted. But I believe under paragraph (a) there might be the potential for probation.

Chairman Frierson:

In short, it appears that the first offense might be probationary and for a second or subsequent, it would be nonprobationary.

A.G. Burnett:

That is correct.

Assemblywoman Cohen:

How is intent proven in this statute?

A.G. Burnett:

That is a very good question. We would have to have the case referred to the District Attorney's Office. They would accept it and then prosecute it just like any other criminal case. They would ascertain intent based on evidentiary standards according to the rules of the court. It would be something that is conducted in the trial.

Assemblywoman Cohen:

Have there been any examples of prosecutions as it already stands?

A.G. Burnett:

There have been over the years. The statute, prior to the amendments that we are requesting, have been up and running for several years. I can have our staff review some of the cases we have sent over to the District Attorney's Office for prosecution if you would like.

Assemblywoman Cohen:

Thank you, I would appreciate that.

Assemblyman Duncan:

Can you tell us again why the "advantage" language was stricken from the statute?

A.G. Burnett:

Last legislative session there was an intent to put that language in. I believe that it was an intent to clarify the statute. However, in its application over the last two years, we essentially came to the conclusion that it made it more vague than it needed to be. That is why we want to strike that and replace it with the current language that you see. Again, there was a court case in regards to that and I can provide the Committee with the name of that case and some of the materials we have. It is my understanding that the judge in that case indicated to us that while the language was constitutional as it stood, it was a little bit vague. We want to reduce any uncertainty or vagaries in our statute.

Assemblywoman Fiore:

How are the markers determined as a cash value?

A.G. Burnett:

Generally speaking, markers are considered negotiable instruments. We audit the markers and the collection of the markers. In some cases there are settlements in regards to the markers and our Audit Division will audit the settlements to make sure the tax reporting structure is being complied with.

Markers are used throughout all of the large casinos and are a very essential tool for gaming utilized by high-level players.

Assemblywoman Fiore:

If a high level player has a marker and does not pay back his debt, how do you prosecute him saying that it is a cash value when that marker is only good in the issuing casino?

A.G. Burnett:

It is a type of negotiable instrument that constitutes a contract between the casino and the patron. It is not something that the Gaming Control Board enforces. If there is a dispute over the marker, it is a contractual dispute between the patron and the casino itself. The casino requests the District Attorney's Office enforce that debt instrument. We audit the accounting functions in regards to the collection of monies related to markers. If the casino and the patron reach a settlement as far as a dispute regarding that marker, we look at the paperwork and information regarding that and ensure that the settlement of the marker is conducted in accordance with our regulations. We have several standards within our regulations for settlements of markers.

Chairman Frierson:

Are there any other questions?

Assemblyman Martin:

In reading this in terms of cheating, I would like to gain your perspective on the concept of card counting. My understanding of card counting is that it is not illegal. I am wondering if A.B. 10 is an effort to move toward that direction to expressly make it illegal. Your Commission has recommended the changes to the games themselves: multiple decks, auto-shufflers, and whatnot. I am talking about an individual playing the game by himself using their brain as a device in this case. Can you clarify the Commission's position on card counting the way I have described it and whether or not A.B. 10 is an eventual reach to try to make that illegal?

A.G. Burnett:

I will ask Chair Bernhard to speak to that question on the Commission's behalf if he so desires. You are entirely correct; card counting is something that is actually legal in Nevada casinos; however, casinos have the right to throw out a patron for card counting. We still stand by that prospect. That is something that has been litigated over the years, and in my view, this is not an attempt to ban card counters. However, the casino's ability to refuse to allow a card

counter access to their premises is entirely within their realm of discretion. I still support that.

Assemblyman Ohrenschall:

My concerns are also regarding trying to prove intent. For instance, you have a science student who is a computer whiz who writes some source code. He shows his friend and informs his friend that he could get a machine to follow his commands, yet he never goes into a casino. Is this student subject to prosecution under this bill?

A.G. Burnett:

In my opinion, if those facts can be proven under NRS 465.080, section 3, that would be a prosecutable offense.

Assemblyman Ohrenschall:

This would be an offense even though he is not in a casino and has not taken any positive step towards completing the crime?

A.G. Burnett:

Yes, in my view those types of steps in and of themselves are quite dangerous to the operations on the casino floors.

Assemblyman Ohrenschall:

If a casino employee is charged with a cheating crime and they take it to trial and win the case, will they be allowed to continue working in the gaming industry in Nevada?

A.G. Burnett:

I have not heard that; however, individuals who work in a casino oftentimes have to be registered as key employees. We do have some regulatory abilities in regards to key employees. Of course, people who work at a higher level have to be licensed and found suitable. Their backgrounds are vetted. If they have any criminal prosecutions, or if they have felony arrests, detentions, or misdemeanors on their records, those things are looked at by our Enforcement Division. I do not know if there is any specific intent to exclude someone who has had an instance such as that in their background. However, we do try to vet the key employees in the casinos.

Assemblyman Ohrenschall:

Under the Board's regulations, is it possible that a prosecution that did not lead to a conviction could preclude someone from being a key employee in the casino industry?

A.G. Burnett:

When you work on a casino floor, or if you have any involvement in gaming at a casino, you have to register as a key employee. Our Enforcement Division initially vets that registration and looks at that person's background. The Enforcement Division has an opportunity to object to the employment of that person. After that, the person can appeal and that goes to a hearing officer. We have two hearing officers; one in Carson City and one in Las Vegas. They each act as an independent judge and jury of that application. If the employee is not satisfied with that result, in other words, if they are denied employment, they can appeal to the full Gaming Control Board where the Board conducts a hearing and reviews all the records, testimony, and evidence related to that objection. We then rule in public as to whether that person should be allowed to be employed in the casino or not. In certain instances, from there the appeal can go to the Gaming Commission. There is a lengthy process. In my own experience being a Board member and Chairman of the Board for three years now, I have not seen someone objected to solely because they were arrested for something like that. I have seen people objected to because they have been convicted for those types of crimes and other crimes such as possession of drugs or even murder.

Chairman Frierson:

I wanted to point out in Mr. Ohrenschall's example that the whiz kid under this bill, would also have had to have been an employee. It looks to me as if the changes are primarily in section 2 that deal with a licensee, employee, or other person. "Other person" would have to be a member of the public.

A.G. Burnett:

"Or other person" would be a person that is not a duly authorized employee of the licensee acting in furtherance of his or her employment.

Assemblywoman Diaz:

I want to make sure that we keep this in the content and perspective that was intended. I recently toured the City Center casinos. I was impressed by how well they monitor their gaming activity on the floors with their security cameras. What I learned from that experience was that they have people who focus on the people that are interesting or people they recognize. I do not think that this bill will make everyone a suspect with the intent to cheat. I think it is more of a tool to help casinos tighten this area when their security people home in on some suspicious activity. If they go up to that person and find something to this effect, then they will be able to move forward with the legal consequences that this person might face. With reference to the whiz kid, I do not think that we have the resources to go and make searches at random. Can you verify and add to that?

A.G. Burnett:

I do agree with you now that I know that you visited what we call the "eyes in the sky" that are located in properties throughout the state and indeed around the world. I, too, have been in those boxes and have been surprised and absolutely amazed at what they can do and how they are able to monitor the play on the gaming floor. In addition to your comments, I will add that there is also facial recognition software to recognize people. For example, in our black book post-9/11, a lot of the care and attention has been devoted to antiterrorist efforts which is very impressive to me.

Chairman Frierson:

Are there any other questions? [There were none.] Again, thank you for your presentation on this bill and making yourself available. Mr. Burnett, I would appreciate it if you would remain available for any clarification.

Is there anyone in Carson City to testify in favor of A.B. 10? I see none. Is there anyone in Las Vegas to testify in favor of A.B. 10? I see none. I will come back to Carson City for those in opposition to A.B. 10.

Chris Frey, Deputy Public Defender, Washoe County Public Defender:

As A.B. 10 is currently written, we do oppose the bill. I am here to address specifically the revisions made in section 1 regarding the language "either solely or in conjunction with others," as well as the elimination of the definition of "advantage." With respect to the language "either solely or in conjunction with others," this is language that duplicates criminal liability under our conspiracy laws found in NRS 199.480 as well as aiding and abetting, or principal liability in NRS 195.020. Both the conspiracy laws and the aiding and abetting laws already adequately criminalize this same sort of concerted action so it seems duplicative in our view. We would oppose inclusion of that language for that reason.

Regarding the elimination of the definition of the word "advantage," I did hear Chair Burnett mention a Clark County case in which this was actually litigated. I think that the notable outcome of that case is that there was a constitutional challenge levied against the language and the language actually survived scrutiny against the vagueness challenge. So I would respectfully submit that in order to cure vagueness, you do not take specificity out of this statute, you actually leave it in. That is my opposition with respect to the elimination of the definition of "advantage."

I know there were a lot of other questions that did surface during Chair Burnett's testimony which were hypothetical in nature. My colleague from Clark County, Steve Yeager, is going to address section 2, and I think

those hypotheticals touch on the revisions in section 2. He is here and is prepared to testify with respect to some of the hypotheticals from Assemblyman Ohrenschall specifically. If there are no specific questions for me, that is the entirety of my remarks.

Chairman Frierson:

Mr. Frey, you mentioned the conspiracy in aiding and abetting. If I correctly understand your testimony, you believe the behavior contained in section 1 would already be covered under a conspiracy theory or aiding and abetting under other statutes. What would the penalty be under those other two theories?

Chris Frey:

It would be a substantial departure from a Category B felony, one- to five-year penalty. For conspiracy, it would be a gross misdemeanor. There is a difference in exposure for the individual who suffered one of these prosecutions. With respect to the aiding and abetting, the person aiding and abetting would be liable to the same extent as the person who actually commits the offense. So the criminal liability would not change; it would still be Category B, one to five. Depending on how the prosecutor wants to proceed with one of these cases, he could charge it as a gross misdemeanor, or he could charge it as a Category B, one to five, depending on whether or not he would want to pursue aiding and abetting liability or conspiracy liability. We favor that because it actually does increase prosecutorial discretion in these cases. These cases are not always cut from the same cloth so we would favor giving the prosecutor some more tools when proceeding with one of these cases.

Chairman Frierson:

With respect to the conspiracy theory, the scenario that comes to mind is having a mastermind who comes up with a plan to cheat and sends in a lesser actor to actually do it. Under that theory, it seems as though the mastermind would be subjected to the gross misdemeanor penalty under the conspiracy theory, but the pawn would be subjected to the greater penalty. I hope that I am understanding your position on this.

Chris Frey:

My position would be that the prosecutor in that case, provided that the gross misdemeanor is still available to him, meaning a conspiracy type of theory and an aiding and abetting type of theory, could choose to pursue both the principal and the agent on the same aiding and abetting theory and reach them both and expose both to felony liability. Again, if the prosecutor thought that this pawn in your hypothetical scenario was really and truly without fault, that perhaps this person was coerced into action, then the prosecutor could actually

prosecute that person arguably for a gross misdemeanor while prosecuting the principal for the felony. With different levels of fault, if the prosecutor has these two theories available to him or her, then they can use discretion as to where the fault should really lie. That is why we favor existing law as opposed to the revision in subsection 1.

Assemblyman Wheeler:

I would like clarification. You pointed out the duplicity of the language in section 1 that reads "either solely or in conjunction with others." Would the addition of that language not shore it up and make it clearer for the courts, especially in the appeals process if the language is similar?

Chris Frey:

I understand, and my position is that this is really declaratory of liability that already exists and that the courts are very well aware as to what aiding and abetting and conspiracy really do mean. These are laws that have been on the books for quite some time. So even though it does make a refinement and perhaps a clarification, I do not think it really makes an improvement on the law. When these cases get litigated, the prosecutor typically charges theories and the alternative. The courts are very well aware the aiding and abetting theory is one thing and a conspiracy theory is another. If nothing else, this language would run the risk of inducing a prosecutor to prosecute solely under this statute and steer them away from the discretion that I think is important in these cases. That is really the basis of my objection to the revision in subsection 1. Hopefully, I clarified that for you.

Chairman Frierson:

Are there other questions?

Steve Yeager, Attorney, Office of the Public Defender, Clark County:

I want to echo my agreement with Mr. Frey's comments. Before I move on to section 2, I do want to add a couple of comments on section 1 for the Committee. In response to Assemblyman Wheeler's question, I think there is a potential danger here because in section 1 we are adding the word "conjunction." That word is not defined anywhere in the statute so I think we could be in a situation where there is a legal challenge to what that phrase itself means. In contrast, under the aiding and abetting statute which Mr. Frey talked about which was NRS 195.020, it very specifically defines what is aiding and abetting and it is very broad. If I could just read a portion of that for the Committee. It says that if you aid or abet whether you are present or absent; every person who directly, or indirectly, counsels, encourages, hires, commands, induces or otherwise procures another to commit a crime is essentially liable for the crime itself. That is a very broad statute that I think

would cover any sort of scenario that we can think of under section 1. That statute itself has been litigated and has been held constitutional, whereas this new language could be subject to constitutional scrutiny were a prosecution to commence under that language. Other than that, I would agree with Mr. Frey's comments.

With respect to section 2, I have some concerns. I think some of the examples that were asked by the Committee members were very pertinent. The main problem with section 2 is the way that it is written. There is not necessarily a knowledge element there. For example, if you look at subsection 1, paragraph (a), they are adding possession of counterfeit chips or other instruments that are intended to be used; it is not knowing possession. I read that statute to mean if I had counterfeit chips on my person and I am in a casino, and I did not know that they were counterfeit, as long as I am intending to use them, I could be subject to prosecution under that statute. My concern here is that this could lead to prosecution of what is essentially innocent conduct. There are a number of examples you can think of where somebody might obtain chips and not know that they are counterfeit. The same would apply to paragraph (b), which would be the actual use of the counterfeit chips without the element that it is a knowing use or knowing that the chips are counterfeit. I think this subjects some of our citizens to unjust prosecutions, and I was somewhat concerned with Mr. Ohrenschall's question when he asked about the whiz kid. I think that example shines the light on this that I think, in theory, that kind of conduct could be reached under this statute. Assemblywoman Diaz made a good point. Maybe they are never going to find that person, and they are not out there looking for that person, but certainly if that situation was to occur I think the prosecution could occur under the statute where someone never even sets foot inside of a casino. Our concern as an office is that we want to make sure that if these prosecutions are going to commence, that they are actually going after the people who are knowingly doing this and are knowingly in possession of counterfeit devices. With that I would open it up to any questions from the Chairman or other members of the Committee.

Assemblywoman Cohen:

Does the intent language protect a person who unknowingly has something in their pocket and does not realize what it could be used for?

Steve Yeager:

I still have concerns about that. The way I read that statute is that the intent is just the intent to use the counterfeit chip. I understand that to mean if I should have a counterfeit chip in my pocket or a counterfeit \$100 bill and I do not know that it is counterfeit, as long as I am intending to use that chip or that bill

in a machine, I think my conduct would be covered by this because it does not require that I have the knowledge that it is actually counterfeit. I think the intent here is limited to the intent to use it, which we have contrasted with the earlier example where someone has counterfeit chips in their vault at their home. There really is no evidence that they are intending to use them in a casino. I think that if we took that person and put them inside a casino and changed the facts where they did not know they were counterfeit, but they have the intent to use them, that could potentially be criminal conduct under this statute.

Chairman Frierson:

Would adding the word "knowingly" address the concern that you mentioned about someone inadvertently possessing?

Steve Yeager:

Mr. Chairman, thank you. Yes, I think that adding the word "knowingly" would protect innocent people, and I would certainly be happy with that addition to subsection 1. With that addition, I would withdraw any objection to the language.

Chairman Frierson:

Do we have any other questions for Mr. Frey or Mr. Yeager?

Assemblywoman Diaz:

In section 2, subsection 2, where it reads "or intended to be used," how could we add additional safeguards or protection for somebody who received the chip from another person without knowing it was counterfeit? Is there any additional language we could put there?

Steve Yeager:

I do think the suggestion by Chairman Frierson to make it "knowingly," they would actually have to know that it is counterfeit. That is a good example. If someone gets a \$5 token for serving a drink and it happens to be counterfeit and they intend to use it, they would not be prosecuted if we added the element that it be "knowing possession of a counterfeit chip." I think that would do the trick because it would make sure that we protect somebody who in this scenario had no idea that the money or the chip was counterfeit.

Chairman Frierson:

I will point out that in other sections of this chapter, "knowingly" is used, which is why I asked the question. I believe it is in section 3 of the bill.

Assemblyman Hansen:

Is criminal intent not something that prosecutors always have to prove? I know there is a strict liability concept you are going on. Does a prosecutor have to show an element of intent even though this does not say "knowingly"? Would it not be the duty of the prosecutor to prove intent?

Steve Yeager:

You are correct in that intent is typically an element of a criminal offense, but what we have in the statute itself will tell you what the intent is, whether it is knowing or willful, or just merely unlawful intent. There are criminal statutes that are strict liability and that is the danger here. Without an intent specified, I think a court could look at this statute and say this is a strict liability statute so the prosecutor is not required here to prove criminal intent. I agree that might be a far-fetched scenario, but I would not be surprised to have a judge read that and say that because there is no intent specified, we are going to construe it as a strict liability crime. I think that the more important thing to do here is to add in specifically what that intent may be so that the court would not have the leeway to construe otherwise.

Assemblywoman Diaz:

What would make the difference in court proceedings in treating these two scenarios: a person who was given this counterfeit chip or money and they use it to gamble versus somebody who has it knowingly and then they claim they did not know it was counterfeit?

Steve Yeager:

That is a good question. Knowing is something that the prosecutor would have to prove in a prosecution. In a case where someone was actually innocently in possession of this, they would have the right in a prosecution to testify about how they came about to have that chip and where they got it. In a prosecution where you have a scenario like you are talking about where somebody has a briefcase full of these chips, I think that in and of itself could be evidence of knowing possession because it is very different if someone has one chip versus a whole briefcase full of them. I think a judge or a jury can always infer knowledge based on the facts of the case and based on the circumstances of the case. I think in those situations if you had a defendant who really did not know that the chips were counterfeit, they would be willing to explain where they got them. This is a general answer, but it would depend on the facts and circumstances. I feel confident that if someone really was innocent and did not know that this was counterfeit, they would be able to establish that through evidence or through inferences from the evidence.

Assemblyman Hansen:

My question is actually for Legal. Does the strict liability concept in criminal law have to be specified in the statute that it is a strict liability statute? Or in criminal law, is the intent automatically assumed to be part of the prosecutor's responsibility to prove?

Brad Wilkinson, Committee Counsel:

I think Mr. Yeager was getting to that point. Most crimes will have a specific intent element whether that is knowingly or willfully, whatever it might be. If a statute does not have that, then it may well be a strict liability crime. I think what he is pointing out here is this statute does not have a specific intent element or state of mind that has to be proved.

Assemblyman Hansen:

In other words, we do have to define it as knowingly, otherwise it could be interpreted as a strict liability statute and you could get prosecuted for unintentional possession of a device. Am I understanding that correctly?

Brad Wilkinson:

I would say that in the absence of a specific state of mind requirement, I do not think that the prosecutor would have to prove any particular intent. I think what the Chairman was referring to earlier, for example, in this same statute page 3, line 7, subsection 3 of section 2 of the bill, there is a specific intent knowingly used as set forth there. If used in the same statute, that will even further demonstrate that the Legislature knows how to use the state of mind of knowingly in the statute, whereas it is not used earlier in the very same statute.

Assemblyman Hansen:

The reason I wanted to bring this up is that we have criminal statutes that come up before this Committee. That is something that we will have to address every time then since it is not something that is automatically assumed. We have to make sure it is either strict liability or it is not. Is that correct? I had a false understanding. Thank you for the clarification.

Assemblyman Duncan:

You have mentioned that you have some reservation about the "advantage" definition being taken out of the statute. I was curious if you have any recommendations for the Committee about what the definition of "advantage" might be, or if you think the language should remain as is. I would like to hear your thoughts on this or Mr. Frey's as well.

Chris Frey:

That was originally my concern. I do not have any draft language that comes to mind at this point. I could submit some for your consideration, but it sounds like this is a very recent revision. I believe it came out of last session and I would have to look at the language and perhaps review the legislative history to obtain what was the intent with that language. It looks like it has "advantage" defined in terms of informational advantage. I think that that is an improvement over just leaving "advantage" undefined. I think this statute as it exists is probably better than refining it along the lines proposed by Chair Burnett. If you would like for me to submit some language and perhaps try to flush out that definition and improve upon what is already there, I can certainly do that. I believe, as it stands, it is probably a more specific statute that would survive constitutional scrutiny as opposed to omitting the language, in which case I think it becomes deficient, or at least subject to challenge.

Assemblyman Duncan:

For purposes of the actual court case in question, is this a district court case that we are dealing with?

Chris Frey:

I gathered from the testimony that it was a Clark County District Court case. It does not sound as though it is on appeal. I can get with Chairman Burnett and try to find that case and do some research on it.

Assemblyman Duncan:

The statute itself has met constitutional muster. I am curious as to whether the "advantage" language specifically mentioned in there was something that was ambiguous at the time.

Chris Frey:

Again, I would have to research that particular case. There is most likely a written order by the judge. It sounds like the judge had some reservations about the language, but it was not deficient to the extent that it would be rendered unconstitutional. I will take a look at that and I can certainly get some materials to you.

Chairman Frierson:

My question is more on protocol. Have either of you spoken with Chair Burnett about your concerns? If not, as a professional courtesy and, as an issue of legislative efficiency, it is always good to try to speak with the sponsor of a bill about concerns beforehand in case there is something that could be worked out prior to presentation. I think that we, as a Committee, are better able to put out good legislation or have a more fruitful discussion if that conversation takes

place before we come for a hearing. Have you had an opportunity to speak with Chair Burnett?

Chris Frey:

No, we have not and I do appreciate your point about procedure. I agree that we should meet with him and discuss the changes that we are proposing. We did not actually know that this was on the agenda until very late in the day yesterday so we did not have a chance to reach out to them. We certainly do not want to bog down the Committee. We certainly will meet with him and we can hopefully hash out an agreement.

Chairman Frierson:

As a general matter, be ready because there are going to be issues that pop up on agendas. I expect to see you both during the session and to work with stakeholders as much as we can on the front end. I would certainly discuss any proposed amendments with the sponsor of the bill first. Are there any other questions? [There were none.] Mr. Yeager, were you finished with your points?

Steve Yeager:

That concluded the points I wanted to make on the proposed bill.

Chairman Frierson:

Is there anybody else in Carson City in opposition to A.B. 10? Is there anyone in opposition in Las Vegas? I do not have anyone signed in as neutral, but I see the District Attorney from Washoe County is here. You may respond to some of the concerns about prosecuting these cases.

Kristin Erickson, Chief Deputy District Attorney, Washoe County District Attorney:

I mainly wanted to bring up the issue that Assemblyman Hansen mentioned regarding intent. He is absolutely correct. There must be some type of criminal intent in virtually every crime. There is either general intent, which is the intent to do the act, or specific intent. Specific intent is literally in the statute itself, such as burglary. They must enter the premises with a specific intent to commit larceny. That is a specific intent crime. With general intent crimes, the intent is not referenced within the statute, but it is referenced in NRS Chapter 194 which states that you must have a bad intent. There are a couple of strict liability crimes. To be honest with you, I can only think of one right off the bat, and that is having sex with an underage minor. That is the only one that I can think of where there is no element of bad intent. I just wanted to clear that up. Mr. Hansen is correct.

Chairman Frierson:

Have you ever prosecuted any cases like these? There was a question earlier about the frequency of these cases.

Kristin Erickson:

Mr. Chairman, I have prosecuted a few of these cases. They are not all that common, but they do occasionally come up. The way criminals are cheating now is quite creative and inventive. They have come a long way from the yo-yos that you previously mentioned. They do occasionally crop up, but they are not all that common.

Chairman Frierson:

Do I have any questions for Ms. Erickson? I see none. Thank you.

Is there anyone else in Carson City here to testify neutral on A.B. 10? [There were none.] Is there anyone in Las Vegas to testify neutral on A.B. 10?

I see none.

I want to ask Mr. Burnett to come back up. We did not address an amendment that is in NELIS. Mr. Burnett, are you aware there is an amendment in NELIS? Are you able to address what is proposed in that amendment ([Exhibit D](#))?

A.G. Burnett:

No, Mr. Chairman, I am not aware of that.

Chairman Frierson:

There is an amendment ([Exhibit D](#)) in NELIS that proposes to add "or any software, hardware or accommodation thereof" and "or that is offered by a licensee or affiliate" in section 1. I will read the entire paragraph for your edification. The amendment that we have reads, "It is unlawful for any person, either solely or in conjunction with others, to use, possess with the intent to use or assist another person in using or possessing with the intent to use any computerized, electronic, electrical or mechanical device, or any software, hardware or a combination thereof, which is designed, constructed, altered or programmed to obtain an advantage at playing any game in a licensed gaming establishment or that is offered by a licensee or affiliate, including, without limitation a device that: . . ." and then the remainder of the bill as it was introduced.

A.G. Burnett:

Yes, Mr. Chair, I am aware of that language. It is language that we submitted after some reflection after initially submitting our bill. I can speak to that if you would like. It is solely intended for the new era of gaming and our thought

process is simply that as Nevada progresses in the interactive gaming space, we feel that it is important to send a message that cheating on an interactive basis would be also considered a crime such as cheating in a land-based bricks and mortar casino would be. That is our attempt to catch anyone who may try to cheat interactive gaming in the same fashion. We struggled with the language and I think we have come up with some language that at least Miss Fralick and I are happy with, and we would submit ourselves to any questions you may have on it.

Chairman Frierson:

Thank you, Mr. Burnett. I do not imagine that that language has changed the position of the other witnesses on the bill. It appears that it simply expands it to include software and to try and prepare for the advancement of interactive gaming and incorporate that into the bill.

A.G. Burnett:

In addition, Mr. Chairman, there is some qualifying language that we submitted regarding licensees or affiliates in order to clarify that notion because as we progress in licensing interactive gaming operators and service providers, we are licensing those two types of entities, licensees or affiliates, specifically for the operation of interactive gaming. If you would like, I can address some of the comments because I believe we may be able to work with the District Attorney's Office and the Public Defender's Office on some of the proposed changes that they just testified to.

Chairman Frierson:

I do not want to start the precedent of going back and forth. While we do have some time, I do think that an opportunity for you and those who have testified to sit down and talk would probably be fruitful and might save a lot of time. I would encourage you to have that conversation.

A.G. Burnett:

We will.

Chairman Frierson:

Are there any questions of Mr. Burnett regarding the amended language or proposed amended language? I see none. Again, for those who testified in opposition, do you have anything in addition to offer with respect to the new language?

Mr. Bernhard, I appreciate your being available as well to answer questions and to give a brief presentation. Ms. Fralick, thank you for being available to answer questions.

Peter Bernhard:

The Deputy Attorney General has given me the citation for the Clark County case. I would be happy to put that on the record at this time.

Chairman Frierson:

Would you please?

Peter Bernhard:

It is *State v. Hairston*, Case No. 08C243104 in the Eighth Judicial District Court, Department One, Judge Corey. I am not sure if that case would clarify that the amendments in section 1 on "advantage" may not have been part of that litigation. I am sure that we will follow-up with the Public Defender's Office to clarify that. Thank you very much.

Chairman Frierson:

Thank you, Mr. Bernhard. If you have the decision, would you provide that? It is not a Supreme Court case so it is not in Westlaw, but it would be helpful if you would provide that to the Committee.

Peter Bernhard:

Yes, I am sure through staff we can get that to everyone.

Chairman Frierson:

Thank you. Do we have any other questions? I see none. Again, thank you, and for those who had comments, I appreciate them. I do think that there are some discussions that can take place that will help provide some guidance and at least give some insight to the sponsors of the bill. I would encourage all of you to try to do that before hearings. I realize sometimes you do not have as much notice as you would like, but with us only having 120 days, sometimes it happens. We have our agendas posted in a timely manner, and so you will need to watch them and be ready to present or contact the chair if there is a concern or need for more time. I see no more questions.

Assembly Committee on Judiciary is adjourned [at 9:52 a.m.].

RESPECTFULLY SUBMITTED:

Dianne Harvey
Committee Secretary

APPROVED BY:

Assemblyman Jason Frierson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 8, 2013

Time of Meeting: 8:04 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 10	C	A.G. Burnett, Chair, Nevada Gaming Control Board	Agency and Revenue Overview
A.B. 10	D	A.G. Burnett, Chair, Nevada Gaming Control Board	Proposed Amendment on Behalf of the State Gaming Control Board