MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Seventh Session
May 13, 2013

The Committee on Judiciary was called to order by Chairman Jason Frierson at 9:17 a.m. on Monday, May 13, 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 Tyrone Thompson
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Ruben J. Kihuen, Clark County Senatorial District No. 10
Senator Greg Brower, Washoe County Senatorial District No. 15
Assemblyman Elliot T. Anderson, Clark County Assembly District No. 15
Senator Barbara K. Cegavske, Clark County Senatorial District No. 8
Senator Ben Kieckhefer, Senatorial District No. 16

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Linda Whimple, Committee Secretary
Colter Thomas, Committee Assistant

OTHERS PRESENT:

Ramir Hernandez, representing Fennemore Craig Jones Vargas
Gregorio Silva, Private Citizen, Las Vegas, Nevada
Garrit Pruyt, Private Citizen, Las Vegas, Nevada
Evan Simonsen, Private Citizen, Las Vegas, Nevada
Adriana Fralick, Senior Research Specialist, State Gaming Control Board
William Anton, Private Citizen, Las Vegas, Nevada
John T. Jones, Jr., representing Nevada District Attorneys Association
Vanessa Spinazola, representing the American Civil Liberties Union of Nevada
Barry Hall, Chief Executive Officer, Celebrating Legacy
John Griffin, representing Google; Amazon; and the Internet Alliance
Elisa Caffereta, President & Chief Executive Officer, Nevada Advocates for Planned Parenthood Affiliates
Robert Armstrong, representing McDonald Carano Wilson LLP
Julia Gold, Co-Chair, Legislative Committee for the Trust and Estate Section, State Bar of Nevada
Layne T. Rushforth, Co-Chair, Legislative Committee for the Trust and Estate Section, State Bar of Nevada
Keith L. Lee, representing Sutton Place Ltd.
Katherine Provost, Private Citizen, Las Vegas, Nevada
Jessica Anderson, representing the Nevada Justice Association
Patterson Cashill, representing the Nevada Justice Association
Connie S. Bisbee, Chairman, State Board of Parole Commissioners, Department of Public Safety

Chairman Frierson:
[Roll was called. Protocol was explained.] Good morning, everyone. We have a heavy agenda for today and some extensive amendments being offered, so we will get through it. We will do the bills first as I see the sponsors here. I will open the hearing on Senate Bill 409 (1st Reprint). Welcome, Senator Kihuen.

Senate Bill 409 (1st Reprint): Makes various changes relating to gaming. (BDR 41-1054)

Senator Ruben J. Kihuen, Clark County Senatorial District No. 10:
This bill serves as a technical correction to Assembly Bill 114 that was passed earlier this session. In effect, it ensures that any wagering transactions made through the interstate compacts authorized under A.B. 114 are not subject to criminal liability. This bill is also the law students' gaming bill that the Boyd School of Law students offer up each session to this body. This is a tradition, as you know, Mr. Chairman, that Mr. Bob Faiss started, and it goes back to the 2001 Legislative Session. I am proud to see that it is continued to this day.

Here to present the bill are Mr. Ramir Hernandez and Mr. Greg Gemignani, professor at the Boyd School of Law. Mr. Hernandez is currently an extern for the Fennemore Craig Jones Vargas Law Firm. Also live from Las Vegas are Boyd Law professor Jennifer Roberts of Lionel Sawyer and Collins and law students Gregorio Silva, Garrit Pruyt, and Evan Simonsen from the Boyd gaming law program. With your permission, Mr. Chairman, and with your indulgence, I would like to turn it over to Mr. Ramir Hernandez.

Ramir Hernandez, representing Fennemore Craig Jones Vargas:
This gaming bill is something that has been going on for many years at the Boyd School of Law, and even though he is not with us today, I think it is a real testament to Bob Faiss and the job that he has done with the Boyd gaming law program that we are able to continue this tradition this session. I will now turn it over to the law students in Las Vegas.

Gregorio Silva, Private Citizen, Las Vegas, Nevada:
I am a member of the student team from the William S. Boyd School of Law here to present a proposal to amend the *Nevada Revised Statutes* (NRS) Chapter 465 to resolve ambiguities between NRS Chapter 465 and the changes to the Gaming Control Act made by the compacting provisions of A.B. 114.

On behalf of my team, I would like to thank you for allowing us to appear before the Committee. We appreciate this opportunity and the Committee's continued

support of Boyd's law program. Today, three students from the gaming law policy class are before you; however, any views that we express are our own.

I would like to briefly tell you about each member of our team. Once again, my name is Gregorio Silva. I received my undergraduate degree from the University of Nevada, Las Vegas (UNLV). I am currently a second-year law student at the Boyd School of Law, and I am clerking for Cliff W. Marcek.

Garrit Pruyt will discuss the purpose of A.B. 114 and the effect of its passage. Garrit graduated from UNLV with a degree in international business and finance and is currently a visiting student from Florida Coastal School of Law. He is an active participant in Florida Coastal's Moot Court Honor Board and recently clerked for Justice Michael Cherry of the Nevada Supreme Court.

Evan Simonsen will discuss our proposal. Evan received his degree in English and philosophy from the University of California, Santa Barbara. He is a member of the *Gaming Law Journal*, which will publish his article in the fall. He is justice of the Boyd chapter of Phi Alpha Delta, class representative for the Student Bar Association, and a member of the Society of Advocates. He is currently a law clerk for the Randazza Legal Group.

Garrit Pruyt, Private Citizen, Las Vegas, Nevada:
As this body is aware, the Gaming Policy Committee was revived last year by Governor Sandoval. Meeting from March through July of 2012, the committee had the stated purpose of building on Nevada's strengths as the world leader in gaming policy, regulation, and education. A large focus of the committee was interactive gaming, and A.B. 114 was a direct result of that focus. Specifically, A.B. 114 provides the Governor with the ability to enter into interstate compacts in order to engage in regulated interstate interactive gaming. The proposed legislation, Senate Bill 409 (1st Reprint) addresses a necessary change to Chapter 465 of NRS, which will allow proper application of A.B. 114. Evan Simonsen will now discuss the specifics of our proposal.

Evan Simonsen, Private Citizen, Las Vegas, Nevada:
The proposed amendment we are discussing before you today is in S.B. 409 (R1). Senate Bill 409 (R1) is intended to harmonize provisions in A.B. 114 and NRS Chapter 465. Assembly Bill 114 authorizes the Governor to enter into agreements with other states or authorized agencies on behalf of the state of Nevada to enable patrons in signatory states to participate in interactive gaming offered by licensees in those states. However, NRS Chapter 465 includes prohibitions on online wagering that do not include an exception for interstate wagering conducted pursuant to the compacts

allowed under A.B. 114. As such, we propose language to add an exception for this behavior.

Specifically, we propose language providing that NRS 465.092 and 465.093 do not apply to a wager placed by a person that is accepted or received by, placed with or sent, transmitted or relayed to any other person or establishment that is licensed to engage in wagering in another state and is permitted to accept wagers from patrons in the state of Nevada pursuant to an agreement executed by the Governor and the other state, as permitted pursuant to Chapter 463 of NRS.

I would like to thank Senator Kihuen for his support. At this time, we would be happy to respond to any questions you may have.

Chairman Frierson:
Thank you to all of the students for being a part of the legislative process. We have quite a few Boyd School of Law graduates who are members of this body, so it is great to see the legacy continue and for the interest to remain. Do we have any questions from the Committee?

Assemblyman Ohrenschall:
The provision on page 2, lines 18 through 22—do any of the other states that allow legal gaming have a provision similar to that or are any of them thinking of putting something like that into their codes?

Gregorio Silva:
At this time, we have only looked at the Nevada gaming law and the proposed A.B. 114 as it affects Nevada, because there are no compacts. Under A.B. 114, we have not looked at how other states have addressed the issue of legal gaming in other jurisdictions.

Assemblyman Ohrenschall:
Absent any provisions like that in the other states' codes, do you see any problem, or do you think it will be all right with just putting this into the NRS and the other states can either follow suit or choose not to follow suit as they see fit?

Gregorio Silva:
Yes, we believe the other states can address this issue as they see fit.

Chairman Frierson:
Are there other questions from the Committee? [There were none.] I will invite those wishing to offer testimony in support of S.B. 409 (R1) to now come forward.

Adriana Fralick, Senior Research Specialist, State Gaming Control Board:
Both the State Gaming Control Board and the Nevada Gaming Commission are in full support of this bill. We want to take this opportunity to thank Mr. Gemignani, Mr. Faiss, and the students of the Boyd School of Law for their hard work and continued hard work and interest in gaming matters and issues.

Chairman Frierson:
Are there any questions for Ms. Fralick? [There were none.] Is there anyone else in Carson City who wishes to offer testimony in support? [There was no one.] Is there anyone in Las Vegas who wishes to offer testimony in support? [There was no one.] Is there anyone wishing to offer testimony in opposition to S.B. 409 (R1), either here or in Las Vegas? [There was no one.] Is there anyone wishing to offer testimony in a neutral position, either here or in Las Vegas? [There was no one.]

It is a pretty clean bill. I think that has been our experience with the Boyd students in every session; the bills are well thought out and well selected. Thank you again for continuing to allow the Boyd students to be a part of the process and, in particular, gaming, as I know that is a significant part of the curriculum at UNLV. I will close the hearing on S.B. 409 (R1). I will open the hearing on Senate Bill 365 and invite Senator Brower and Assemblyman Anderson up to the table.

Senate Bill 365: Establishes the crime of stolen valor. (BDR 15-155)

Senator Greg Brower, Washoe County Senatorial District No. 15:
It is a privilege to be able to sit here with Assemblyman Elliot Anderson this morning to present Senate Bill 365, otherwise known as Stolen Valor 2.0. Senate Bill 365 would make it illegal under state law for a person to fraudulently represent himself or herself to be the recipient of certain military decorations for the purpose of obtaining some benefit, such as money or property. Because this concept may sound familiar to many of you, let me give you a little history to bring us up to date in terms of this issue.

The fraudulent wearing of military decorations in uniform has long been against federal law. In 2005, Congress decided to go a little further when it passed the original Stolen Valor Act, making it a crime for someone to lie about receiving certain military decorations. A person by the name of Xavier Alvarez was

prosecuted by the United States attorney in Colorado under this new law. He challenged the law on constitutional grounds, and that case made it all the way up to the United States Supreme Court [*United States v. Alvarez*, 132 S. Ct. 2537 (2012)], which decided that the law was, in fact, unconstitutional as an improper infringement upon Mr. Alvarez's freedom of speech. Again, the original Stolen Valor Act, the federal law, prohibited merely speaking about one's receiving a certain military decoration and again, the U.S. Supreme Court decided that that was a violation of the First Amendment.

In 2012, our own representative, Senator Joe Heck, teamed up with Democrat U.S. Senator James Webb, and introduced a new federal version of stolen valor. That version, currently pending in Congress, instead of simply outlawing speech, went a little further and outlawed the misrepresentation about receiving a particular military decoration for the purpose of obtaining some benefit. That bill is currently pending in Congress, as I said, and, in fact, just passed the House Judiciary Committee unanimously. This bill is essentially the state law version of the new and improved federal Stolen Valor Act. The point of both bills is to protect the honor and integrity of certain awards and decorations received by ordinary people for doing extraordinary things under extraordinary circumstances in defense of our country. The bill honors our brave service members and the awards they have received by making it a crime to falsely claim to be a recipient of such an award and to benefit from that. What we call the Stolen Valor 2.0 bill is intended to get at the same sort of conduct that the original version was aimed at, but in light of the Supreme Court's decision in *Alvarez*, this bill is intended to take care of any constitutional issues that were presented by the original bill.

Assemblyman Elliot T. Anderson, Clark County Assembly District No. 15:
There is a compelling state interest in controlling how the uniform is used and how decorations are used. Under the Geneva Convention, we have specific requirements in armed warfare to ensure that our troops are uniformed and that it is clear they are fighting for the United States of America. There are always some concerns as to why we need to do this. It is not just the part about making sure that those who have not served in the uniform and who have not earned these medals are not getting something for it. It is also because we cannot let our uniform and our decorations be used in any way, shape, or fashion. It is very important.

As someone who has received a Combat Action Ribbon, which you see on page 2, line 1, I have to tell you, personally it really would offend me. It offends me a lot that someone would hold themselves out to have that when they have not been there and they have not done that. It is something that is very important to me. It is something that tugs right here, especially when you

put in your time and you have done the hard work and then someone else is using that to get something that they do not deserve. With that, I will conclude my remarks. Thank you.

Assemblywoman Spiegel:
In section 1, subsection 1, paragraph (b), you talk about obtaining money, property or another tangible benefit. I am wondering why you do not include any intangible benefits.

Senator Brower:
We asked the Legislative Counsel Bureau to draft the bill to essentially track the language in the proposed federal law that is pending in Congress right now. That is where the tangible benefit language comes from. I think it makes more sense than including both tangible and intangible because it tightens up the statute. It makes it easier for prosecutors to interpret the statute and enforce it. That is where the language comes from.

Assemblyman Elliot Anderson:
The way fraud is understood generally, you have to be getting some consideration for it. You have to have something that is solid—a benefit received or a detriment suffered. You have to have something that is really clear. When you look at the existing fraud statutes and causes of action, you have to have something a little bit more tangible to get someone on fraud.

Assemblyman Martin:
In reading this bill, I see that it takes care of the problem of fraudulently representing that you have won a medal. What is the current law when someone is just claiming military service? In other words, if they are not claiming any medals, but saying, "I served in whatever" and they are caught. Is there a penalty for that, or does this bill need to address that? Does this bill indirectly address that kind of consideration with no effect on whether they have medals or not, just the basic service itself?

Senator Brower:
It depends on the context. If an individual lies, for example, to the federal government, in an effort to get a Department of Veterans Affairs (VA) loan when in fact he is not a veteran, that would constitute a crime under Section 1001 of Title 18 under federal law. That would be a false statement. But simply holding oneself out to be a veteran when one is not would not necessarily violate this law and would not violate the proposed federal stolen valor law. This bill addresses, as does the federal version, specific declarations and other qualifications.

Assemblyman Elliot Anderson:
I would also say that that would really open up the scope of this and even just holding yourself out to have one of these medals, you still have to receive something. The idea with this bill is to create a tight crime that would suffice under case law from the Supreme Court to make sure it withstands constitutional challenge. All of these medals that are listed are really, really important. They are the top-tier ones that I think need protection because those are the ones that could be used to obtain something of greater value and they deserve special protection over just wearing the uniform.

Senator Brower:
It seems that when we see people misrepresent their military record, they rarely seem to stop at claiming that they were a veteran. They typically do go above and beyond. There was a case that is referenced in the *Alvarez* decision by the Supreme Court in which a state court judge in Illinois apparently claimed to have won two Congressional Medals of Honor, and went so far as to display the certificates in his courtroom that would typically go along with such awards. As it turned out, the whole thing was a scam. We rarely see cases where someone is trying to obtain the benefit just by claiming they are a veteran. Usually they claim to have been the recipient of one of these awards which typically does cause folks to pay attention and be more willing to trust them and transfer some kind of benefit, and that is what this is aimed at combating.

Assemblyman Wheeler:
I have run into some people, especially lately, who tell me about the unit they were in. For instance, SEALS, Air Force parajumpers, Special Forces, et cetera, when in reality the guy was in the supply department with me. I am wondering if we could not add something about that, because that is obviously another very valorous action, to have been a SEAL, parajumper, et cetera.

Senator Brower:
You are right, especially of late there seems to be more former Navy SEALS out there than could possibly have ever served since the creation of those units 50 years ago. The bill, as we are presenting it today and as we have drafted it with the Legislative Counsel Bureau's assistance, tracks the federal law. But, of course, if this Committee were to see some omission or omissions from the list, we would be happy to entertain any ideas that you might have.

Assemblyman Hansen:
My question may actually be for the Legal Division. Right now, if I wanted to obtain a Nevada state contracting license, some of the requirements are that I served an apprenticeship and as a journeyman in that capacity for a certain number of years. If I were to actually apply and they discover that I had

intentionally lied about an apprenticeship or a journeymanship in an effort to obtain that contracting license, is there a penalty right now in my effort to basically obtain money, property, or other casual benefits, such as a contracting license and the ability to contract?

Brad Wilkinson, Committee Counsel:
I am not familiar with that particular statute you are referencing. Obviously, the point would be that some conduct that might be criminal under other statutes may already be covered under existing law that could also fall within the purview of this statute. There may be some circumstances where you could be subject to penalty if you are claiming military service and some other qualification that brings you in the purview of another criminal statute. There could be some overlap.

Assemblyman Hansen:
If you can lie about one thing and you get punished for it because obviously there could be some tangible benefit—I have a hard time seeing why this law would—there would be an exception basically for people lying about military service. This is not just about lying about it; this is obviously a requirement that they have to obtain money, property, or other tangible benefits, not just merely lying. There are some Supreme Court decisions on this and some question about how much we can regulate someone's personal integrity if they are going to lie about things like that. I am thinking of other examples where if you do lie, you can be nailed under Nevada law.

Chairman Frierson:
As a former prosecuting attorney, this reminds me of workers' compensation fraud where I think that the difficulty is in figuring out what the value is of whatever a person got that is what gives some prosecutors some hesitation in pursuing this under existing law. I will say this for some of the people who were not on this Committee last session. This bill came forward before and the broadness that was in the bill before is what killed the bill. I think that the sponsors are being careful on how they word it. It killed the bill, so if we want something that folks have some comfort with, I think the notion that it was in exchange for something is key to what the discussion was last session as opposed to someone getting a door opened for them because they have a medal on.

Senator Brower:
You are absolutely right. That is what both the pending federal version and this version of the state law are aimed at doing—taking advantage of the U.S. Supreme Court's invitation, frankly, for the introduction of a narrowly tailored bill that could pass constitutional muster. I will say that the American

Civil Liberties Union (ACLU) has expressed opposition to this bill, as I explained to the ACLU on the other side, and their criticisms would seem to be well-placed with respect to the original version of the law. With this new version, I do not think there is a First Amendment issue, and I think it is clear that the U.S. Supreme Court has said so.

Assemblyman Elliot Anderson:
Even when you read the decision in *Alvarez*, it was really clear that they did not want to strike down the law from the dicta in the decision, but they felt that they had to. I think with their holdings in that case, and the rules that they brought forward, this bill satisfies the recent court's decision on this. I feel really solid in saying that this will not offend the *United States Constitution* because it has been narrowly tailored and I think it is a great bill.

Assemblyman Duncan:
I think we are dealing with a content-based restriction on free speech. In terms of the narrowed tailoring that we are trying to accomplish, if a person holds themselves out to have a Combat Action Ribbon or something like that and they were a veteran but did not earn a Combat Action Ribbon, and they had all these other things that they had in an application for employment, say they got the job. Does simply holding themselves out to have a Combat Action Ribbon and then later it was found out that they were not and they received employment, is that enough under this statute to be prosecuted for that crime? Does it have to be basically a one-for-one deal, or can it be in the list of different things that they are holding themselves out for? Say four out of five were correct, but one was not, and they ended up getting a job over someone else. Could they be prosecuted under this statute?

Senator Brower:
I think they could. I do not think that the applicability of the bill to that situation is such that if you were truthful about some things but lying about others that you would be protected.

Assemblyman Elliot Anderson:
We put in two culpability elements, knowingly with the intent to obtain. There is nothing to stop someone from being hauled into court if it is a closed case, but the district attorney or whoever is prosecuting will have to prove that the reason they put it in there beyond a reasonable doubt was to do that. If there is something that is close, or maybe it was technical error or whatever, the burden is on the prosecutor, as it always is. In a case like that where there is so much there where everything is truthful and then maybe they messed up or made a mistake or a number of things, they would have to prove intent. It is a tight statute. The district attorney will have a heavy burden, especially if you

really have someone that did serve and can bring in witnesses saying that this person is a good person, he served honorably with me. I think the district attorney will have to be choosy. If you have someone who really did serve, they are going to be able to be very persuasive to any potential jury if it gets that far.

Assemblyman Duncan:
If you could spell it out so we could put the intent on the record in terms of the least restrictive means? Could you articulate how, in those circumstances, this would be the least restrictive means on content-based speech? There is a knowledge element and it is narrowly tailored to the actual crime.

Senator Brower:
As Mr. Anderson explained, the statute is drafted with the specific intent requirement. In order for a person to be prosecuted under this law, it would have to be proven beyond a reasonable doubt that he or she lied about his or her military record in certain respects with the intent to obtain money, property, or another tangible benefit. We, admittedly, recognize that a very small and narrow set of cases or situations would be implicated by this bill. I think we all recognize that. This is not going to happen a lot. There will not be a lot of cases brought under this law, but even in those few cases, we think it is important to have this law available, both as a deterrent and as a way of punishing those who lie about their record with the intent of obtaining a benefit.

Chairman Frierson:
Thank you, Senator. I will say that historically there were some concerns last session about homeless folks with mental illness who were wearing coats and going into Denny's. This was clearly aimed at the folks who are intentionally trying to defraud others by virtue of misleading them about their military status. I think this is a much better start to try and address that behavior. Are there any other questions from the Committee? [There were none.] Is there anyone here in Carson City who wishes to offer testimony in support of S.B. 365? [There was no one.] Is there anyone in Las Vegas who wishes to offer testimony in support of S.B. 365?

William Anton, Private Citizen, Las Vegas, Nevada:
I am a recipient of the Combat Infantry Badge, and I am a Ranger and special forces officer and retired Army. I was part of Stolen Valor 1.0, and I totally support Stolen Valor 2.0. I worked with Congressman Heck from the very beginning to push stolen valor. It incenses me when I hear people claim qualifications that they do not have, but under freedom of speech, as the Supreme Court ruled, we cannot say much about that. We can just hold them in contempt. I believe this bill will accomplish what is required.

Chairman Frierson:
Are there any questions from the Committee? [There were none.] Is there anyone else wishing to offer testimony in support?

John T. Jones, Jr., representing Nevada District Attorneys Association:
I would like to do a quick "me too" on this.

Chairman Frierson:
Is there anyone wishing to offer testimony in opposition, either here in Carson City or in Las Vegas?

Vanessa Spinazola, representing the American Civil Liberties Union of Nevada:
I am speaking in opposition to S.B. 365 this morning, and I would like to put on the record that this has nothing to do with military, veterans, or service, and has solely to do with free speech. We believe that this is a content-based restriction on speech, and as a result of that it should be held to exacting scrutiny. We are concerned that it might not hold up and this will lead to excessive litigation, particularly in the context of criminal defense.

The more specific problem we have is with the words "tangible benefit." We believe that it is vague, overbroad, and can encompass anything from a glass of wine, to someone jumping in your car, to obtaining a job, or getting a military scholarship. Criminalizing that by gross misdemeanor is not specific enough to say what the issue might be. If you look at our other fraud statutes, they are broken down very specifically as to fraud that is less than $650, fraud that is more than $650, and all those statutes are aligned so that a particular class of felony or a particular misdemeanor or a particular fine is lined up with what the actual benefit obtained was and what the problem was.

When considering restrictions on free speech, we should look to the least restrictive means. Again, in the fraud statutes, there are fines or someone can do community service. Criminalizing someone with a gross misdemeanor is not the least restrictive means of curbing free speech.

We also have statutes on the books that would basically cover any type of fraud that you could cover by this statute, which is NRS 205.445 through NRS 205.450. Those address Assemblyman Hansen's question, and include impersonating another and obtaining benefits from a hotel or restaurant. Any type of fraud is already covered in our criminal statutes and we do not think that criminalizing speech would result in any benefit for us.

I also wanted to clarify on the record that we already have a Nevada statute that criminalizes the wearing of uniforms and the showing of medals that has

already withstood constitutional scrutiny in Nevada, and that is NRS 205.410. My understanding is that this particular bill, because we have this other statute, would have to deal solely with speech and, therefore, that is where our concern comes from.

Chairman Frierson:
Are there questions from the Committee? [There were none.] I am a little thrown off by two things. The first is the notion that this is only about speech when the bill clearly talks about getting something of value in exchange for it. It is not illegal to lie, but it is illegal to lie to get something. I am a little confused by the position that this is about speech and not about that.

The second thing is whether or not you are familiar with the *Alvarez* case that was discussed and whether or not that addresses the speech element in federal court.

Vanessa Spinazola:
I am sorry. To clarify, I mean that it is about speech as opposed to wearing uniforms. I see the tangible benefit, but I am saying we have a statute on the books right now that already criminalizes the wearing of uniforms and insignia, so therefore this is about speech. Yes, I am familiar with the *Alvarez* decision (Exhibit C) and I understand that the *Alvarez* decision said that in order to make this criminal, you obviously have to obtain something in return. I do believe that this bill does a good job of trying to address what the Supreme Court's concerns were in that opinion; however, I do not think the words "tangible benefit" is defined narrowly enough to say what it is that people will be obtaining, and that is what part of our concern is.

Second of all, it is not fully clear that this would hold up anyway, so I think it would invite litigation in the context of a criminal defense.

Chairman Frierson:
If the tangible benefit language were removed, would it alleviate the concern?

Vanessa Spinazola:
It would alleviate a lot of the concern. We still have a concern that it would invite litigation.

Chairman Frierson:
Are there questions from the Committee? [There were none.] Is there anyone else wishing to offer testimony in opposition to S.B. 365? [There was no one.] Is there anyone wishing to offer testimony in a neutral position, either in

Carson City or Las Vegas? [There was no one.] I will invite the sponsors of the bill to come up and give any closing remarks they may have.

Senator Brower:
We appreciate the chance to be here today to present this bill. This bill is very important to veterans around the state. We sit here as two veterans representing the interests of thousands around Nevada whose honorable service should be recognized in this bill, and prosecuting those who would lie about their record in order to obtain a benefit is part of honoring that service.

Assemblyman Elliot Anderson:
I would like to note something. If criminalizing wearing medals is constitutionally okay, there are so many other areas of speech that have been defined as more than actually just saying something. For example, the U.S. Supreme Court has ruled that you can burn a flag and that is protected speech. I do not get that if criminalizing wearing medals has withstood constitutional scrutiny, how this would not. This is a very narrowly tailored fraud statute. In addressing the fact that there are other fraud statutes out there, this gives these medals special protection as a matter of law. They deserve special protection as a matter of law. I understand that there are other statutes that are in play here; however, this is very narrowly tailored to just look after these medals.

[The following exhibit was submitted but not discussed: (Exhibit D).]

Chairman Frierson:
Thank you. I will close the hearing on S.B. 365. I will open the hearing on Senate Bill 131 (1st Reprint) and invite Senator Cegavske to introduce the bill.

Senate Bill 131 (1st Reprint): Establishes provisions governing the disposition of a decedent's accounts on electronic mail, social networking, messaging and other web-based services. (BDR 12-563)

Senator Barbara K. Cegavske, Clark County Senatorial District No. 8:
The purpose of this bill is to provide a decedent's personal representatives access to information contained in electronic mail, social media, messaging, and other web-based services. When someone dies, this bill will allow the deceased's designated representatives to administer the content contained in a social media account. It used to be that when someone passed away, personal possessions such as pictures or letters were kept in physical form at their place of residence or the like. Those possessions could then be passed on to surviving family. These days, more and more people are keeping personal documents in electronic format in either web-based social media accounts or

similar databases. In the current environment, access to that information is subject to the policies of the host companies. This bill would grant access to personal information contained in social media accounts.

This bill not only helps those who have lost a loved one; it may also provide an economic opportunity. The idea behind this bill came from a representative of a new startup company in Las Vegas called Celebrating Legacy. Barry Hall is here to help answer any technical questions you may have. I have no relationship with Celebrating Legacy; in fact, this is the first time I am meeting Mr. Hall. Assemblywoman Kirkpatrick and I put this bill in on behalf of someone we know, Lisa Mayo. We feel that this bill could potentially provide a new economic opportunity for this company and others like it. Celebrating Legacy focuses on what happens to our digital information when our physical presence passes on. They provide an online directory that allows a decedent to live on through the use of technology. Celebrating Legacy is designed to be a living family history for surviving family and future generations. Currently, there are only five states which have estate laws that include digital assets—Connecticut, Rhode Island, Oklahoma, Indiana, and Ohio. The laws vary among them. Some state statutes just relate to emails, with only Oklahoma and Idaho clearly including social networking and blogging as part of the estate. Nevada could be the sixth state to recognize the growing need for laws to address our online digital legacy.

I appreciate your listening to this bill. I believe that others will be able to provide some insight. I was just approached by two entities that are coming in opposition that I had not had in the other house, so it will be news for all of us together to share. Thank you. I would appreciate Mr. Hall being allowed to testify next.

Chairman Frierson:
Thank you, Senator. We will certainly accommodate that as part of the introduction.

Barry Hall, Chief Executive Officer, Celebrating Legacy:
Celebrating Legacy allows people to store their memories in a digital format and, in doing so, it allows them to share their legacy and their memories with not only the current generations but generations in the future. We are asking you to support S.B. 131 (R1). This bill will allow state law to keep up with technology. Our digital legacy and that of our children, spouse, partner, or parents is growing and becoming a more important part of our daily life. On average, each person has between 20 and 25 digital accounts, and that includes anything from Facebook, Google, LinkedIn, email accounts, and more. When someone passes away, these accounts have value. They have value to

the holder, the living, and to the living family members. Today, once a social media or an email account holder passes away, the estate of the individual should have the right to decide the fate of those digital assets. If the social media contract holder is a minor, that makes access to these assets even more important. Facebook, LinkedIn, Yahoo, and others will not give family members or estate holders access to that digital content or control of that site.

As was mentioned before, to date six states have passed laws similar to S.B. 131 (R1) and two more are on their way. This bill essentially gives the executor of an estate access to the digital assets and also ensures that the executor at the same time does not abuse the site and will follow the same rules as the initial social media holder was subject to. They can memorialize the digital asset or, if they choose, take it down.

As Nevada diversifies and attracts younger and technology-savvy employees and chief executive officers, to be digital friendly will be very important. In addition, we have a very active retirement community and they are very active on social media and they would also appreciate being able to leave their digital assets in a will. Other companies like Facebook and Google will ask to wait until federal law takes place, but that is probably three to five years away and maybe never. It is estimated right now that every three minutes, someone who has a Facebook account passes away. Nevada can allow families and friends to do this in a way that keeps the laws and new technology in sync. They can have their estates and their executors decide the fate of those accounts. If the deceased includes the digital assets, there are no privacy laws to be dealt with by the estate executor.

I would also like to state that I think it is important for Nevada to be a leader in this area. We are trying to project the image of being a leader, especially in new technologies, so waiting for federal law to take place would be leading from behind. Thank you in advance for your support of S.B. 131 (R1), and thank you for your time.

Assemblyman Thompson:
Who gets to be the personal representative? What do they have to prove and show that the person actually is deceased, because you do not want to get into a situation where a boyfriend wants to tap into his girlfriend's account. There can be so many scenarios.

Barry Hall:
The way our site would work is every individual will appoint an executor to their digital assets. Like anytime else in the law, when a person passes away, there is an executor of the estate and just like taking over a bank account or

distributing money, they would have to be proved to the court. I think it would be very easy for any web-based service to allow their members to appoint digital executors. In our case, just as a fail-safe method, we are going to have two digital executors that both have to agree that that person, in fact, has passed away.

Assemblyman Thompson:
Will there be any provisions for the personal representative if they abuse their representation?

Barry Hall:
It is pretty hard to govern people's bad behavior. That is up to the individual. Just as if you were to appoint an executor to your estate, you have to have a certain amount of trust in them and trust that they are going to do the right thing. I do not think we can legislate people's future behavior, in my opinion.

Assemblywoman Spiegel:
Was there any discussion at all about putting in a requirement that the site clearly indicate that the person who is the subject of the matter is in fact deceased? One of the concerns that I have is that it could make it look like a person is still alive. I was telling someone earlier that I had a friend who passed away a couple of years ago, and on what would have been her birthday, I received something from Facebook that said, "Your friend's birthday is today. Send her flowers and an e-card." It was really creepy. When you went to that page, there was no way to tell that she was no longer with us. If someone posted something in her name, and if someone did not know that she was deceased, they would think that it was her actually posting that.

Barry Hall:
I think that is a very good question and it goes right to the essence of this bill. People who get notices that their friend who has passed away is having a birthday find it very disturbing. Right now at Facebook, if you have a loved one who was to pass away, there is no way to terminate that Facebook account and, in fact, because of that, that practice which was just brought up, will continue. It will continue forever. Having this bill in place will allow the executors of the estate to take control and make sure that that Facebook account becomes a memorial account and not go on forever disturbing loved ones. Rather than this being an issue, I think we are solving that problem with this bill.

Senator Cegavske:
I received confirmation on that. Someone made a suggestion and I found that what Mr. Hall said is going on right now, and I think that we will be able to help

with that situation through this legislation. I was startled, as you probably were when you got it. I had no idea that it was capable of continuing to go on. It is an issue.

Assemblywoman Spiegel:
I am fully on board with the termination component. If it is not terminated and it continues is where I have some questions.

Assemblyman Martin:
I am not sure what the current policies are with Facebook or whatever entity in terms of if you do not log on for whatever period, they automatically inactivate the account. This bill sounds like it would notify them, saying this is a special kind of account and that it needs to be frozen in time. I can see their natural reaction if they are opposed to this, if they are to say, "Well, if no one logs on in a year, the account goes deceased." Are we addressing that issue with this bill, and the question is, what do they do now?

Senator Cegavske:
I am going to go on record and say that I do not have a Facebook account, so I do not know the answer to it.

Barry Hall:
Right now, it is all over the map. Every site can have a different policy. I understand that Google actually has instituted a new policy where you can request that if you do not log onto a site for six months, your information can be taken down. This bill is much more than that. This allows the executors and the families of the deceased to take control of those digital assets. They are not the property of the site itself. They are the property of that person and that person should be able to decide, through his will and through his executor, exactly what he would like done with those assets. Right now, you can say what you like done, but Google, Facebook, and others will tell you "No" and we need to address that.

Assemblyman Martin:
I am wondering what the obvious response will be when these social media sites say, "By keeping these sites active . . . ." Maybe it is not an issue anymore with storage. Over the course of time, and with you citing the death every three minutes of a Facebook user, it reminds me I had better log on to my account. The pushback from Facebook and others about the cost and how that is handled might be of concern at some point to them, so I am wondering how you might address that.

Barry Hall:
I have heard arguments that it costs as much as $500 to manage that account or to take it down after the person is deceased. Personally, I think that is a bunch of hogwash. I do not buy it. I think it is a false argument. You can program these things very easily. If you look at the depth and breadth of Facebook and everything it can do, it would be very easy to allow digital executors to take over control of that account after the death of a loved one. To say it costs $500, I do not believe that for a second. The cost would be minimal, and minimal would be an overstatement. It would be nothing. Just put it in there as part of the code, let it be programmed, and if people want to take over this account, they can. They can control those digital assets and they are disposed of in the way the owner of the assets wanted them to be disposed of.

Assemblywoman Cohen:
In section 1, subsection 2, it says that this is not authorizing a personal representative to take control of financial accounts. What about things like eBay and PayPal? They are kind of hybrids. They are not bank accounts, but they do have an almost social media-type component to them. If you take the money out of the mix, they are still an account. Where do they fall into this?

Barry Hall:
I am not an attorney, but if there is a financial account—such as on eBay you have PayPal or other accounts—that falls under the banking laws. This law has nothing to do with that. That clearly falls under the current laws and we are strictly talking about digital assets in this case.

Assemblywoman Spiegel:
Part of the value of the eBay account is all of the feedback that the vendor receives, and there are many consumers who will not purchase from a site where a vendor has had negative feedback. A vendor who has positive feedback—there are some in the tens of thousands—that is really almost a tangible asset that if someone were to then go in and take it over, it is using someone else's reputation for commerce, but it is not necessarily taking their money because they could redirect it to a different PayPal account. I think that that could be problematic if, in fact, the eBay account is in the name of a person and not a business. That would then seem like it would be covered by this bill.

Barry Hall:
I am not sure that this bill falls under those eBay accounts. Those digital assets—if you are talking about postings on eBay of people's recommendations or ratings—are not your property. That is the property of eBay and eBay

controls that. We are talking about your digital assets, the pictures you post, the emails you sent, and the emails you have. Those are the digital assets we are referring to in this bill. It is not things that are owned by the web-based companies such as eBay. When you go and post something on eBay that is a recommendation or to the contrary, that really belongs to eBay.

Assemblywoman Spiegel:
I think that needs to be clarified. Thank you.

Assemblywoman Cohen:
You mentioned there needs to be notification by the personal representative when the decedent dies. Is that notification to Facebook the company, or is that notification to all of the friends on Facebook? I have a lot of concerns with fraud issues.

Barry Hall:
What I was referring to was notification to the depository of the digital assets that the person had passed away, and these assets were, in fact, being taken over by the estate.

Assemblywoman Cohen:
So that would be, for instance, Facebook the company.

Barry Hall:
Yes. Facebook the company.

Assemblywoman Cohen:
I am not exactly sure where in the bill it says that. Would you point me there?

Barry Hall:
It does not say that in the bill. That is the way it would work. Every organization is going to have to decide how best to deal with this.

Assemblywoman Cohen:
I would like to put on the record some of my concerns. For instance—and not to make this too personal—I do retired racing greyhound rescue, and I have Facebook friends all over the world that all do retired racing greyhound rescue. When they have fundraisers, there are people there that I trust and I will send money to for their groups. If one of them should die and I do not know about it and their conniving kid comes in and says, "Oh yeah, I am doing a fundraiser for the greyhounds," I have no idea, necessarily, that this person passed away. I just send him the money because I think of that as my friend whom I have been dealing with for years and that I do not see on a regular basis or at all.

I want to put that concern on the record that I would like to see something that says there needs to be notification to everyone about the death.

Senator, would you be willing to put in some notification component to this?

Senator Cegavske:
Whatever would help; it would help everyone. We would be willing to amend. I just do not know if any of the banking regulations have anything to do with the bill. Are you talking about PayPal specifically, or are you talking about anything?

Assemblywoman Cohen:
I am talking about anything—any of the social media sites having notification.

Senator Cegavske:
Okay. To prevent what happened to Assemblywoman Spiegel, where she got notification of a friend who had already been deceased that her birthday was coming up, you want notification to the Facebook friends. I know what you are saying.

Assemblywoman Cohen:
Yes.

Senator Cegavske:
I totally understand and agree with your concerns. I would refer to the Legal Division to make sure that it was within this bill's purview.

Barry Hall:
Once again, there are people out there who will do bad things. We certainly would like to have laws against them doing bad things. That is not the purpose of this particular bill. The purpose of this bill is allowing loved ones to be able to take control of the digital assets of a family member who is deceased, or a friend, or whoever the person decides to be their executor. The issues that are being brought up are going to be greater and greater as time goes on. I think it is important that you have to start somewhere. I think this is a good place to start; try to get at least up to the technology. The technology will constantly change and advance. I think it is important that Nevada show leadership in addressing how we deal with these technological advances, especially in areas as important as this.

Brad Wilkinson, Committee Counsel:
In response to the question about the proposed amendment, if I understand it correctly, if the idea was to include a requirement, for example, that the

personal representative notify persons of the fact that the account holder is deceased, I would say that would be a germane amendment to the bill.

Chairman Frierson:
I have been approached on this topic by several individuals who are concerned about information that a decedent might not want their family to know. What if a decedent decided they did not want to come out and they were struggling with their lifestyle and did not want their family to know? What if the decedent was having an affair and it would be harmful for the family to find out? What if there are things that the decedent did not want the family to know that all of a sudden are out there? It just seems to me that if they wanted them to know, they would have had a mechanism in place for that to happen, as opposed to the family being able to start their own memorial page anew. I guess that is my concern. Giving control over to someone to do anything other than close the site upon death is concerning.

Barry Hall:
That is obviously an issue. Anytime today you post anything online for any reason whatsoever, I think that most of us understand that that particular posting picture is out there for the entire world to see. I think by giving an individual the ability to determine who and how their digital assets will be controlled addresses that issue. In the absence of that, there is no telling where that content, where those pictures could end up, who will own them, and who will know about them.

Chairman Frierson:
That would be addressed if a family member or a representative could close the account. We are not just talking about posting pictures. We are talking about emails sent and emails received. If someone is able to close out an account so that that information is deleted is one thing, but accessing email and messages—some of these websites have a security measures in place to limit who can see those things. I am struggling with why giving them the ability to delete the account or close the account is not sufficient.

Barry Hall:
It is not sufficient because—I will speak about this from a personal standpoint. I have a lot of pictures of my family on Facebook. I would like those to belong to my family after I pass. Whether I store them on Facebook or Google Plus or someplace else, I share them with people; but in the long run, I would like them to be preserved for my decedents to see. If I choose to give someone access to close that account, I think that would be fine. That would be my choice. At the same time, I do not think this bill is just about giving someone access to close the account. That certainly solves one problem in certain areas, but

I think giving someone access to your account to carry out your wishes is really what we are talking about.

Chairman Frierson:
I think what you are describing and what this bill does may be separate things. You are describing your choice. This bill does not say that the user may opt to allow a personal representative upon their death to do what this says. There is no indication that the subject wanted it. That is what I am getting at.

Barry Hall:
Again, you appoint an executor, you tell them your wishes, and you basically depend on them to carry out your wishes. You cannot see into the future and say, "What is going to happen if they are going to do that or not?" That is the whole point of having a will and giving people access to those assets. We are just including those assets that are digital in that estate.

Chairman Frierson:
If that is your intent, it seems to me some language is missing, because the bill does not say that a person may create a will to direct these things to happen. This pretty much gives authority for someone to take over, and I think that is different. I think that authorizing someone to give someone else permission upon their death is one thing, but right now, this bill seems to allow upon death for that information to be completely controlled by someone else independent of whether or not the decedent requested that that be the case.

Senator Cegavske:
When I look in section 1, lines 4 through 5, where it says, "such restrictions as may be prescribed in the will of a decedent or by an order of a court of competent jurisdiction . . . ," does that cover what you are referring to?

Chairman Frierson:
To me it does not, because it says, first of all "may," which is permissive, and second, "or," which means that it is either/or. So now assuming there is no will, a court could order a personal representative to have power to take control in the absence of a will. The court ordering someone to shut down a site or giving the authority to shut down a site is one thing, but in the absence of a will for the court to be able to designate a personal representative, that personal representative can pretty much do anything. That is my concern.

Senator Cegavske:
I understand. In my reading of the language, that is how I took it—that it was upon a court or the will of a decedent that would be able to be used. I think that could be used in any case with anything that they have—property,

money, bank accounts, anything. But it has to go through either the will or it is in the—I am not an attorney—you are. It is just my interpretation of reading it.

Chairman Frierson:
I do not hold myself out to be an expert in this area at all. My layman's reading of it just suggests to me that, in the absence of a will, it is treated like property. I think that Facebook postings and emails and such are different than the storage box I have now that my family has to figure out a way to deal with. For those items that are not made public by virtue of the Internet—this is obviously a new area. I would be concerned about things that someone might not want their family to know.

Senator Cegavske:
I understand the concerns, but I think that that could go with what is in the contents of the box as well. You are right; we are going into a new frontier when we start getting into online territory. We would work with you and staff with anything that you think would enhance or help this legislation.

Assemblywoman Spiegel:
Just one additional comment that, as you continue to work, I would appreciate it if you would also think in the back of your mind about a service like Dropbox, which is an online file folder and online storage—you can back up your computer, keep any of your digital assets, and it is assessable wherever. I think that that would be counted in here in section 1, subsection 1, paragraph (b) where it is talking about "digital asset of the decedent . . ." and that is precisely where someone might keep digital assets that they did not necessarily want family members or others to see. I think that as we walk through the policy components, it is important to keep in mind that times have changed and it is not just emails and it is not just pictures on Facebook, but there are other assets as well.

Senator Cegavske:
Thank you for that additional information. We are learning more about all the online opportunities and consequences of what goes with all of it. This was the first step in doing something, and that is what we are trying to accomplish in this legislation. All of the suggestions and questions are very appropriate.

Assemblywoman Fiore:
Thank you for bringing this bill forward. I really like it. If you start changing things around and doing amendments, would you please add me as a cosponsor?

Senator Cegavske:
Yes, I would love to do that. Thank you very much.

Chairman Frierson:
Are there any questions from the Committee? [There were none.] I will invite those here to offer testimony in support of S.B. 131 (R1) to now come forward, both here and in Las Vegas. [There was no one.] I will invite those wishing to offer testimony in opposition to come forward.

John Griffin, representing Google; Amazon; and the Internet Alliance:
I am here today on behalf of Google, Amazon, and an association called the Internet Alliance. The Internet Alliance is made up of a number of companies that have been mentioned in the questions raised by the Committee, including Facebook, eBay, Yahoo, et cetera.

I would like to apologize for testifying for the first time in this Committee. The Internet Alliance submitted a letter (Exhibit E) in opposition on the Senate side, but we were not able to offer testimony, so I apologize to the sponsor, but I want to get our concerns on the record.

In response to some of the questions raised, I want to clarify a few things. There has been a lot of discussion about Facebook. Currently, Facebook's practice—and you are more than welcome to look at the policies and procedures that you can get online—is that they will not issue a login or password information to family members of a person who has died. However, a family member of a person who has died may contact Facebook and request that the deceased person's profile be taken down or turned into a memorial page. If a memorial page is chosen, then the account can never be logged onto again, and is taken off of public search results. I am sure we have all experienced seeing someone's memorial page. It just becomes a memorial page. There is no access to and from and it is taken off from public search results.

There was discussion about a personal representative. Not all the time is a personal representative your mom, dad, son, daughter, or family member. A personal representative can be a number of different people, including institutional representatives or representatives that the decedent knows nothing about and has never met in his life. I am not saying that is the majority of the time, but there is that chance. Not all the time is the personal representative accessing—if this bill were to pass—information of someone they actually knew.

We believe—all of my clients that I am here on behalf of today—that this is a well-intentioned bill. We actually support a lot of the concepts in it. There are

a couple of complex issues that it touches on, as drafted, that cause some issues. The first is federal law that puts the companies in a conundrum. If this bill were to pass and grant fiduciary access to the contents of electronic communication, it would conflict directly with the federal provision under Section 2702 of the Electronic Communications Privacy Act. That Act restricts an electronic computing service or remote computing service from providing the context of an electronic communication without the lawful consent of the originator or recipient of the email or the subscriber of the service. If the law were to pass, given the federal law which is in place, it puts a company like Amazon in a conundrum as to choosing which law they want to violate—the federal law or the state law. That is not to say that this is not without solutions. There is an effort with the Uniform Law Commission to take these well-intentioned concepts and try to address them in a way that complies with federal law and also seeks to get at what the sponsors of this bill are trying to do. The Uniform Law Commission established a committee recently to address concerns of access to the decedent's account with restrictions on the disclosure of the content of the electronic communications imposed under federal law. It is my understanding that the Uniform Law Commission's goal is to craft a workable draft bill that would be out by 2014. I also understand that a draft version of this bill may be out as soon as this fall.

While well-intentioned, there are some issues that touch into access of the decedent's personal private information that they may have wanted to remain personal and private forever. Leaving this alone and leaving that information at, say Facebook, that the Facebook account user does not want anyone to ever know, it is still protected, it is still safe, it is not accessed by anyone, and Facebook has a number of different duties and obligations under federal law and state law to not disclose that personal private information to anyone ever.

Chairman Frierson:
Are there any questions from the Committee? [There were none.] I want to make sure I got the federal act right. It is the Electronic Communications Privacy Act?

John Griffin:
Yes, 1986, the Electronic Communications Privacy Act. The cite is specifically 18 USC Sections 2510-2522. That is with regard to stored communications and then for the Electronic Communications Privacy Act it is 18 USC 2702 as it relates to stored communication.

Chairman Frierson:
Was that federal statute addressed in the letter which was submitted to the Senate?

John Griffin:
Yes, it was. I think the Internet Alliance posted the same letter on the Nevada Electronic Legislative Information System (NELIS) this time, and if not, I will make sure I get that to everyone on the Committee. In response to your question, the Internet Alliance's letter had included that cite.

Chairman Frierson:
Are there any other questions from the Committee? [There were none.]

Elisa Caffereta, President and Chief Executive Officer, Nevada Advocates for Planned Parenthood Affiliates:
I also have my second private sector lobbying hat as a geek mother. Social media accounts are not especially on my radar of legislation to track; however, the more we talked about this piece of legislation with a couple of our folks in our organization, the more concerns we have. This is a rapidly evolving area and one of the concerns we have is on behalf of our lesbian, gay, bisexual, and transgender (LGBT) clients and activists. If you can imagine, a young person who is gay or lesbian may have a Facebook account or other social media accounts and it is possible—while we understand that that information is out in the ether and recoverable—for them to set up those accounts with some privacy protocol so that only their accepted friends or accepted followers can see what they are posting. Of course, if one of those young people dies, they no longer have a right to privacy, but their friends and followers certainly still do have a right to privacy. So things that they may not want their parents to know, certainly their friends who also may be in the LGBT community or activists on behalf of, may not want the decedent's mom or uncles or whoever to have access to that information and that would be why they would set their accounts as private. The way this is written, it would give access to a whole group of people who were not envisioned in those conversations.

The second concern is the issue of personal representatives. In health care, we certainly see conflicts that come up between family members and LGBT partners in terms of who gets to make decisions in terms of the health care setting. This would not clarify how those conflicts would be resolved. While executors are clearly laid out in wills and estates, most 25-year-olds I know, and many 60-year-olds, do not have wills or have not identified executors, so personal representative is a pretty broad term. In a case where you have young people who are in relationships, it does create the potential for conflict without very clearly spelling out how that would be resolved.

As a geek mom, I will say I am aware that most of these social media sites are rapidly developing a response to this issue because it is coming up in so many places. Not only does Facebook have the option of memorializing or deleting an

account, there is an app for that called "If I Die," which lets the user specify what is to be done with their assets. Google has developed a program called the Google Inactive Account Manager which lets you specify what would happen with your account upon your death. There are several Twitter applications such as "LivesOn," "DeadSocial," or "The Tweet Hereafter." As was pointed out, the market is certainly stepping in to provide solutions here. When I think of my 22-year-old and 25-year-old kids, they are much more likely to use an application that is available on their Twitter or Facebook account than establishing an executor and directing that person how to deal with their digital assets upon their death.

To me, the moral of the story is you should definitely be friends with your kids on Facebook so that you have access to their pictures and accounts should something happen to them. If you are not, then there may be a good reason for that and this might be an opportunity for a conversation. I rarely recommend something go to an interim study, but I think that there is a lot more conversation and a lot more investigation of what is actually available to make this bill of how do you deal with this situation more robust and useful.

Chairman Frierson:
Are there any questions of Ms. Caffereta? [There were none.] Is there anyone else wishing to offer testimony in opposition? [There was no one.] Is there anyone wishing to offer testimony in a neutral position, both here in Carson City and in Las Vegas?

Robert Armstrong, representing McDonald Carano Wilson LLP:
I am a trust and estate lawyer from Reno, Nevada, and I am with the law firm of McDonald Carano Wilson.

I did not sign up to testify, but I wanted to raise just one practical matter for the Committee's attention. A number of the estate plans that I am involved with only involve trusts. We do not probate wills anymore, and typically a personal representative is someone who is appointed pursuant to a will. I think that one of the things that may want to be considered in either an amendment, if this bill goes forward, or in the study committee, is whether or not a trustee who is authorized under the trust instrument to undertake the similar powers of a personal representative could also serve in that capacity, thus avoiding having to go to court to get the will administered and just manage the digital accounts of a decedent.

Chairman Frierson:
Are there any questions? [There were none.] I will invite Senator Cegavske back up and give an opportunity to make any closing remarks. In particular,

your response to Ms. Caffereta's comments about the privacy of the other individuals that the decedent may be communicating with.

Senator Cegavske:
Yes, I do realize that there are family members all over who have issues where they might not want their family to know a host of things. When Ms. Caffereta came up to tell me that she was coming to oppose, I told her, "As a mom, you would hope that you would be able to learn something about your child if your child's life is taken. You would hope that you would be able to know a little bit more or find out a little bit more," and I had not thought about the other part that she described as the other members of that conversation that would be on Facebook. I am very sensitive to what she is referencing. I think this all goes into the part that we talked about, Mr. Chairman, that it would be upon a will, their wishes, and it would be by order of the court if there is not a will accessible. I think all those areas are covered from the limited knowledge that I have, but I think those would be covered in where and who you want to see this if you have a will. If you do not, it would be up to a judge to make that decision whether or not you would be able to have access, but without at least being able to possibly close down a site. I do appreciate all of the questions and discussion on this legislation, and I appreciate your consideration. I will be willing to work with you, Mr. Chairman, and the staff on the recommended amendments that we did discuss.

Chairman Frierson:
Thank you, Senator. I will certainly survey the Committee and see what their thoughts are on it. I will close the hearing on S.B. 131 (R1) and open the hearing on Senate Bill 307 (1st Reprint).

Senate Bill 307 (1st Reprint): Revises provisions relating to trusts, estates and probate. (BDR 12-179)

Senator Ben Kieckhefer, Senatorial District No. 16:
I am going to be very brief because this is not my subject matter of expertise. I am going to do a quick introduction and try to get back to Finance to take care of a couple of bills that we have there. This is a bill that I am carrying on behalf of the Trust and Estate Section of the State Bar of Nevada. It has been processed through the Senate Judiciary Committee and the full Senate. Ms. Gold will be able to walk through all the particulars of the bill. It is my understanding that an amendment is going to be brought forward that the State Bar is in agreement with, and I would consider that a friendly amendment at this point and for the record (Exhibit F).

Chairman Frierson:
If you can go ahead and introduce the bill fully and go through the measures, I think that would probably save us some time and questions.

Julia Gold, Co-Chair, Legislative Committee for the Trust and Estate Section, State Bar of Nevada:
Senate Bill 307 (1st Reprint) has been endorsed by the Board of Governors of the State Bar of Nevada, and it has also passed the Senate. As you can see, the bill is quite lengthy, and we are here today to walk you through the sections if you want to go through section by section. I understand that you have already been at this for quite some time, and I do not want to unduly take your time today. If you would like, that is what we have done in the past. I want to give you a brief background about the Legislative Committee for the State Bar. It is comprised of attorneys who volunteer their time. They are trust and estate attorneys, they are litigators, they administer trusts, and they are estate planners. The goal of the committee is to try to work to improve the laws in the state of Nevada to hopefully not introduce controversial bills but to introduce bills for you to improve the laws and make them less ambiguous. For the past almost 14 years we have been able to promote the enactment of legislation which has kept Nevada competitive with other states such as Delaware and Alaska, and it has brought a significant amount of business to the state of Nevada.

[Vice Chairman Ohrenschall assumed the Chair.]

That is a brief introduction with respect to the Legislative Committee. If you would like, Mr. Rushforth and I will go through the bill section by section, or we can summarize and make this a little more brief. It is a lengthy bill.

Vice Chairman Ohrenschall:
The Chairman had to step outside and his counsel to me was for you to walk us through the major points. I think the Committee is not as well versed in trusts and estates as you both are, so if you could walk us through the major points, that would be great.

Julia Gold:
I will start with the first 32 sections, and then Mr. Rushforth will take the balance of the sections. Sections 1 through 5 provide some clarification with respect to *Nevada Revised Statutes* (NRS) Chapter 132 and provide some definitions to provide clarity. One definition that we have elaborated on is the definition of "interested person," so we just made sure that that is clarified so that the courts know who can be in front of them to proceed whether it is a trust or estate. Section 6 amends NRS 133.110. That section currently

provides that a decedent spouse is entitled to an intestate share of the decedent's estate. If the decedent's will predates the marriage, we have amended that to clarify that a testator may now exclude a future spouse without naming a particular individual so they are not having to constantly update their documents.

[Chairman Frierson reassumed the Chair.]

Julia Gold:
Section 7 amends NRS Chapter 136 and clarifies the impact of a pre-death declaratory judgment regarding the validity of a will. Sections 8 through 9 were deleted by amendment. These are the technical amendments that Senator Kieckhefer mentioned (Exhibit F). Sections 10 and 12 modify NRS 138.020 and NRS 139.010 and allow the court to consider other reasons to not name a personal representative if there is a compelling reason, perhaps there was an inappropriate financial relationship that would make it so that person is not the appropriate person to take over the management of the assets of the decedent.

Section 11 modifies NRS 138.090 and this pertains to the appointment of an administrator with the will annexed. This section clarifies that a person who is excluded as a beneficiary or as a fiduciary in a will is now ineligible to serve as an administrator, and it gives the court a little more guideline with respect to appointing a personal representative, and maybe appointing someone who is going to receive a larger share.

Section 13 provides technical corrections to NRS 143.380 concerning the sale of property held in an estate, and this goes to the Independent Administration of Estates Act. This clarifies when court confirmation of a sale of property is not required. Sections 14 and 15 modify NRS 144.010 and NRS 144.020 pertaining to filing inventories and appraisals. The purpose of this section is to allow the interested parties to waive the need for preparing and filing an inventory and appraisal to cause less expense to the estate.

Section 16 modifies NRS 146.070 which relates to the administration of estates of $100,000 or less. This gives the probate court the ability to reduce amounts that may be set aside to a spouse or minor children if the spouse or minor children are already receiving assets through nonprobate transfers such as life insurance or through a trust. This also allows the court to award attorney fees.

Section 17 was deleted by amendment. This went to the amendment that Senator Kieckhefer mentioned (Exhibit F). Section 18 amends NRS Chapter 155 and provides clarification concerning the jurisdiction of the probate court with

respect to testamentary trust and estate matters. The court's jurisdiction is further clarified in section 52 of this bill. Section 19 amends NRS 155.010. This is essentially a technical correction that updates the reference to "interested persons."

Sections 20 through 24—in the 2011 Legislature, they enacted a section that dealt with fraud and undue influence and it set up a presumption that set aside transfers that were effective on death. This bill also brings in lifetime transfers as well, so that if someone were to execute a deed during his lifetime and it was a result of undue influence or fraud, those transfers could also be set aside under the presumption.

Section 25 concerns NRS 155.165 which deals with a vexatious litigant. This section was added in 2011 to the NRS and now we have added that a fiduciary can also be included as a vexatious litigant if they continually and unreasonably file motions or papers that are not warranted.

Sections 26 through 27 provide technical corrections to NRS 21.075 and NRS 21.090 that relate to property which is exempt from execution. These sections were amended to coordinate with other existing revised statute sections and to clarify what assets are exempt from predator claims, how the exemptions relate to the distributions made from certain assets to the debtor, and after the debtor's death. To be consistent with other provisions regarding retirement benefits, this makes benefits for military retirement plans exempt. It also adds qualified annuity plans under section 403 of the Internal Revenue Code, which include teacher retirement plans to the provisions allowing the $500,000 exemption from certain retirement plans. These sections also clarify that the exemption of insurance and annuities is subject to NRS 687B.260 and does not permit premium payments made with intent to defraud creditors. This section also clarifies that if certain exempt assets are paid to the debtor during his or her lifetime, the cash received from the asset remains exempt in the debtor's hands, such as a life insurance policy, annuity contract, distributions from a retirement account, or sales from a personal residence. This section further clarifies the exemptions available after the debtor's death and the exemptions available to the beneficiaries of a debtor's estate and retirement plan, so it provides a lot more clarity with respect to those exemptions that exist in those titles.

Sections 28 through 29 amend NRS 40.515, and this allows a life estate and real property to be terminated with the use of an affidavit instead of requiring a court petition. Section 30 provides a technical amendment to conform to modifications in NRS 146.070 concerning the filing of inventories in estates. Section 31 clarifies the effective date of NRS 111.781 which pertains to the

effect of a divorce or annulment on nonprobate transfers. This statute was also added in 2011, but the effective date was unclear. This amendment clarifies that the date of the transfer is the relevant date for the application of the statute.

Section 32 provides an amendment to Chapter 112 of NRS, the Uniform Fraudulent Transfers Act. The section eliminates the potential conflict between Chapter 112 and Chapter 166 of NRS. Section 32 clarifies that the Uniform Fraudulent Transfers Act does not apply to transfers to a spendthrift trust, and creditor's rights and relief with respect to a spendthrift trust are governed by Chapter 166.

Mr. Rushforth is going to continue with the rest of the sections. Before he does, are there any questions on the sections that I have covered?

Chairman Frierson:
We received summarizing documents about this bill beforehand that wrote it off as, for the most part, clarifying the law. I think this bill does everything far above and beyond clarification. I think this bill significantly changes the law, except for the effective dates. It is a complicated bill that does a lot, but certainly does more than clarify most of the law that it is addressing.

Assemblywoman Dondero Loop:
I would like to go back to section 16 that allows for the probate court to reduce the amount set aside to the surviving spouse or minor children by amounts received by them. I personally find an issue with that because I think we are saying that someone, in effect, could allow the courts not to support those children even if we take the surviving spouse out of it.

Julia Gold:
What the bill allows the court to do is to consider other assets that have actually gone to the support of the minor children and the spouse. It is not directing the court to take away the support from a minor child or the spouse. Many times, the decedent will provide for the minor children or spouse through a revocable living trust or through life insurance through beneficiary designations on retirement accounts, so it allows the court to consider the whole picture of the estate and not just what might be included in the probate estate.

Assemblywoman Dondero Loop:
I am not an attorney, but I have studied this extensively. When you say, "consider"—these are the surviving spouse and minor children. Surviving says to me, yes, someone could put in a will that they want someone else to get

their amounts that they put aside in their estate, but "consider" to me says that they can change something. Would you clarify "consider?"

Julia Gold:
Yes. Based on the current statute, generally you can have a small estate that is under $100,000 and you can essentially go in and say this is going to be set aside for the spouse and minor children and perhaps not pay other creditors and have the assets go directly to the spouse and minor children. All this bill does is allow the court to take into account—right now the court really cannot look at what other assets are going to the spouse and minor children—so it is not so much as taking assets away from children and the spouse, but it is giving the court the ability to consider the decedent's estate as a whole and other assets that are passing outside of the probate. Does that answer your question?

Assemblywoman Dondero Loop:
We can wordsmith this any way you want. It is taking money away from minor children.

Chairman Frierson:
It looks like section 16, subsection 1, paragraph (a) discusses creditors. In that regard, are we talking about giving the option of reducing the amount that would otherwise be designated for a surviving spouse and siblings based on what the person may have given them outside of the will in order to pay these creditors?

Julia Gold:
Yes. The court could reduce the amount in order to pay the creditors. Again, the court would be taking into consideration if the surviving spouse and/or the children received significant life insurance proceeds outside of the estate, then they could use the money that perhaps is through the probate estate to pay valid creditors instead of going directly to the spouse and child, because the spouse and child have already received significant assets outside of that probate proceeding.

Chairman Frierson:
So you are saying that the court can reduce what I have said I want my surviving spouse and children to have in my will because the court has recognized that I have otherwise provided some support for my spouse and my surviving children?

Layne T. Rushforth, Co-Chair, Legislative Committee for the Trust and Estate Section, State Bar of Nevada:
Nevada Revised Statutes Chapter 146 deals with small estates, and it was actually intended to supersede the will by allowing a spouse or minor children to take contrary to the terms of the will and make sure they were provided for. The intent of NRS Chapter 146 is to make sure that the minor children and spouse are potentially provided for in an estate that is $100,000 or less. This is not a situation where if you provided for them in your will someone is going to use this chapter, because if the will already provides for the spouse and minor children, that is going to be taken into consideration. Sometimes a spouse or minor child will come in and say, "We are impoverished; we don't have any assets; we should be paid before creditors." That is exactly what we want to happen if the estate is small.

As Ms. Gold said, the whole point of this is that sometimes we have spouses who get a million dollars of life insurance or a child who has five million dollars in a trust for their benefit, and then we are asking creditors, who are the plumber and the electric company and other general creditors, to go without payment because the probate estate is under $100,000. All we are asking here is to allow the court to know all the facts, and if it can be shown that the spouse or minor children still need it, then the court is not going to pay the creditors. I have been in Nevada for 30 years, and we have a history of doing that. All we are asking now is to have a little equity if the spouse and minor children are clearly provided for, to take it into consideration before you go against the will and before you have creditors go unpaid.

Chairman Frierson:
The tone of the bill seems to be providing rights to a whole lot of people who are not right now parties to have influence in where the money goes. We add people who are materially affected by the outcome who are not necessarily beneficiaries. Someone who has interest in 51 percent or more can pretty much run the show at that point, and we allow attorneys to come in and get paid first. That seems to be the tone of the bill, not to mention we are redefining the court to be someone other than the court. Right now the court is the court—the district judge. This bill seems to be redefining that so every time you see the court making all these really important decisions, now they are being made by someone other than the judge.

Layne Rushforth:
That is not what we intended. Our intent was that in Clark County and in other counties, we have a division of court responsibilities that relate to probate matters and nonprobate matters. Our intent in defining "court" was to mean the judge, but what we want to define the court as meaning is the judge who is

handling probate and trust matters, and not a judge in some civil case that is going to basically not be familiar with these types of issues and be making rulings that affect trust and estates in a way that is inconsistent with the longstanding rulings and the law. We are not trying to redefine court to take it away from the judge; in fact, from my point of view, the way we do things now with our probate commissioners, I think is an unconstitutional delegation of the judicial duty. We have never fixed that. I do not want to take it away from the court. I would be an advocate of having a separate probate court like they do in many other jurisdictions. I do not want to define court to take it away from the judge.

Chairman Frierson:
The way I read it, this bill redefines court to take it away from the judge, and allows for the court, who is now not necessarily the judge, to have personal jurisdiction and to impose sanctions. It allows someone who is not a judge, from my reading of it, to do a lot that traditionally would be the purview of the district court judge.

Layne Rushforth:
If you could point to the area where we need to add the wording that indicates that this is not a judge, we will fix that in a heartbeat. We do not want to put that in there. If it reads that way, I want to fix it. That is not the way we intended it.

Chairman Frierson:
This is a big bill. I will find the specific section related to the definition of the court. Are there any questions from the Committee?

Assemblyman Martin:
I did a quick search of this large bill, and I came up with the term "spouse" approximately 100 times. Nevada also has a domestic partnership law and I searched for "domestic partner" and there were zero searches found. I am wondering if there is a restriction being embedded in this against domestic partners, or maybe we need to consider clarification of the language to wherever spouses are included, as appropriate, that we also add domestic partner. Then, of course, we have the legal chaos of people who are in same-sex marriages from other states who are in Nevada and who are not registered partners. I realize this is a large bill, and I am sorry for the lack of specifics, but when I did a search, spouse comes up 100 times, and nothing comes up domestic partner; it raises that general question in my mind.

Julia Gold:
There is a definition of domestic partner, and essentially any reference to spouse is included as a domestic partner. We could put throughout the bill "spouse or domestic partner," but because there is already a reference—I do not have it at my fingertips, but I could provide it to you. That is already taken into account because it is considered to include both domestic partner and spouse.

Assemblyman Martin:
I would like that information, and I am sure the Committee would too. If I am doing a search on a document and nothing is coming up in terms of the definition, obviously it raises a concern as to where it is defined.

Assemblyman Thompson:
In section 11, subsection 3, paragraph (b), I need clarification on where it says, "The court has the discretion to disregard the order of priority set forth in subsection 1 of NRS 139.040 to favor the appointment of a beneficiary of the will who is given a larger share of the estate over beneficiaries who are given lesser shares, and the court may exercise this discretion to appoint two or more beneficiaries who have similar interests in the estate of the decedent as coadministrators with the will annexed."

Julia Gold:
When a will is admitted to probate—essentially when it is qualified as admitted to probate with the will annexed—that means that the person who was named as the personal representative is not being appointed as the personal representative to serve, for whatever reason. This section addresses that case where you have someone who is not being appointed under the terms of the will, and so now what we are asking the court to consider is who is the appropriate person to be appointed as the fiduciary to administer this will. This gives the court some guidelines, because if you have people who are larger beneficiaries of the estate, oftentimes they will not take fees, so it is more beneficial to the rest of the beneficiaries. They have a larger stake in how the will or probate proceeds through the administration. It gives some guidelines to the court when a will is admitted to probate being annexed—which is a term of art with respect to the personal representative is not being appointed who is named under that will, or the will did not name someone.

Assemblyman Thompson:
When a person dies—money tears a family apart. If the person selected someone at 75 percent of a lot of their assets, you could probably be sure that that is the person who the decedent wanted to support the most. I do not necessarily agree with the court having the ability to come up with

coadministrators because, again, I feel like that that is going to continue to tear that family apart.

Julia Gold:
This section says that the court can consider naming a beneficiary who is given a larger share of the estate over beneficiaries who are given lesser shares. It can exercise this discretion to appoint two or more. It does not have to appoint two or more personal representatives, but it can. In your factual scenario where someone is given 75 percent, maybe the court just appoints that person to serve as the personal representative and does not name a coadministrator, or in a situation where there are fifty-fifty beneficiaries, maybe in that situation the court then appoints them as copersonal representatives. This gives the court some guidelines through which to proceed when a will is being admitted and, for whatever reason, there is not a personal representative named in the will. A lot of times holographic wills do not name personal representatives or someone who is named is no longer living, something like that. Does that answer your question?

Assemblyman Thompson:
It does, but I still feel like whoever gets more of the assets percentage—if you have to pick someone, maybe that is the best person to pick because otherwise there is going to be a big family feud.

Julia Gold:
I agree. This bill actually does say that the person who gets the larger share should be considered. It is under paragraph (b) and it says that the court should consider the beneficiary of the will who is given a larger share of the estate over beneficiaries who are given lesser shares.

Assemblyman Thompson:
But then the rest of it is where it can change up the mix. If it stopped there, it would be fine.

Julia Gold:
So you would prefer that it did not have two or more coadministrators?

Assemblyman Thompson:
I am thinking of the person with a larger share of the estate.

Julia Gold:
These beneficiaries have similar interests in the estate of the decedent as coadministrators of the will annexed. I think it addresses your concerns, but we

were very open. We do believe that this bill does provide clarification, and it is trying to provide a fair approach for the court to consider.

Chairman Frierson:
My concern in that section is if someone has a will and leaves his surviving spouse with certain assets and leaves his oldest son with certain assets and the oldest son's assets are more than the surviving spouse's assets, despite the fact that the decedent wants the surviving spouse to be in control, this gives control to that son, because that son has a greater share?

Julia Gold:
I am not sure if we are talking about apples and oranges. If the decedent had named his spouse to be the executor of the will, then he/she would be named to serve. A lot of times it is a holographic will, where someone forgot to name a personal representative and in that case, this provides some guidelines to the court to consider who to name as the executor of the will.

Chairman Frierson:
Okay. In my example, in the absence of a will, under current law, the surviving spouse would be number one in priority, and this says that rather than follow that order of priority, the person who has the most interest or the greatest amount of assets in the property would essentially be in charge.

Julia Gold:
There are two different scenarios. One is if you have someone who is intestate or again, it could apply with the will annexed, so you do not have someone named. The surviving spouse generally does have priority when you look at the priority statute. In this case, what could happen is if the spouse is not a significant beneficiary of the estate and the estate is primarily going to someone else, then the court could appoint that person. Again, it is not mandatory. It is that the court may exercise this discretion.

Assemblywoman Dondero Loop:
Would you explain section 27, page 27, line 11?

Julia Gold:
Currently, veteran's benefits are exempt and this clarifies that it also applies to benefits from a military retirement plan that are exempt from execution.

Assemblywoman Dondero Loop:
I may be wrong, Mr. Chairman, but this appears to be new language. I am not clear why it would be clarifying.

Julia Gold:
This is new language. It clarifies that veteran's benefits are currently exempt, but it also clarifies that it is benefits from a military retirement plan as well. I do not know if there is an issue.

Assemblywoman Dondero Loop:
So just to clarify, this says that it would make it impossible to enforce child benefits.

Julia Gold:
This bill would affect child support.

Assemblywoman Dondero Loop:
So it would make it impossible to enforce that someone would get that child support. You cannot enforce that with this piece of language.

Julia Gold:
I do not believe you can.

Layne Rushforth:
I spoke with Bob Dickerson on this and I cannot speak for the Bar, but I certainly would not object to an exclusion for child support on this. We are not trying to create a haven for dead-beat dads. There was a debate in our committee as to whether veteran's benefits included military retirement or not, and because other retirement benefits are excluded, we just thought it was appropriate for the military people to benefit from the same type of exclusion. We certainly do not want to have this be a big loophole as it relates to child support. I do not have a problem with amending this to say other than support of a minor child.

Assemblywoman Dondero Loop:
It clearly states that it is an exclusion. Would you please discuss the alimony and the property support within it, because it appears to me it is going to be a part of that.

Julia Gold:
Do you want me to discuss as far as right now, or do you want us to try to address your concerns with an amendment on this to make sure that that is an exception, because these are exemptions that are already in NRS Chapter 21, and we are happy to address those concerns with respect—you already have retirement benefits which are exempt.

Assemblywoman Dondero Loop:
I guess I am not clear on this. Once again, this is new language, and while I recognize you keep telling me that this is already in play, this is clearly new language, so it is clearly saying that the veteran's benefits are exempt from execution, which means they would be exempt from paying alimony, child support, property, anything that goes along with a divorce settlement, or an estate planning piece.

Julia Gold:
Generally, during a divorce, you are going to have the assets that were earned during the marriage divided by a qualified domestic relations order, and that is going to be divided by the judge. Generally, for family support, that is going to be taken care of during the divorce process. What this bill does is that we already have retirement accounts that were exempt assets under Chapter 21, and they are exempt from creditor claims. I believe your concern is that with the payment of alimony and child support, you are concerned that perhaps if you do have a dead-beat parent, that that parent could not access these accounts. All we were trying to clarify was that because we already have an exemption for retirement accounts, that military benefits were also included; however, if the Committee feels that that is somehow adversely affecting the children, then we would be very open to modifying the language to ensure that that was not the case.

Chairman Frierson:
I am assuming you are aware that there was a bill proposed in this Committee that addressed the exact same topic, so folks are reading the bill and revisiting issues that have been proposed before and are concerned about the notion that we are reconsidering the same language for the same result. If it is already covered, why do we need it in statute?

Julia Gold:
This just clarifies that military benefits receive the same exemption that retirement, IRAs, and other retirement accounts were also receiving. That is all this does is to clarify.

Chairman Frierson:
When you say clarify, are you saying that it is already the law?

Julia Gold:
It is the law that individual retirement accounts are exempt up to $500,000, and that is already the law, yes.

Chairman Frierson:
The word "clarify" throws me off.

Julia Gold:
It is including, so it is not just those retirement benefits. It is trying to amplify the law to include military benefits.

Chairman Frierson:
Amplify is a little better.

Julia Gold:
I am sorry for the language.

Chairman Frierson:
It looks like section 16 proposes to allow the creditors to get paid first and then the attorneys to get paid. That speaks for itself as far as the priority of that portion of the bill. What happens right now in the absence of this?

Julia Gold:
This section just deals with small estates. In the absence of this section, the court really does not take into account other assets that are passing to the surviving spouse and the minor children, and generally would just set aside the estate to the spouse and the minor children. The creditors could potentially not get paid when there were already ample assets that were going to the spouse and minor children and they were already taken care of.

Chairman Frierson:
So when someone mentioned earlier money being taken away from children, what this does is essentially, in small estates, say someone had a $50,000 estate, that attorneys and creditors would get paid before the beneficiaries would.

Julia Gold:
The attorney fee provision in that allows the court to award fees. There has never been an attorney fee provision that allowed the court to award fees out of the set-aside, so you would have attorneys preparing the documentation and then not having a way to get a court order for payment of their fees. This just allows the court to make that award. The attorneys are getting paid just outside of the estate without having the court even issue an order. That is what has happened in the past. This allows the court to pay the fees of the attorney outside of the estate, and then it allows the court to also pay creditors again when the minor children and the spouse are taken care of with other assets.

Layne Rushforth:
The reason that the attorney's fees were added into this was because a lot of times the family was asking for this to be done—which could be the spouse and minor children—they do not have any money, other than the money in the estate. Many attorneys will say they need either a retainer or they need to have a secure way of getting paid, and this was actually intended to allow attorneys to say they will take your case, and as long as the court order says that they can be paid out of the proceeds of the estate, then they do not have to have a retainer. It makes things go more simply. This was not intended to give attorney's fees to attorneys who were not going to get paid anyway. It is just to simplify the process of allowing them to be paid when the estate assets are the only assets from which they can be paid.

Chairman Frierson:
I think we are using wills and trust language to say right now that creditors are not getting paid and this takes money to make sure the creditors get paid before it gets distributed to beneficiaries.

Layne Rushforth:
Only if there are other assets that show that the spouse and minor children are already provided for. If there are no other resources, then the court is not going to pay the creditors. But if you have a million dollar life insurance trust or a huge education trust for the kids, then the creditors can be paid out of what little is left out of the probate estate. But what we are seeing, and what is happening in real life, is that we will have a person who puts 95 percent of their assets into a revocable trust and takes care of his spouse and minor children through his revocable trust, leaving a probate estate of an unknown asset, maybe a bank account that is worth $75,000, and the spouse and children under current law can go in and say, "You don't have to pay creditors. You can give us 100 percent," and the information regarding the revocable trust and all the other assets have been provided for his spouse and minor children are irrelevant and are inadmissible evidence. That is the only injustice that we are trying to correct. If there are no other assets, then NRS Chapter 146 clearly makes the spouse, and especially the minor children, the priority.

Chairman Frierson:
It sounds to me like you are putting a lot of trust in the court based on experience, but it is not necessarily all in a statute. You say that a court will not do that, but it sounds to me like the court could.

Layne Rushforth:
The court could do what?

Chairman Frierson:
The court could pay the creditors and the attorney before distributing to other beneficiaries regardless of whether or not there are other assets being distributed to the beneficiaries.

Layne Rushforth:
If you look at the statute in NRS 146.070, it basically says if there is $100,000 or net, "the estate must not be administered upon, but the whole estate, after directing such payments . . ." and then there is the language wanted by the Medicaid people, "by an order for that purpose, assigned and set apart for the support of the surviving spouse or minor child or minor children . . . ." So the court does not have discretion here except as to awarding attorney's fees and paying the Medicaid. The Medicaid provision was already elsewhere in the code, but it was just not in NRS Chapter 146. Under the provisions relating to Medicaid priority, they were already legally entitled to reimbursement. That is true even if this provision in section 16, subsection 1, paragraph (a) were not added, and that is actually still the law under the Medicaid provisions under the welfare regulations. The only things new we are adding are (a) we are saying the court can award attorney's fees, and (b) the court can take into consideration other assets that are going to the spouse and minor children. But the court does not have the discretion to ignore this provision if there are no other assets.

Assemblyman Duncan:
When we do summary administrations, is it just for full probate that you can go after the creditors first and then the attorney's fees? I recall in guardianship law when you are doing a set-aside—obviously you cannot do this. So summary is not the same, but the full probate is?

Julia Gold:
There are different procedures based on the value of the estate. If the estate is over $100,000 but less than $250,000, then it goes to a summary administration. The difference is the publication notice. If it is over, then it goes into a full administration. Once you get over the $100,000 range, then you get into the creditor notice procedures that I think you are thinking about. This is for summary administration when you have less than $100,000. That is where the court can set it aside to the spouse and minor children.

Assemblyman Duncan:
The set-asides for summary are $100,000 to $250,000, and then normal probate is beyond that. Maybe we do not want to lock it in, and leave it to the discretion of the probate commissioner. But would it be helpful to say if nonprobate assets are in the range above $500,000 or a million-dollar threshold,

then the court has discretion to be able to pay off the creditors first and the attorneys in the summary administration?

Just for the record, I do not want anyone to think that this is a lawyer employment act, because a lot of times you have attorneys doing tons of pro bono work and they are not getting paid because there are not that many nonprobate assets and there may be nonprobate assets that are outside of the estate that they cannot get to. Would it be helpful to put a threshold in, if the spouse and surviving children have $250,000 of nonprobate assets or some number? I do not know; maybe that would ameliorate some concerns.

Layne Rushforth:
I do not have a problem with that. I look at this as innocuous that saying the judge can take it into consideration, whatever there is, if there is $100 or $200,000 or whatever. All we are saying to the judge is to take it into consideration when making your decision. What the law already allows the judge to do is to direct such payments as the court shall deem appropriate, meaning payments to creditors. The judge already has the discretion to pay creditors even if there is a spouse or child. All we are saying is let us also produce evidence that the spouse and minor children are already taken care of. We could put in a dollar amount here. Just think about it. If I am a creditor and I am owed, whether it is for mowing the lawn, fixing up a house, or doing some little thing, and I am a creditor and I am only owed $2,500, and the spouse has adequate provision, does it really matter whether it is $100,000 or $200,000? It is just something that we say to the court that before you determine what creditors go unpaid, consider nonprobate assets. That is all we are saying. I would really rather not put a dollar amount to it, but if that is going to be the difference between this going forward or not, I would be happy to add a dollar amount.

Chairman Frierson:
On page 27, subsection 4, the bill is proposing to exempt life insurance policies, annuity contracts, and tax refunds. Would that also mean that currently those sources of revenue could be distributed and this would say they cannot?

Julia Gold:
Currently life insurance policies are exempt assets. This is if someone was to get the cash value of their life insurance paid out to the debtor, then that remains an exempt asset.

Chairman Frierson:
When you say "remains," is that what the current law is or are we adding something new? Right now, is the disbursement of an insurance policy and

annuities something that can be distributed to beneficiaries and we are saying now that it cannot?

Julia Gold:
We are adding something new to clarify that those accounts are exempt, those assets are exempt, and we are adding something new if they were distributed out that they are exempt assets in the hands of the debtor. It is the same with a homestead exemption. Your homestead is exempt. If you sell it, the proceeds that you receive are exempt in the hands of the debtor. It is clarifying what happens if those proceeds are distributed.

Layne Rushforth:
With respect to life insurance and annuities, the law that was passed last session exempted insurance and annuities and exempted a lot of things but, in my opinion, it was not clear as to what happens to the money once a policy was cashed in or an annuity was collected. What happens to the money? What we tried to do here was to say if it goes to the debtor, then it is still exempt. It is traceable to the exempt property. The purposes of the exemption are to continue as long as that money is in the hands of the original debtor, but what we tried to do here is to say the public policy for the exemption dies with the debtor. So that exemption for those proceeds does not continue in the hands of other beneficiaries. Once you have the exemption amount and it is in the hands of the debtor, then it is okay. With respect to what happens after the death—I am on page 28 of the bill—we said if an exemption applies to a deferred compensation retirement plan, then we allow the exemption to continue for the participant and the participant's spouse.

Let me add here that the omission of domestic partner was under the belief that NRS Chapter 122A that created domestic partnerships gave the domestic partners all the rights of the spouse. There is no one in our committee that wants to discriminate against domestic partners. Not one. If we need to define spouse in NRS Chapter 122 to include domestic partner, or if we need to add "or domestic partner" everywhere spouse appears—I can speak for the committee—that would be done in a heartbeat. We do not want to discriminate against domestic partners. That is not our intent.

The exemption continues as to the retirement benefits for the benefit of the spouse, but after the date of the death, then money that is paid—the exemption—does not continue to anyone else. That is the purpose of this. It is a new provision that is intended to specify what exemption applies after the death of the debtor. In our opinion, there was a lot of dispute about what should and should not be exempt in the hands of the beneficiaries that should be exempt in the hands of the debtor. We are saying that the public policy for

the exemption—if a child, spouse, or other beneficiary of a will or trust wants to have an exemption, they need to claim their own exemptions and they cannot simply say, "I get to dovetail onto the benefits now." With annuities and insurance, that is a little different because the exemption for insurance proceeds has been on the books for years—in 2011 it was made unlimited.

One of the other things that we did in another part of the bill is coordinate the exemption of insurance and annuities with the insurance and annuities chapter. That is an area where fraudulent transfers are not permitted, and we wanted to make sure that the exemption in NRS Chapter 21 did not appear to grant something inconsistent with what was granted in the other chapter relating to exemptions. The idea here is to define what exemptions survive the death of a debtor.

Chairman Frierson:
In the interest of time, whatever you were planning on presenting that you have not presented yet, could you go ahead and present it? Maybe abbreviate it, and not amplify it.

Layne Rushforth:
In sections 33 and 34, there are a lot of duties that are defined in common law and that have evolved, but Nevada does not actually have a codification of those duties. One of the fundamental policies that our committee has tried to promote is the desire to allow a testator of the will or a settlor of a trust to do whatever he or she wants to do. What we have said, in plain English, is here are the duties, and you can negate any of those duties except for the duty to comply with the governing instrument—whether it is a will or a trust—or to comply with applicable law. Other than that—the duty to invest prudently, the duty to be impartial, the duty of loyalty—those duties can be waived, but you cannot waive the duty to comply with the governing instrument or comply with applicable law. The intent is not to create new duties, but to clarify them. It is not to amplify them either. We specifically say that this is not going to create new duties.

Nevada Revised Statutes Chapter 163 in sections 35 through 37 add the trustee's power to combine or divide a trust. Section 38 is a combination of NRS 163.4177 and 163.418. The primary intent of this is to consolidate those two provisions into a more clarified version and to make it clear that the rules relating to alter ego that apply to trust are different from the alter ego rules that apply to corporations.

Sections 39 and 40 are a rewording. We have always allowed a trustee to be directed by an advisor, but we called the trustee who was being told what to do

an excluded fiduciary. We are now changing that to be a directed trustee. This is a rethinking of the terminology. Section 41 applies to public benefit trusts. Under the common law, a trust could not exist without a clearly defined beneficiary. Nevada law allows for public benefit trusts to be created for religious, scientific, literary, educational, or community development and not just to have a specific beneficiary designated.

Section 42 was intended to indicate under NRS Chapter 163 that a person can declare assets to the trust assets. The unanswered question was whether or not those assets, if they are reinvested in something else, come out of the trust? This basically says that investments and reinvestments of those assets continue to be trust assets.

Section 43 is codifying the rulings of the Nevada Supreme Court that say that if a trust does not expressly include a right of revocation, then it is presumed to be an irrevocable trust. That has been ruled in the courts that way, but we do not have a statute. We are just trying to codify existing Supreme Court rulings.

Section 44 is adding the possibility of a charitable trust along with the existing benefits for animals and public benefit trust as being a trust that is permitted without a beneficiary. Section 45 is a cross-reference provision. Section 46 is a cross-reference provision. Section 47 is a modification that makes it clear that if a trustee is given the authority to make distributions in the trustee's discretion, the court is to look at that discretion only if the trustee acts dishonestly with gross negligence or with willful misconduct. Beneficiaries have a tendency, even though they are just permissive beneficiaries, of wanting to demand distributions and we are saying that if the settlor gave the trustee discretion, unless you can show that they acted dishonestly with gross negligence or willful misconduct, then you cannot challenge it.

Section 48 is a cross-reference. Section 49 goes in with the directed trustee things and adds a provision if you are a trustee and you are required under the trust instrument to follow an investment advisor's advice and you follow that advice, you cannot be liable for following that advice because the trust said you had to. Section 50 is a follow-up on that which basically says that even though the settlor is deceased or has become incapacitated, if the trustee was told to follow certain instructions, those instructions can be continued to be followed even though the settlor is now deceased.

Section 51 is a technical amendment to the decanting statute. Sections 52 and 53 deal with both jurisdiction and governing law. What has arisen in section 52 is under constitutional considerations, a question of jurisdiction deals with what connection or nexus between the state is required for Nevada law to govern,

and basically our rule is that if the settlor has indicated what the governing law is, that is what trumps. But there are other considerations. If the settlor does not state what governs, then what connections to Nevada will allow a Nevada law to govern? The jurisdiction section in section 53 relates to both in rem jurisdiction and in personam jurisdiction. In anticipation of some questions on this, the in rem jurisdiction has always been the case. In rem just means that we are taking jurisdiction over the assets, over the property, of the will or trust. In this case, particularly the trust, what we have not had clear is to what in personam jurisdiction was involved. One of the problems that we have had is with NRS Chapter 164 and NRS Chapter 153, which relates to trust enforcement. This applies to both testamentary and inter vivos trusts, which have allowed the courts to order certain payments to be made, but it was not clear whether or not the court could, or had the jurisdiction over the person, be able to order those payments. So what we are trying to say is, if a person that gets involved in an estate does something, and let us use the example of a trustee.

Chairman Frierson:
I hate to cut you off, but if you would stick to the sections of the bill and then if we have follow-up questions for those, we can certainly do those for anecdotes. We are running short on time, and I have the opposition I have to give time to and a significant work session.

Layne Rushforth:
I apologize. Section 54 is to coordinate Chapter 30 with Chapter 164. Section 55 is a minor change regarding getting rid of the tax identification number and the certificate of trust. Section 56 deals with allowing a trustee, instead of having to run to court, to give notice of proposed action on any trust-related matter. Section 57 deals with relieving a liability of a trustee if they have relied on the trust terms, a court order, or following a statute. Sections 58 and 59 relieve a testamentary trustee—that is a trust under a will—from having to do a more complex accounting than the trustee of a revocable trust, except for the final accounting.

Section 60 deals with the right to receive an accounting and allowing it to be corrected if no one objects. Section 61 allows a settlor of an irrevocable trust to be able to be entitled to an accounting and to enforce a trust, even though the settlor was not a beneficiary of the trust. Section 62 is related to the effective date of NRS Chapter 165 provisions. Sections 63 and 64 are intended to amplify NRS Chapter 166 so that all the decisions related to spendthrift trusts are handled in NRS Chapter 166 and to give new statutory language that has been added to avoid inadvertent estate tax inclusion. Sections 65 and 66

are what I alluded to earlier that coordinate NRS Chapter 21 with Chapter 687B. I will be more than happy to take questions.

Assemblyman Ohrenschall:
In section 60, page 57, lines 20 through 23, it looks like it removes notice to beneficiaries who only have a discretionary interest. Is that done now, and what will this change mean if this is adopted into the NRS?

Layne Rushforth:
This is relating to the duty to account. What this will change is that if a beneficiary is entitled to a distribution as the provision says, "the trustee may make a distribution," the trustee is not required to account to that beneficiary unless they have some other interest in the trust, such as a mandatory income interest or a remainder interest. But if their only interest is a discretionary interest where the trustee does not have to give them anything, then they cannot really demand an account. They do not need to know the trust assets or income.

Assemblyman Ohrenschall:
Under existing NRS, do those folks who are "mays" instead of "shalls" receive accounts customarily?

Layne Rushforth:
Yes.

Assemblywoman Cohen:
I have a question about section 43, subsection 3, on page 42. Is that making trusts automatically irrevocable if you do not specifically say they are not irrevocable?

Layne Rushforth:
That is the law, yes. The Nevada Supreme Court has ruled on a number of cases. The main reason we are doing this is for educational reasons. We want people to understand that if they want it to be revocable, they need to say so. That is the rule in Nevada. A trust is presumed to be irrevocable unless you reserve a right of revocation.

Assemblywoman Cohen:
In section 33, page 36, it defines fiduciary and the requirements of being a fiduciary. Do we not have law that already says that? Nowhere in Nevada law does it define a fiduciary?

Layne Rushforth:
That is correct.

Chairman Frierson:
Are there any other questions? [There were none.] I will invite folks here to provide testimony in support to now come forward.

Keith L. Lee, representing Sutton Place Ltd.:
I represent Sutton Place, which is manager and trustee of a large family trust. I briefly mentioned to you, Mr. Chairman, that I thought we would be in opposition, but in presenting this bill, Senator Kieckhefer said he is considering our amendment that we are proposing which is a friendly amendment, so we are here in support with the amendment that we offered.

Robert Armstrong, representing McDonald Carano Wilson LLP:
I am here on behalf of Beacon Trust Company, which is a licensed Nevada family trust company. Our firm represents several family trust companies that are licensed here in Nevada and have identified that Nevada is a very good jurisdiction to conduct business. We had an opportunity to review S.B. 307 (R1) and the changes being made and one of the largest changes being made is the enlargement of who an interested person is relative to trust. That caused the review of the current chapter of NRS 669A, and from that review it was clear that we should be providing the information to beneficiaries and not necessarily this large class of interested parties. That is one technical change that we are making to NRS Chapter 669A (Exhibit F).

The second change that we are recommending in our amendment is—there is a financial reporting requirement in NRS Chapter 669A and we realized that the beneficiaries being provided accountings right now are getting duplicative information, very much the same information that is required to be produced under NRS Chapter 669A as being issued under NRS Chapter 165. We wanted to clarify that if they provide an accounting under NRS Chapter 165, they have satisfied their duty under the financial reporting obligations of NRS Chapter 669A.

The final two matters that we address in our amendment are the effectiveness of certain provisions in S.B. 307 (R1). One is dealing with the codification of the fiduciary duties that were in section 33. We were requesting that, in regard to trusts, which generally are very long-term trusts and have been in existence for a number of years, they would apply prospectively to the trust created after the effective date of S.B. 307 (R1) if it became law. These trusts that we administer have typically very detailed requirements with regard to disclosure and the statute in S.B. 307 (R1) does not allow for the trust instrument to

trump or control disclosure of information to beneficiaries, and that is very advantageous for a lot of families that we represent. Those are the changes, and I appreciate your attention in this matter.

Chairman Frierson:
Are there questions from the Committee? [There were none.] Is there anyone else wishing to offer testimony in support? [There was no one.] Is there anyone wishing to offer testimony in opposition, both here and in Las Vegas?

Katherine Provost, Private Citizen, Las Vegas, Nevada:
I am a practicing family law attorney in Clark County, Nevada. My office is the Dickerson Law Group and we have been involved with Assembly Bill 378. It is a spendthrift trust act brought forth by Assemblywoman Dondero Loop and Senator Segerblom. In dealing with that bill, I became aware of S.B. 307 (R1) and having reviewed S.B. 307 (R1), there are some areas of concern for me. I have provided a memorandum in opposition to S.B. 307 (R1) (Exhibit G) which I believe has been uploaded to NELIS. First of all, Chairman Frierson had already noted the concern with respect to what S.B. 307 (R1) is trying to do with the definition of a district court. Right now as the law in Nevada is, any district court can hear matters involving estates and trust cases. If this bill were to pass as currently proposed, that is going to limit all litigation of trust and estate cases to specifically only the probate court. That, in my opinion, is contrary to the *Nevada Constitution*, Article VI, as well as a 2011 Nevada Supreme Court holding in the case of *Landreth v. Malik* [127 Nev. Adv. Op. 16, 251 P.3d 163 (2011)], which already has analyzed whether or not this legislative body has the right to restrict the district court judges from hearing any particular types of cases.

I would oppose S.B. 307 (R1) as currently drafted if this language does not come out. No one wants to have an increase in litigation; however, to have it specifically be heard only by the probate court as opposed to a district court is an infringement upon the judge's general jurisdiction. Mr. Rushforth mentioned that in Clark County he has a concern because these matters are being heard by commissioners as opposed to being heard by district court judges. That is a problem that is existing, and if S.B. 307 (R1) were to pass as amended, you are not even going to have district court judges presiding over estates and trust litigation. You are going to have hearing masters or magistrates.

With respect to section 27 of S.B. 307 (R1), this is the section that Assemblywoman Dondero Loop brought up with respect to military retirement benefits, and there was a lengthy discussion this morning. I want to clarify for this Committee that there is a difference between veterans' benefits and military retirement benefits. In section 27, subsection 1, paragraph (ii), there

is an exemption for veterans' benefits, and then under paragraph (jj), an exemption for benefits from the military retirement plan. There is already existing federal law that provides for an exemption for veterans' benefits. Veterans' benefits are those paid by the U.S. Department of Veterans Affairs to a military service member who has retired from service. I do not have a problem with paragraph (ii) because it complies with federal law. I do have a concern with paragraph (jj), which would exempt benefits from the military retirement plan. That would make it impossible for any judgment to be satisfied from military retirement benefits paid to a service member.

As a little background, I am the wife of a service member. Personally, it would be great, because it would mean that more of our assets could not be attached. As a family law attorney who represents the former spouses of military members, this would be a significant change to Nevada law, and it would be contrary to what currently occurs right now with respect to military retirement benefits on the federal level. In fact, the Department of Finance and Accounting Services (DFAS), who pays the military retirement benefits out to the military retiree, has an entire garnishment and collection section. If you get a child support or spousal support or even a property division order—sometimes there will be a property division order that can be satisfied from military retirement benefits—if you have one of those orders and you bring that to DFAS, they will begin the garnishment process and you will be able to get an attachment of those wages directly from the source without having to wait until they are paid out and then go try to attach it from a bank account. If this remains in and remains as an exemption, it will create a very large change in the law, not only in Nevada, but it would be contrary to what currently exists throughout the fifty states.

Section 32 of S.B. 307 (R1) proposes to exclude Nevada spendthrift trusts from the Uniform Fraudulent Transfers Act. The Uniform Fraudulent Transfers Act has been in existence for an extremely long time. It is actually a build-upon of the Uniform Fraudulent Collections Act, which I believe has been around since the 1800s. The Uniform Fraudulent Transfers Act has been enacted in 43 states. There are two states that still use the Uniform Fraudulent Collections Act, and then there are a few states that deal with it under state law. Of the 15 states that have a statutory scheme for spendthrift trusts, 13 of them comply with the Uniform Fraudulent Transfers Act. Two of them do not, so if this passes, Nevada would be the third that would not.

I understand why the proponents of this bill want to remove spendthrift trusts from the Uniform Fraudulent Transfers Act—it is to limit the statute of limitations that you have to challenge property transfers to spendthrift trusts. Currently, under NRS Chapter 166, which is our state's spendthrift trust act

law, it is a two-year statute of limitations. Under the Uniform Fraudulent Transfers Act, it is a four-year statute of limitations. The concern that I have with respect to exempting Nevada's spendthrift trust from the Uniform Fraudulent Transfers Act is that it is going to be a significant change in law and it is going to limit the ability for any creditor to request payment, whether that be someone trying to enforce a family support order, or whether it be another type of outside creditor trying to seek payment of their debt through the trust assets. Right now, because there is that ability to challenge the transfers of property to a trust either under the Uniform Fraudulent Transfers Act or under NRS Chapter 166, a potential creditor's attorney has the ability to plead that in the alternative and to attack that transfer in either way. This will remove one of those two from the attorney's bag of possible ways to get at the trust assets to satisfy a creditor's claim.

Section 38 is an amplification of the law and deals with alter ego claims. Alter ego claims are a way that a potential creditor would seek to challenge the validity of a trust and assert that even though this trust says that the settlor is not in control, there has to be this neutral discretionary third person who allows for any payments to go to that settlor. The alter ego is another way that plaintiffs' attorneys would seek to challenge these trusts. Section 38 is amplifying this section of the NRS, including additional factors that you cannot use as sufficient evidence in court to determine that someone is the alter ego of one of these spendthrift trusts. Basically, it is just making it harder and harder to challenge anything with respect to spendthrift trusts in Nevada. That is a policy issue for your body to decide. I just want you to be aware of it.

Section 64 of S.B. 307 (R1) makes changes to NRS Chapter 166, which is our spendthrift trust act. Once again, it is an amplification of NRS Chapter 166. What I saw that was of interest and note to me is that it is changing the two-year statute of limitations to bring claims against the trust. Right now it is two years from the date that the property is transferred into the trust. This will change it to two years from the date of the creation of the trust, which can be a completely different type of time frame and significantly limit it. Right now it allows that every time property is transferred in, that two years starts anew every time there is a new transfer—only as to that transfer. This would remove that and basically make it that if you did not bring your claim within the first two years of the trust being created, you are going to be foreclosed from doing so.

From earlier comments today on section 16, we were talking about the payment to creditors instead of payment to family support obligations where Mr. Rushforth said that the court should have the discretion to look to the other assets that persons might be receiving before foreclosing those creditor claims.

I do not necessarily have a problem with that, other than to say that this is going to provide discretion to the courts where there has never been discretion before. Again, I think that is more of a policy decision for this body as opposed to attorneys.

I believe those are all the sections that I had some concerns with. If anyone has any questions, I will be happy to address them.

Chairman Frierson:
Are there any questions from the Committee? [There were none.]

Jessica Anderson, representing the Nevada Justice Association:
I am also a family law attorney practicing in Washoe County with Anderson Keuscher. We oppose S.B. 307 (R1) for the same reasons set forth in the Provost memorandum in opposition (Exhibit G), particularly section 4.5, which limits the jurisdiction of the district courts, particularly as it pertains to the family division. Oftentimes, family courts are in the post-divorce context dealing with the administration of the trust and estates of people who have been divorced. I think it would be very detrimental to limit the jurisdiction. It does contravene with the Nevada Supreme Court as already held in the *Landreth v. Malik* case.

With respect to section 27, removing military pension income from the reach of child support or spousal support creditors, this would make it very difficult for children and spouses and former spouses—which is not something that has really been dealt with this morning. We need to make sure they are adequately supported. Also section 32 deals with respect to children and former spouses as creditors.

I would also note that although this bill was approved by the Board of Governors, we do not believe that it was vetted by any of the other sections, and was definitely not vetted by the Family Law Section of the Bar. I know this because I am on the executive council of that section and on the Legislative subcommittee. I think it has more implications other than just the trust and estate section of the Bar.

Chairman Frierson:
Are there questions from the Committee? [There were none.]

Patterson Cashill, representing the Nevada Justice Association:
I have been a federal prosecutor in this state and a civil trial lawyer since 1969. I have prosecuted fraud claims in this state, and have handled civil wrongs from elder abuse to stock fraud to all sorts of cases involving the secreting of assets,

the commitment of wrongs, in both the criminal and civil sense, in order to feather one's own financial nest. I want to answer a couple of specific points that were made during the earlier course of the presentation by the proponents of this bill.

First, there is a significant body of common law in Nevada which defines the duty of a fiduciary. Those duties in this state, running over case law going back as far as 50 years, are the duty of loyalty, absolute honesty, full disclosure, good faith, and ordinary care. Those are the duties that a fiduciary, such as a trustee, has to those beneficiaries or other persons who have such a special relationship with that fiduciary as to compel the law in this state to impose particular responsibilities on those people who have control of assets in which that beneficiary or other person might have an interest. It is simply wrong to say that there may not be a statute that particularly defines all the duties of a fiduciary, but there certainly is a body of law here to which all of us look as litigators to determine what the responsibilities of fiduciaries are. This bill eradicates that body of common law insofar as those relationships are concerned in a spendthrift trust or otherwise.

Secondly, the provisions of this bill appear to us to alter significantly the rights of creditors in Nevada. As Senator Ford so succinctly stated, Nevada does not want to be a home to dead-beat dads, nor I suggest respectfully, does Nevada want to be a home other than temporarily perhaps, while in state custody, for people like Mr. Madoff or Mr. Simpson, who have utilized unlawful activities in order to create ill-gotten gains and who could, in other circumstances, perhaps use a vehicle such as a spendthrift trust, for example, to secrete those assets and keep them from legitimate creditors or from spouses or from children. Those are not salutary public purposes for enactment of legislation.

Finally, the statute of limitations provision in section 64 of this bill provides for a statute of limitations of two years, not from the date on which an act occurred, but from the date of the creation of the spendthrift trust. During earlier discussions, which have been the subject of various emails back and forth between this Committee, the proponents of this bill discussed the lengthening of the date of discovery period from six months to one year. Some of us felt there was an understanding, and others of us felt there was no understanding. The point is, as we, from the Nevada Justice Association, have demonstrated to this Committee within the last ten days concerning Senate Bill 441 (1st Reprint), that under certain circumstances it makes sense to expand a statute of limitations which may seem on the surface to be contrary to logic.

Why would you give people a longer time to sue? It may well be under many circumstances that enlarging the period gives good lawyers with responsible clients and experts adequate time to research a lawsuit that may be legitimate and may be found not to be so, but the expansion of time serves the public interest, as the state of California found when it extended its one-year general period of limitations to two years. It makes sense to expand that period. We suggest here that leaving the two-year statute as is but to modify, as my colleague has suggested, from the date of the wrong or one year from the date of the discovery of the wrong, whichever is later, better serves the people of the state of Nevada in the public policy sense.

In conclusion, as a general proposition, this bill as written does not enact sound public policy in the state of Nevada. In these times, even though we are recovering, as we have talked about previously with certain members of this Committee, any act enacted by this Legislature which ultimately foists onto the people the responsibility for the payment of legitimate debts as opposed to keeping that responsibility on the shoulders of those who have committed the wrong, or who have breached the contract, or whatever the misconduct is, is simply not sound public policy. The people of this state cannot bear those costs, and we respectfully suggest that this bill does not serve the public interest.

Chairman Frierson:
Are there any questions from the Committee? [There were none.] Is there anyone else wishing to offer testimony in opposition? [There was no one.] Is there anyone wishing to offer testimony in a neutral position, either here or in Las Vegas? [There was no one.] As a courtesy, I will ask that the sponsors come up and provide any brief closing comments.

Layne Rushforth:
I want to indicate two things. There are two components to the statute of limitations in NRS Chapter 166 as proposed. Under the current statute, there is an ability to challenge transfers within two years of a transfer, but there is not really a mentioning of a statute with respect to challenging the trust itself. In the bill, we have provided for two statutes of limitations. For each transfer there is a new two-year period, but for challenging the trust itself, we want it for the inception of the trust.

The final comment that I want to make is that I am willing to meet with Katherine Provost and work out her concerns, and I would need to discuss with other members of my committee in order to deal with the Nevada Justice Association's concerns. I think that with what has been said today, we have

some ideas as to what can make this bill more acceptable, and we would like the opportunity to work it out.

Julia Gold:
The one closing comment I would like to make is with respect to the spendthrift trust act. I am not sure if this Committee realizes that this has generated a significant amount of business in the state of Nevada. Nevada is held out as one of four preferred jurisdictions in which to situs trust. These truly are not generally used to protect against or stiff family or children. When set up correctly, it is only with respect to a small portion of the trust or the person's assets. I want to point out, because I know you are not the recipients—this Committee was not the recipient of all of the emails that were in support. It was a separate bill, but dealt with a spendthrift trust act, and I would caution that before anything is done which really changes Nevada's position, that we really carefully consider how these trusts are used and the benefit that they do provide to Nevada.

Chairman Frierson:
Thank you very much. I will say—and I waited until the end so as not to invite a response because I am going to close the hearing in a second, and so that everyone is aware—it is not an efficient use of the Committee's time to carbon copy the Committee on the whole back-and-forth about emails. It is an absolute waste of our time, and it makes it really difficult for us to filter through the actual issues. So for the stakeholders, I would ask that you refrain from carbon copying the entire Committee on emails back and forth and that you simply provide the Committee with testimony and documents supporting your position so that we can use our time as best we can.

[The following exhibits were submitted but not discussed: (Exhibit H), (Exhibit I), (Exhibit J), and (Exhibit K).]

With that said, I will close the hearing on S.B. 307 (R1).

We have an extensive work session, and I hope that the Committee has had an opportunity to vet or read most of these. There is one new amendment that I know we are going to have to address today, but it will give us an opportunity to shift and have staff get ready.

We will take a quick recess [at 12:38 p.m.].

Chairman Frierson:
I am calling this meeting back to order [at 12:44 p.m.] and we will get to the work session. We are going to roll Senate Bill 31 (1st Reprint) and Senate

Bill 38 (2nd Reprint) for some continued work on both of those measures. First, we have Senate Bill 28.

Senate Bill 28: Makes various changes to provisions relating to securities. (BDR 7-381)

Dave Ziegler, Committee Policy Analyst:
Thank you, Mr. Chairman. Senate Bill 28, sponsored by the Senate Committee on Judiciary on behalf of the Secretary of State and heard in this Committee on April 26, 2013, has to do with regulation of securities. It provides that a person engages in unethical or dishonest practices in the securities business if the person misuses a certification or professional designation. In addition, the measure revises the grounds for discipline by the securities administrator in the Office of the Secretary of State to include any felony conviction and adds a misdemeanor conviction within the previous ten years involving moral turpitude. [Mr. Ziegler continued to read from the work session documents (Exhibit L).] There were no amendments.

Chairman Frierson:
Thank you, Mr. Ziegler. Are there any questions about the bill?

Assemblywoman Fiore:
I am going to be voting no with my reservation to change on the floor.

Chairman Frierson:
Are there any other questions or comments about the bill? [There were none.] I will be seeking a motion to do pass.

ASSEMBLYMAN MARTIN MOVED TO DO PASS SENATE BILL 28.

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN FIORE VOTED NO.)

Chairman Frierson:
Assemblyman Martin will handle the floor statement. As I said, we will be rolling Senate Bill 31 (1st Reprint) (Exhibit M) and Senate Bill 38 (2nd Reprint) (Exhibit N). We will go to Senate Bill 45 (1st Reprint).

Senate Bill 45 (1st Reprint): Revises provisions governing the sealing of certain records of criminal history. (BDR 14-345)

Dave Ziegler, Committee Policy Analyst:
Thank you, Mr. Chairman. Senate Bill 45 (1st Reprint) relates to criminal procedure and was sponsored by the Senate Committee on Judiciary on behalf of the Records and Technology Division and heard in this Committee on May 7, 2013. This measure requires a petition for sealing records of a conviction to be accompanied by the petitioner's current records received from all the criminal justice agencies that maintain such records in the city or county where the conviction occurred. The petition must also include the petitioner's date of birth and specific information about the conviction. [Mr. Ziegler continued to read from the work session documents (Exhibit O).] There were no amendments.

Chairman Frierson:
Thank you, Mr. Ziegler. Are there any questions on the bill? [There were none.] I will be seeking a motion to do pass.

> ASSEMBLYWOMAN DONDERO LOOP MOVED TO DO PASS SENATE BILL 45 (1ST REPRINT).
>
> ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Chairman Frierson:
Assemblyman Duncan will handle the floor statement. Next we have Senate Bill 78 (1st Reprint).

Senate Bill 78 (1st Reprint): Makes various changes concerning guardianships and powers of attorney. (BDR 13-465)

Dave Ziegler, Committee Policy Analyst:
Thank you, Mr. Chairman. Senate Bill 78 (1st Reprint) was sponsored by Senator Settelmeyer and heard in this Committee on April 22, 2013. It relates to guardianships and powers of attorney. As it concerns guardians, the bill authorizes a court to require a guardian to complete any available training, as appropriate; it requires a financial institution to accept a copy of a court order appointing a guardian as proof of guardianship and allow the guardian access to the assets of the ward, but does not grant a financial institution access to confidential medical information. [Mr. Ziegler continued to read from the work session documents (Exhibit P).] There were no amendments.

Chairman Frierson:
Thank you, Mr. Ziegler. Are there any questions on the bill?

Assemblyman Thompson:
I have a question about if the prospective guardian has had a bankruptcy in the last seven years. Could you explain that a little more? Is that basically saying that if you have had that then—say that that is the last person who really possibly knows the ward or the wards, so would they then automatically go into the Division of Child and Family Services' care?

Dave Ziegler:
My recollection from the testimony was that the petition has to include this information, but it is not necessarily disqualifying. It is just disclosure to the judge, and then the judge can decide whether the guardianship can be granted.

Assemblyman Thompson:
Okay. I see a lot of things that talk about financials and when it comes down to caring for a child, some of that matters, but having that child under a roof and someone is caring for them is far more valuable.

Chairman Frierson:
You certainly can reserve the opportunity to address that on the floor or with the sponsor of the bill before then to get some clarification. If you do, would you circulate that to the rest of the Committee as well?

Assemblyman Thompson:
Thank you. I would like to do so.

Chairman Frierson:
Are there any other thoughts on the bill?

Assemblywoman Fiore:
I am going to follow Assemblyman Thompson on that. That was one of my biggest concerns on this particular bill.

> ASSEMBLYMAN WHEELER MOVED TO DO PASS SENATE BILL 78 (1ST REPRINT).
>
> ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Chairman Frierson:
Assemblywoman Cohen will handle the floor statement. Next is Senate Bill 104 (1st Reprint).

Senate Bill 104 (1st Reprint): Revises provisions governing parole. (BDR 16-241)

Dave Ziegler, Committee Policy Analyst:
Thank you, Mr. Chairman. Senate Bill 104 (1st Reprint), sponsored by the Senate Committee on Judiciary, was heard in this Committee on April 29, 2013, and has to do with parole. It replaces the requirement for prisoners convicted of sexual offenses to be evaluated by a panel with a requirement for such prisoners to be assessed by the Nevada Department of Corrections (NDOC) before their parole is granted or continued. The measure requires NDOC to assess the prisoners with a currently accepted standard of assessment that will classify the risk to reoffend in a sexual manner as low, moderate, or high. The completed assessment must be provided to the Parole Board not sooner than 120 days before a scheduled parole hearing, and the Board must consider the findings before determining whether to grant or revoke parole. [Mr. Ziegler continued to read from the work session documents (Exhibit Q).] There were no amendments.

Chairman Frierson:
Thank you, Mr. Ziegler. Are there any questions on the bill?

Assemblyman Thompson:
My question pertains to page 3, starting on line 18, where it talks about the "Department of Corrections shall assess each prisoner . . . ." In the presentation or discussion, was it ever mentioned why they would not go with a neutral party when doing the assessment? If the person has been with NDOC for five years, there could be a bias there to not allow them to parole.

Chairman Frierson:
I will say for the hearing on this matter that it was actually the Department coming forward to try to make it easier for these folks to be considered because the structure that was in place seemed to not be working out. The reason for bringing the bill forward was to get rid of some unnecessary barriers to the current process, so the folks that we would be concerned about were actually the ones coming forward to say that we need to make it easier for everyone to consider this without a lot of the technical barriers that currently exist.

Connie S. Bisbee, Chairman, State Board of Parole Commissioners, Department of Public Safety:
What happened before was a panel—and if you are talking about biases, that is where a bias could exist. I am not saying that a bias did exist. They did a fine job, but having it within NDOC makes a lot of sense, because they have the physical body of the offender, and the assessment itself is one that is biased

neutral. It is either correct information or incorrect information. It would be the most internationally valid assessment at any given time. They are already going forward to make sure they have people trained properly and that there is an appeal should there be something incorrect. It is a huge move forward in making sure that the testing is actually accurate.

Chairman Frierson:
Thank you, Ms. Bisbee. Are there any other questions? [There were none.] I will be seeking a motion to do pass.

> ASSEMBLYMAN OHRENSCHALL MOVED TO DO PASS SENATE BILL 104 (1ST REPRINT).
>
> ASSEMBLYWOMAN SPIEGEL SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Chairman Frierson:
Assemblyman Ohrenschall will do the floor statement. Next is Senate Bill 108 (1st Reprint).

Senate Bill 108 (1st Reprint): Revises provisions governing juvenile justice. (BDR 5-518)

Dave Ziegler, Committee Policy Analyst:
Thank you, Mr. Chairman. Senate Bill 108 (1st Reprint) concerns juvenile justice and was sponsored by the Senate Committee on Judiciary on behalf of the Commission on Statewide Juvenile Justice Reform and heard in this Committee on April 25, 2013. This bill provides that a child who violates a county or municipal ordinance related to curfews or loitering is under the original jurisdiction of the juvenile court as a child alleged or adjudicated to be in need of supervision, rather than as a delinquent child. [Mr. Ziegler read from the work session documents (Exhibit R).] There were no amendments.

Chairman Frierson:
Thank you, Mr. Ziegler. Are there any questions on the bill? [There were none.] I will be seeking a motion to do pass.

ASSEMBLYWOMAN DIAZ MOVED TO DO PASS SENATE BILL 108 (1ST REPRINT).

ASSEMBLYMAN WHEELER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairman Frierson:
Assemblywoman Diaz will handle the floor statement. Next we have Senate Bill 264 (1st Reprint).

Senate Bill 264 (1st Reprint): Revises provisions governing criminal procedure. (BDR S-671)

Dave Ziegler, Committee Policy Analyst:
Thank you, Mr. Chairman. Senate Bill 264 (1st Reprint) relates to criminal procedure and was sponsored by Senator Cegavske and heard in this Committee on April 23, 2013. The bill requires the Advisory Commission on the Administration of Justice to include the following items relating to overcriminalization on an agenda for discussion. [Mr. Ziegler continued to read from the work session documents (Exhibit S).] There were no amendments.

Chairman Frierson:
Thank you, Mr. Ziegler. Are there any questions on the bill?

Assemblywoman Spiegel:
From my notes, someone had asked the question why we are not compelling the Advisory Commission to do anything with the results that they find. I had that Senator Cegavske said she would put that into the bill, yet there are no amendments. I am wondering if there was any discussion?

Brad Wilkinson, Committee Counsel:
I do not think that would need to be explicitly spelled out in the bill. It is being placed as an item for discussion on the agenda and the Advisory Commission would consider that as it would any other topic and could act if they wanted to recommend that there be legislation drafted to implement any of those things.

Chairman Frierson:
Are there any other thoughts on the bill? [There were none.] I will be seeking a motion to do pass.

ASSEMBLYMAN OHRENSCHALL MOVED TO DO PASS SENATE BILL 264 (1ST REPRINT).

ASSEMBLYWOMAN DONDERO LOOP SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairman Frierson:
Assemblyman Thompson will handle the floor statement. Next is Senate Bill 388 (1st Reprint).

Senate Bill 388 (1st Reprint): Revises provisions relating to crimes involving certain persons. (BDR 15-927)

Dave Ziegler, Committee Policy Analyst:
Thank you, Mr. Chairman. Senate Bill 388 (1st Reprint) was sponsored by Senator Parks and heard in this Committee on May 8, 2013. It involves crimes against persons. Senate Bill 388 (R1) repeals the crime of solicitation of a minor to engage in acts constituting the infamous crime against nature, and provides that the crime of luring a child includes contacting or communicating with the person believed to be a child with the intent to solicit that person to engage in sexual conduct. [Mr. Ziegler continued to read from the work session documents (Exhibit T).] There were no amendments.

Chairman Frierson:
Thank you, Mr. Ziegler. Are there any questions on the bill?

Assemblyman Hansen:
As I understand it, this bill will basically do away with solicitation of a minor to engage in homosexual conduct because currently that is allowed between 16- and 17-year-olds in heterosexual activities. I am amazed by the fact that we are actually going to allow a 50-year-old man to solicit sexual acts from a person who is as young as a sophomore in high school.

Chairman Frierson:
Would you refer to a section?

Assemblyman Hansen:
My understanding of the bill is—does it now make it so that solicitation of a minor to engage in acts that constitute the infamous crime against nature is now going to be allowed for 16- and 17-year-olds?

Chairman Frierson:
I think the state of the law right now is that—Mr. Hansen and I have had this discussion over previous sessions with the issue of the age of consent in Nevada being 16 years old. My understanding of the bill is that it is attempting to remove the distinction between what is currently permissible under the law for heterosexual individuals considered to be adults under the law, and gay and lesbian individuals under the same section of the law.

Assemblyman Hansen:
Thank you. That is my understanding as well, and that is why I think we are looking at this backwards. What we should be doing is not allowing 50-year-old men to go after sophomores and juniors in high school, female or male. I have a real problem with the idea that we are going to basically allow predatory practices, heterosexual or homosexual, on people who are clearly underage. I have a bill right now that we are dealing with in Commerce and Labor where we are going to make it illegal for anyone under 18 years old to go into a suntan booth. This exact same statute deals with an offense involving pornography. You have to be 18 years old to have any sort of pornographic involvement. We have federal age of consent laws which are age 18 for any kind of interstate sexual conduct. We just had a whole series of bills dealing with human trafficking and we determined in those bills that 16- and 17-year-old girls or boys involved in prostitution would be considered underage. I think we are doing this completely backwards. What we should be doing is bumping the heterosexual statutes up to make sure that 16- and 17-year-old girls also are protected from solicitation by predatory male or female sexual activities. I am a strong no on this, and I think we are absolutely looking at this backwards.

Assemblywoman Fiore:
Please correct me if I am wrong, but basically as our law states today in Nevada, a 16-year-old girl consensually can have sex with anyone whom she wants, but a 16- or 17-year-old boy cannot. Am I correct?

Chairman Frierson:
Under existing law, I believe that is correct.

Assemblywoman Fiore:
So I am a strong yes on this to give them equal rights.

Assemblywoman Spiegel:
I thought that it was if it is engaging in a heterosexual relationship, but if the 16-year-old girl wanted to initiate a relationship with another 16-year-old girl, then that would fall under this infamous crime against nature, and that is what this bill would be addressing. I think there may be some confusion.

Chairman Frierson:
Looking at the digest, it says that "infamous crime against nature is defined as anal intercourse, cunnilingus, or fellatio between natural persons of the same sex." So existing law distinguishes between folks of the same sex and folks who are not of the same sex. All of those fall under it, so this bill would be attempting to remove that distinction so that regardless of whether or not they are the same sex, it is treated the same. I think that Mr. Hansen's position is well taken. I hate to paraphrase, but we should be looking at raising the age to 18 as opposed to this despite all the other inconsistencies in existing law.

Assemblywoman Fiore:
The reason why I think this bill is so important is because we are looking at kids who are in high school, 16 and 17 years old, and at that age I believe it is such an experimental age where, gay or not, girls are tasting cherry Chapstick. I think it is vitally important that we do not get girls or boys in trouble for experimenting with themselves.

Assemblyman Hansen:
I think we need to make a distinction. This law, as I understand it, deals with solicitation for adults towards minors. Is that accurate? In other words, 16-year-olds are not covered in this bill. This is for adults who go after underage females—excuse me—males going after other males. My point is, you need to make that illegal for all sexual activity. Right now, if you are a teenager and you are 17 and you are dating another 17-year-old, this law has nothing to do with that kind of activity. It is only for adult conduct towards underaged people. Is that correct?

Brad Wilkinson, Committee Counsel:
Yes.

Chairman Frierson:
The target, Mr. Wilkinson, is the gray area between 16 and 18 years old?

Brad Wilkinson:
That is correct. You succinctly described the current state of the law. It is not illegal for opposite-sex couples.

Chairman Frierson:
The bill does not get rid of other crimes like lewdness with a minor, lewdness with a child, luring a child with a computer, or open and gross lewdness. Those would cover existing law, but it is specifically the sections referring to infamous crime against nature that the bill is proposing to repeal in that regard.

Assemblyman Hansen:
If I am 52 years old, and I go to a high school or wherever there are 16- and 17-year-old boys, and I solicit them for sex acts, the one specifically mentioned, would that be—that is currently illegal under the law. Would that now be legal under the law if we pass it with the solicitation provision removed?

John T. Jones, Jr., representing Nevada District Attorneys Association:
When you look in section 1.5 of the bill, what the Senate Committee on Judiciary did was add the word "solicit" to the luring a child statute. So the conduct that Assemblyman Hansen just described would now be illegal, not under the infamous crime against nature statute, but the luring a child statute.

Assemblyman Hansen:
Right now, if under Nevada law, if this passes, where is the separation? Can a 21-year-old try to seduce a 16-year-old?

John Jones, Jr.:
The statute now says "Another person whom he or she believes to be a child who is less than 16 years of age and at least 5 years younger than he or she is, regardless of the actual age of the person, with the intent to solicit, persuade or lure the person to engage in sexual conduct."

Assemblyman Hansen:
So a 16-year-old to 21-year-old would qualify. A 50-year-old would qualify.

John Jones, Jr.:
Yes.

Assemblyman Hansen:
So in that case, they would have to be within a five-year window under the new law?

John Jones, Jr.:
Yes, there is the addition of the five-year window as well, but basically anyone 21 years or older would be covered by the statute.

Assemblyman Hansen:
Covered in what respect? To be a crime to do that?

John Jones, Jr.:
The specific crime of luring a child, yes.

Chairman Frierson:
Just so we are clear, this is a child under the age of 16. So in Nevada currently there is nothing illegal about a person 21 or 201 soliciting someone who is aged 16 or older, as long as they are not a teacher.

John Jones, Jr.:
Other than the crime prohibited in the statute that you are about to repeal, that being the infamous crime against nature statute.

Assemblywoman Fiore:
I am looking at this bill as two underage same-sex people engaging in sexual conduct to be protected. I am not looking at this bill as if a 50-year-old is going to be able to solicit a child. Can you clarify?

John Jones, Jr.:
The 50-year-old soliciting a child under the age of 16 would now be illegal under the luring a child statute. The difference is that it is just general sexual conduct. It is not anal intercourse, cunnilingus, or fellatio.

Assemblywoman Fiore:
You keep saying under 16 years. I am asking if there is a 50-year-old man, is he now allowed to solicit girl or boy or boy on boy, or a 50-year-old woman can solicit a 16- or 17-year-old—that is where I am getting confused.

John Jones, Jr.:
The answer is basically—16 is the age of consent in the state of Nevada. So a 16-year-old is able to consent to whatever age he or she wants to. Right now, I think the distinction is if you are a 50-year-old male who solicits a 16-year-old male to engage in one of the described acts—that is illegal. It would no longer be illegal in this case if 16 is the age of consent.

Assemblywoman Fiore:
So as it stands right now, you are saying that a 50-year-old male can solicit a 16-year-old girl, but a 50-year-old male cannot solicit a 16-year-old boy?

John Jones, Jr.:
That is correct.

Assemblyman Hansen:
That was my point. Right now, what we should be doing is making it illegal for a heterosexual male to go after a 16- and 17-year-old female as it currently is for a male to go after a male or a female to go after a female. So that is where I have a real problem with this. Basically, the new law is if the person is

younger than 16 years old, you will still be able to prosecute them for solicitation but if, in fact, a male is 16 years old and a 15-year-old male solicits him for sexual acts, then that would no longer be something that will be punishable under Nevada law. That was my original point. Thank you.

Assemblyman Martin:
I think the point of this is that we need to get rid of the offensive language "crimes against nature" and the inequality. We certainly would have a much different discussion about raising the age of consent, but along the same lines, you would have to raise the age for marriage too. I am in support of this bill. We need to get some sense of equality and consistency in the law and remove all of these offensive terms.

Assemblywoman Fiore:
Because of the existing law, it is forcing my hand to support this law, but I highly suggest Assemblyman Hansen and I cosponsor a bill next session to up the age.

Assemblyman Frierson:
I welcome that. I certainly understand the frustration and agree with it. With that, I will be seeking a motion to do pass.

> ASSEMBLYWOMAN SPIEGEL MOVED TO DO PASS SENATE BILL 388 (1ST REPRINT).
>
> ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN DUNCAN, HANSEN, AND WHEELER VOTED NO.)

Chairman Frierson:
Assemblywoman Spiegel will handle the floor session. With that, we will conclude our work session for today. Is there any public comment? [There was none.]

[These bills were mentioned but not discussed.]

Senate Bill 31 (1st Reprint): Revises provisions governing children within the jurisdiction of the juvenile court and children in protective custody. (BDR 5-385)

Senate Bill 38 (2nd Reprint): Revises provisions governing the dissemination by the Central Repository for Nevada Records of Criminal History of information relating to certain offenses. (BDR 14-343)

I will adjourn today's meeting on Assembly Judiciary [at 1:19 p.m.].

RESPECTFULLY SUBMITTED:

_____
Linda Whimple
Committee Secretary

APPROVED BY:

_____
Assemblyman Jason Frierson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 13, 2013 **Time of Meeting: 9:17 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 365	C	Vanessa Spinazola	Testimony
S.B. 365	D	Norm Halliday	Testimony
S.B. 131 (R1)	E	John Griffin	Letter from Internet Alliance
S.B. 307 (R1)	F	Robert Armstrong	Proposed Amendment
S.B. 307 (R1)	G	Katherine Provost	Memorandum
S.B. 307 (R1)	H	Layne Rushforth	Letter
S.B. 307 (R1)	I	Layne Rushforth	Letter
S.B. 307 (R1)	J	Layne Rushforth	Summary
S.B. 307 (R1)	K	Patterson Cashill	Proposed Amendment
S.B. 28	L	Dave Ziegler	Work Session Document
S.B. 31 (R1)	M	Dave Ziegler	Work Session Document
S.B. 38 (R2)	N	Dave Ziegler	Work Session Document

S.B. 45 (R1)	O	Dave Ziegler	Work Session Document
S.B. 78 (R1)	P	Dave Ziegler	Work Session Document
S.B. 104 (R1)	Q	Dave Ziegler	Work Session Document
S.B. 108 (R1)	R	Dave Ziegler	Work Session Document
S.B. 264 (R1)	S	Dave Ziegler	Work Session Document
S.B. 388 (R1)	T	Dave Ziegler	Work Session Document