

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

**Seventy-Seventh Session
May 16, 2013**

The Committee on Judiciary was called to order by Chairman Jason Frierson at 8:31 a.m. on Thursday, May 16, 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 Tick Segerblom, Clark County Senatorial District No. 3
Senator Justin C. Jones, Clark County Senatorial District No. 9

Minutes ID: 1130



STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Thelma Reindollar, Committee Secretary
Colter Thomas, Committee Assistant

OTHERS PRESENT:

Stephanie Allen, representing Nevada District Judges Association
John T. Jones, Jr., representing Nevada District Attorneys Association
Brian Connett, Deputy Director, Industrial Programs, Department of Corrections
Bill Uffelman, President and CEO, Nevada Bankers Association
Cheryl Blomstrom, representing United Trustees Association
Graham Galloway, representing Nevada Justice Association
Peter Krueger, representing Nevada Petroleum Marketers & Convenience Store Association
Erin McMullen, representing the Las Vegas Metropolitan Chamber of Commerce
Tray Abney, representing The Chamber
Lee Tauchen, representing Retail Association of Nevada
Terry K. Graves, representing Henderson Chamber of Commerce

Chairman Frierson:

[Roll was called. Committee protocol and rules were explained.] We have again a heavy agenda today and we are going to do the work session first. If the Senators are listening, my intention, when we get to the actual hearings, is to hear Assembly Bill 499, then Senate Bill 111 (1st Reprint), and then Senate Bill 107 (1st Reprint).

Some folks may be here with respect to the Subcommittee meeting this morning. We are not going to work up Senate Bill 130 (1st Reprint) today. I see Senator Gustavson here, and I would like to make sure the members get an opportunity to take a look at it.

We will begin the work session with Senate Bill 38 (2nd Reprint).

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)

Dave Ziegler, Committee Policy Analyst:

Senate Bill 38 (2nd Reprint) was sponsored by the Senate Committee on Judiciary on behalf of the Records and Technology Division, Department of Public Safety. It was heard in this Committee on May 7, 2013. This bill amends the existing laws relating to the dissemination of criminal history information—covering notice to employers, requests by employers, correction of information, actions for damages, and related matters—to apply to persons who work in positions involving the elderly and persons with disabilities, as well as prospective and current volunteers who work with children, the elderly, and persons with disabilities. [Mr. Ziegler continued to read from ([Exhibit C](#))].

There is an amendment that was received on the day of the hearing from the Records and Technology Division ([Exhibit C](#)). There was another amendment from Mr. James Jackson which has been withdrawn.

Chairman Frierson:

Are there any questions or thoughts on the bill? Seeing none, I would entertain a motion to amend and do pass with Ms. Butler's proposed amendment.

ASSEMBLYWOMAN DONDERO LOOP MOVED TO AMEND AND
DO PASS SENATE BILL 38 (2ND REPRINT).

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN OHRENSCHALL WAS
ABSENT FOR THE VOTE.)

I will assign the floor statement to Mr. Carrillo. Next, we have Senate Bill 76.

Senate Bill 76: Revises provisions governing permits to carry concealed firearms. (BDR 15-37)

Dave Ziegler, Committee Policy Analyst:

Senate Bill 76 relates to concealed firearms. It was sponsored by Senator Settelmeyer and heard in this Committee on May 15, 2013. Senate Bill 76 revises the definition of "concealed firearm" to mean a loaded or unloaded handgun that is carried in a concealed manner, and deletes the definitions of "revolver" and "semiautomatic firearm." [Mr. Ziegler continued to read from ([Exhibit D](#))].

There were two amendments proposed, one by the sponsor. The second one, proposed by Mr. Greg Ross, was not approved by the sponsor. Copies of both proposed amendments are included in the work session document ([Exhibit D](#)).

Chairman Frierson:

Is there any discussion on the bill itself? [There was none.] At this time, I would entertain a motion to amend and do pass, but only with the amendment provided by Mr. Settelmeyer.

ASSEMBLYMAN WHEELER MOVED TO AMEND AND DO PASS
SENATE BILL 76.

ASSEMBLYWOMAN FIORE SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN OHRENSCHALL WAS
ABSENT FOR THE VOTE.)

Mr. Wheeler will handle the floor assignment. We will now move on to Senate Bill 136.

Senate Bill 136: Revises provisions relating to justifiable homicide by a public officer. (BDR 15-867)

Dave Ziegler, Committee Policy Analyst:

Senate Bill 136, sponsored by Senator Parks, was heard in this Committee on May 15, 2013. It provides that homicide is justifiable when committed by a public officer or a person acting under the command and in the aid of a public officer, when necessary, in protecting against an imminent threat to the life of a person. There were no amendments. ([Exhibit E](#)).

Chairman Frierson:

Is there any discussion on the bill? [There was none.] I would seek a motion to do pass.

ASSEMBLYWOMAN SPIEGEL MOVED TO DO PASS
SENATE BILL 136.

ASSEMBLYWOMAN DONDERO LOOP SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN OHRENSCHALL WAS
ABSENT FOR THE VOTE.)

I will assign the floor statement to Ms. Fiore. Next on our agenda is Senate Bill 356.

Senate Bill 356: Revises provisions relating to real property. (BDR 9-824)

Dave Ziegler, Committee Policy Analyst:

Senator Roberson sponsored Senate Bill 356 which was heard in this Committee on May 14, 2013. Senate Bill 356 revises provisions relating to statutory covenants that may be adopted by reference in a deed of trust as they relate to the duties of the trustee after a trustee's sale and the appointment of a substitute trustee. [Mr. Ziegler continued to read from ([Exhibit F](#))]. There were no amendments.

Chairman Frierson:

Is there any discussion on this bill? [There was none.] I would seek a motion to do pass.

ASSEMBLYMAN WHEELER MOVED TO DO PASS
SENATE BILL 356.

ASSEMBLYMAN HANSEN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN CARRILLO AND FIORE
VOTED NO.)

Assemblywoman Fiore:

I am going to vote no with my right to change my vote because I am confused on this bill.

Chairman Frierson:

Mr. Duncan, would you handle the floor statement? Next, we will look at Senate Bill 421 (1st Reprint).

[Senate Bill 421 \(1st Reprint\)](#): Requires a court to excuse a juror for cause under certain circumstances. (BDR 2-1109)

Dave Ziegler, Committee Policy Analyst:

Senate Bill 421 (1st Reprint) was sponsored by the Senate Committee on Judiciary and heard in this Committee on May 6, 2013. The bill relates to civil practice and jury selection. The bill revises the grounds for challenges of jurors in civil actions. [Mr. Ziegler continued to read from ([Exhibit G](#))].

Members, for clarity on the proposed amendments, there is a Research Division mock-up that follows the explanation of the bill. It was included inadvertently and is not intended to be in play at this time.

There is a proposed amendment submitted by the law firm of Kaempfer Crowell and is included in the work session document. What it does is change the

grounds for a challenge to include an interest, including a financial interest, of a person who has formed or expressed a substantial opinion. It changes the word "newspaper" to "media." Grounds would also include the existence of the state of mind in the juror, evincing bias for or against either party. [Mr. Ziegler continued to read from ([Exhibit G](#))].

Chairman Frierson:

Is there any discussion on the bill?

Assemblywoman Fiore:

The judges that I spoke to seemed to not like this bill. I am going to vote no and reserve my right to change my vote on the floor in case the judges come to a better conclusion.

Chairman Frierson:

Thank you, Ms. Fiore. If I remember correctly, the judges agreed with this most recent amendment. If you look at the work session document, there are two amendments that are included. The amendment with the Kaempfer Crowell letterhead is the most recent amendment that reflects an agreement between the sponsors of the bill and the judges. If that is your concern, my understanding is that the judges agreed to this.

Assemblywoman Fiore:

Thank you, Mr. Chairman. Then my vote will be a yes.

Chairman Frierson:

Is there any other discussion on the bill? Members, if you would look at the mock-up we are talking about, section 2, line 28, that proposes to strike the words, "In civil actions." However, that bill is in *Nevada Revised Statutes* (NRS) Chapter 16 which only deals with civil cases. My plain reading of it says that by striking, "In civil actions," that does not really accomplish anything because it is only in the civil action anyway and that the criminal provisions would remain the same. I do not know if that is the intention of those that agreed on this language because there was discussion about whether or not this applied both to criminal and civil. I would like some clarification on that from the folks who were involved in this.

Senator Tick Segerblom, Clark County Senatorial District No. 3:

Initially, the bill was intended to cover both civil and criminal. As a compromise, we pulled out the criminal but we are happy to put the criminal back in.

Chairman Frierson:

My question right now is, was the intention of the amendment to leave out criminal? I want to make sure that we understand. Are we leaving criminal out by virtue of this proposed amendment as a reflection of the agreement between the parties, or was their understanding to have criminal and civil be treated the same? We need to know.

Stephanie Allen, representing Nevada District Judges Association:

We appreciate them working with us on this amendment and our intention was to have criminal and civil be treated the same. It was not our intent to delete criminal from this.

Chairman Frierson:

So the intention of the parties would be to reinsert section 3 of the original bill?

Senator Segerblom:

Right, put criminal back in.

Stephanie Allen:

Correct.

Chairman Frierson:

Okay. Well, at least now we understand the intention of the parties. Who were the parties to the agreement?

Stephanie Allen:

We represent the Nevada District Judges Association and we worked with Peter Neumann as well as Victoria Coolbaugh who, I believe, represent the trial lawyers.

Chairman Frierson:

I am going to ask Mr. Jones to come up.

John T. Jones, Jr., representing Nevada District Attorneys Association:

We were consulted late last night with this amendment after the deal had already been struck. At this point, the Nevada District Attorneys Association (NDAA) would oppose any move to put criminal back in this bill. It is my understanding the issues this bill is attempting to address are specific to civil proceedings. As far as I know, criminal is not broken so we do not need to fix it.

Chairman Frierson:

Mr. Jones, if you could, I want to go through the bill just to make sure the Committee understands. In the bill, the first line says, "any interest on the part of the juror, to include a financial interest," which would seem to not necessarily have an impact on criminal. Section 1, subsection 1, paragraph (f) originally says, "Having formed or expressed an unqualified opinion or belief as to the merits of the action . . ." and this would propose to change that to, "any opinion or belief as to the merits of the action" I do not know if that would impact criminal. It also refers to media, and then paragraph (g) says, "The existence of a state of mind in the juror evincing enmity against or bias to either party" seems to be rewording of existing law. In section 2, "and may be held in chambers," is stricken. Maybe section 2, lines 26 to 28, is the one that gives the NDAA pause and that is, "the court shall excuse any juror who the court determines is more likely than not to be biased for or against any party to the proceeding." I want to make sure the Committee understands what language the NDAA thinks should not be applied in criminal jury trials.

John Jones:

Mr. Chairman, if I can also be clear, right now this bill purports to change NRS Chapter 16 which deals specifically with civil practice. That is why I think the issue of just deleting "In civil action" does not apply because this passage specifically deals with civil actions. Chapter 175 of NRS is what deals specifically with jurors in criminal actions and right now, challenges for cause is NRS 175.036 which says, "Either side may challenge an individual juror for disqualification or for any cause or favor which would prevent the juror from adjudicating the facts fairly." That is the standard we operate under now in the criminal section. As far as I know, no one has had any issues with the criminal standards. We would ask that it be left alone.

Chairman Frierson:

I am trying to understand how that proposed language, "the court shall excuse any juror who the court determines is more likely than not to be biased for or against any party to the proceeding," is inconsistent with that, other than maybe just a concern that, theoretically, it is going to open the door up for challenges. I think the intent of the bill was to make sure that jurors were not biased. I think the judges' concern was to make sure that the same emphasis on an unbiased juror was applied to civil cases as well as criminal cases.

John Jones:

I understand that intent but, at least at this point, Mr. Chairman, I do not think we have had those issues on the criminal side.

Chairman Frierson:

Are there any questions from the Committee? I wanted to give Mr. Jones an opportunity because this is a late developing amendment, but I appreciate the parties making sure that he was made aware of it last night.

Assemblyman Hansen:

Is the sunset clause still in it?

Chairman Frierson:

Yes, the sunset clause still provides that it expires on June 30, 2015. Are there other thoughts? I think that the agreement is a conceptual amendment to reinsert section 3 which would apply to both criminal and civil, in addition to the amendment submitted with the heading of Kaempfer Crowell.

ASSEMBLYWOMAN DIAZ MOVED TO AMEND AND DO PASS
SENATE BILL 421 (1ST REPRINT).

ASSEMBLYWOMAN FIORE SECONDED THE MOTION.

Chairman Frierson:

Is there any discussion on the motion?

Assemblyman Wheeler:

We are putting section 3 back in?

Chairman Frierson:

Correct. The motion contemplates applying to both criminal and civil. Are there any other questions on the motion? I understand the concerns and the potential for this to come up. The effort to have an unbiased jury is a noble one so I am not going to get in the way of it as Chairman. That said, if there is no other discussion, there has been a motion and a second.

THE MOTION PASSED UNANIMOUSLY.

I will assign the floor statement to Mr. Ohrenschall. Next on our agenda is Senate Bill 478 (1st Reprint).

Senate Bill 478 (1st Reprint): Revises provisions relating to the employment of offenders. (BDR 16-1202)

Dave Ziegler, Committee Policy Analyst:

Senate Bill 478 (1st Reprint) relates to the Department of Corrections (NDOC). The bill was sponsored by the Senate Committee on Finance and was heard in

this Committee on April 29, 2013. Senate Bill 478 (1st Reprint) requires the Director of NDOC, before entering into a contract with a private employer for the employment of offenders, to obtain a personal guarantee, surety bond, or security agreement, to secure any obligations of the employer under the contract. [Mr. Ziegler continued to read from ([Exhibit H](#))].

Senator Smith, chair of the Senate Committee on Finance, has submitted a conceptual amendment and a copy is included in the work session document ([Exhibit H](#)).

Chairman Frierson:

Is there any discussion on Senate Bill 478 (R1)?

Assemblyman Ohrenschall:

I think the prison industry provides a vital resource to try to give inmates experience and a trade that may help them succeed once they get out in the private sector. I applaud Senator Smith and everyone else for working together on this. I had the privilege of getting to chair the Committee on Industrial Programs during the interim and yes, while we were happy with all the good things, there was frustration about the issues such as monies owed on the steel operation. I think this achieves a good balance because we want the prison industries to be a success. We want to protect the private sector and I think with this amendment, S.B. 478 (R1) does both. I will be supporting it.

Chairman Frierson:

This Committee got a tremendous amount of email on this bill with the suggestion that this bill was designed, or would have the consequence of, getting rid of the prison industries in its entirety. I never read the bill to be that. I appreciate the stakeholders' work in trying to accommodate each side's concerns to make sure we know what we are getting and what we are doing. Now we have a voice clearly that is going to be able to reflect the impact this may have on the workforce. I appreciate that work. I still do not read this as getting rid of the prison industries which, of course, I value.

Assemblywoman Fiore:

I think it is quite complicated so I am going to be voting no on this.

Chairman Frierson:

Are there any other comments?

Assemblyman Hansen:

This is a sensitive one for me. Being a contractor, blue-collar worker myself, I am concerned about prison industries potentially impacting the private sector.

I agree that the prison industries should not be allowed to compete openly, but I think this bill, as written, did not quite achieve the balance that it should have. I think it will dramatically impact the ability of the prison to do what they need to do to help rehabilitate the prisoners. While I agree there should be absolutely a minimal amount of competition between the prison industries and the private sector, I think this bill did not reach that reasonable compromise. It puts too much of an onerous burden on the prison system. In this case, in the interest of trying to help rehabilitate the prisoners, I am going to have to vote no at this point.

Chairman Frierson:

I want to be clear that despite the prison being okay with it, you still think it is bad for the prison?

Assemblyman Hansen:

My understanding is the prison is against the bill. Has that changed?

Chairman Frierson:

Yes, there is an amendment that reflects the parties coming together.

Assemblyman Hansen:

Is there anyone from NDOC here? My understanding was they were not accepting that but if that is the case, then, yes, I would be happy to agree with NDOC as long as the compromise has been reached.

Brian Connett, Deputy Director, Industrial Programs, Department of Corrections:

I am available and would like to make a couple of statements to the Committee. With the amendment that we just received, we do not agree with a couple of sections of this bill. One is section 1, subsection 7, paragraph (a), which was the surety bond issue. We had proposed and thought we had worked with some of the parties to submit some language that was amenable to everyone involved. That language did not make it in to this amendment. Also, we had discussed with the parties here as well to delete section 1, subsection 7, paragraphs (c) and (d). If those stay in the amendment, then we would not support this bill.

Chairman Frierson:

If I can clarify, I do not know if you are looking at the same amendment or if you are going by what you have heard. I can tell you that the proposed amendment firstly makes a minimal amount of the personal guarantee or surety bond not less than 100 percent of the prorated annual amount of the contract. It removes section 1, subsection 7, paragraphs (c) and (d), which you just referenced. [Chairman Frierson continued to read from ([Exhibit H](#)).]

Brian Connett:

Mr. Chairman, that is not the amendment that I have, but we do agree with that language. That is the language that we had worked out with the parties. As far as section 1, subsection 7, paragraph (a), we had submitted language with regard to a personal guarantee surety bond shall be calculated on the annual prorated portion of the contract term and annual bond would be calculated based the nation's best practices concerning these types of bonds and based upon variables specific to that industry.

Chairman Frierson:

These are conceptual amendments but it says, make the minimum amount of the personal guarantee or surety bond not less than 100 percent of the prorated annual amount of the contract.

Brian Connett:

Did you say for the prorated?

Chairman Frierson:

Yes, prorated annual amount of the contract.

Brian Connett:

The Department of Corrections supports that language.

Assemblyman Hansen:

Mr. Chairman, I just had an opportunity to speak with the bill's sponsor who said that Director Cox had agreed to that. She was fine with that and if there are any conceptual issues, that she would be more than willing to work that out. She wants to see the bill move.

Chairman Frierson:

I think that is what happened. I appreciate it, Mr. Hansen, and thank you, Mr. Connett, as well. Are there any other questions on the bill? [There were none.]

ASSEMBLYMAN WHEELER MOVED TO AMEND AND DO PASS
SENATE BILL 478 (1ST REPRINT).

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN FIORE VOTED NO.)

Mr. Hansen will handle the floor statement.

With respect to the homeowners' association common-interest community bills, there was a Subcommittee work session just this morning. I do not know if the Committee is prepared to move forward with either. Senate Bill 130 (1st Reprint) was a relatively short and straightforward bill that moved out of Subcommittee. While Senate Bill 383 (1st Reprint) is extensive, there has been no opposition to that bill with respect to time shares, and Senate Bill 280 (1st Reprint) did not get moved out of Subcommittee.

My question at this point would be, is there a comfort level with respect to the Committee's having been able to read S.B. 130 (R1)? Is there anyone on the Committee that has not had an opportunity to read the bill ([Exhibit J](#)) and would not be comfortable moving forward? [There was no one.]

Senate Bill 130 (1st Reprint): Revises provisions governing common-interest communities. (BDR 10-428)

I would entertain a motion to do pass.

ASSEMBLYWOMAN COHEN MOVED TO DO PASS
SENATE BILL 130 (1ST REPRINT).

ASSEMBLYMAN CARRILLO SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Is there any discussion on the motion? [There was none.] Because this issue had not had an opportunity to be vetted, and I do not even know if it could be articulated, this bill deals with violations and notice provisions. I have always been baffled that someone could walk by, recognize a violation, and turn that in, but when you remedy the violation, they cannot walk by and recognize that you remedied the violation. I have always found that bizarre that you could end up getting fined for not writing a letter that said, "Those weeds that you saw? I pulled them, but I just did not write you a letter to say that." I may have a conversation with the sponsor at some point.

The floor statement will go to Ms. Fiore.

Next we have Senate Bill 383 (1st Reprint) which involves time shares. I know the parties have been working at this for a long time and there has been no opposition to that measure. Is there any discussion about the bill? Is there a comfort level in the Committee having had an opportunity to read the bill? I will be seeking a motion to do pass.

Senate Bill 383 (1st Reprint): Revises provisions governing time shares.
(BDR 10-916)

ASSEMBLYWOMAN SPIEGEL MOVED TO DO PASS
SENATE BILL 383 (1ST REPRINT).

ASSEMBLYMAN MARTIN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Mr. Martin will do the floor statement. Last in our work session for today is Senate Bill 321 (1st Reprint).

Senate Bill 321 (1st Reprint): Enacts a "Homeowner's Bill of Rights."
(BDR 9-748)

Dave Ziegler, Committee Policy Analyst:

Senate Bill 321 (1st Reprint) relates to mortgages and deeds of trust. It was sponsored by Senator Jones and heard in this Committee on May 2, 2013. This bill provides that the exercise of the power of sale under a deed of trust or an action for foreclosure of a real mortgage is subject to the provisions of the bill. The bill requires the lender of a residential mortgage loan to notify the borrower at least 30 days before recording a notice of default (NOD) or commencing action to foreclose a real mortgage concerning foreclosure prevention alternatives and other matters. [Mr. Ziegler continued to read from ([Exhibit K](#)).]

The sponsor has submitted a mock-up amendment that is included in the work session document. Mr. Uffelman, representing the Nevada Bankers Association, also submitted a one-page amendment which is behind the mock-up. Yesterday evening, we received a proposed amendment from the United Trustees Association and that is not in the compiled work session document but it is on the Nevada Electronic Legislative Information System (NELIS) ([Exhibit L](#)).

Chairman Frierson:

I know this bill reflects a tremendous amount of work and effort to accomplish its intended goals and to accommodate folks who had concerns. While we were nearly there with everyone being on the same page, there appears to be remaining some concerns primarily as to whether or not banks are subject to Consumer Financial Protection Bureau (CFPB) rules.

My reading of the amendment is that it makes a very earnest attempt at making sure that is taken into consideration. Also, Ms. Blomstrom has some technical

concerns as well, but we have the amendments and I would entertain first any questions or comments about the bill.

Assemblyman Duncan:

Does section 16 do that? Are the banks subject to the CFPB and if somehow the CFPB falls out, then S.B. 321 (R1) kicks in?

Senator Justin Jones, Clark County Senatorial District No. 9:

With regard to the CFPB rule issue, I spent a lot of time looking at this. I have talked to constitutional scholars, bankers, and the mortgage bankers association. Here is the issue. Banks are subject to the CFPB whether we like it or not. The question is, do we exempt them out from the requirements under sections 2 through 16 of the bill if they are compliant with CFPB rules?

The problem is that under a case which came down in January, *Canning v. NLRB*, ---F.3d ---, Nos. 12-1115, 12-1153, 2013 WL 276024 (D.C. Cir. Jan. 25, 2013), the district court of the District of Columbia found that rules that are promulgated by a federal board or agency that is populated by those who are recess appointments will be thrown out. The congressional research service published a report recently which I provided earlier to the Committee on this issue and found that there was a high likelihood that if a court were to address the issue of rules promulgated by the CFPB because its director was also a recess appointment, its rules would likely be thrown out. This is an issue that will probably end up in front of the U.S. Supreme Court next year. So my compromise was to say those who are subject, go to the administrator of the National Mortgage Settlement and get him comfortable with compliance with CFPB rules. Then they would be exempted from sections 2 through 16 of the bill.

Chairman Frierson:

Does that answer your question, Mr. Duncan?

Assemblyman Duncan:

Yes, thank you.

Assemblywoman Fiore:

Thank you, Senator Jones. I am looking at all the people on this bill who cosponsored it and with all the amendments. Did the rest of the Senators on the bill go through the amendments with you?

Senator Jones:

Senator Hutchison went through an earlier version. This was being amended because I have been working with everybody very hard over the last two weeks

to try to make sure we get this right. I do not think that Senator Hutchison has seen the very latest version, but I will tell you that all the members of the Committee that I worked with were on board with the original amendment and this would be categorized as a, shall we say, watered down version of what was passed through the Senate unanimously.

Chairman Frierson:

Thank you, Mr. Jones. I was going to make that point also that what passed out of Senate was much less accommodating.

Senator Jones:

Yes, we have tightened up all the deadlines, a concern that was expressed by realtors and also by creditors and attorneys. So we have made it very explicit as to what the deadlines are to ensure that we are not giving those who go through this process the ability to abuse the process because that is not the intent of the bill.

Assemblywoman Fiore:

Is it possible to hear from someone from the banking association on this?

Chairman Frierson:

I was intending to ask Mr. Uffelman and Ms. Blomberg. Obviously, you submitted your amendments, but I think that the question is in response to what was asked of Senator Jones—why are his accommodations not adequate to address your concerns?

Bill Uffelman, President and CEO, Nevada Bankers Association:

With regard to Senator Jones's explanation of his amendment on page 10 relative to the consent judgment, the way his amendment is written, if the consent judgment is modified to incorporate the CFPB rule, then that would be what the bank would conform to. However, it expires with the expiration of the National Mortgage Settlement, so basically in March 2015 that would go away. My amendment, and I appreciate the opportunity to submit it, says that a bank that is subject to the consent agreement in the current state of affairs, complies with the consent agreement. At the expiration of the consent agreement, they would then be subject to CFPB rules. They are subject to the CFPB rule, but compliance with the CFPB rule would satisfy S.B. 321 (R1). I have also provided that if the CFPB rule lapses, for example, the court rules that the rules that were adopted are inappropriate because the director was not appropriately named, then they would be subject to S.B. 321 (R1). So it is first the National Mortgage Settlement, then CFPB, and then S.B. 321 (R1) if CFPB does not exist. For the national banks that are subject to the CFPB rule, it is the potential for conflict between the S.B. 321 (R1) and the CFPB rule on literally just minor

details, not on the substance of whether the borrower has not paid his mortgage. There are various things you could end up with—a judge ruling on CFPB or S.B. 321 (R1) and finding yourself betwixt and between. Which one do you comply with to be in conformance with the law?

Chairman Frierson:

Are there any questions for Mr. Uffelman?

Assemblywoman Fiore:

Are all the parties coming together the way the bill is with all the amendments? Is it going to work or not?

Bill Uffelman:

The banks are opposed to S.B. 321 (R1) with the language that Senator Jones has put in.

Chairman Frierson:

Are there any other questions?

Assemblyman Hansen:

It is hard to oppose a bill with a name like the Homeowner's Bill of Rights. We are now more than four years into the mortgage crisis. Legislatively, we look at either a stopgap idea or some magic solution to what is essentially a market problem. We had bills on abandoned houses, vacant houses, and squatters rights. I am underwater on my own house substantially so I am sympathetic, but the reality is there are 50,000 homes that are going to be foreclosed or have been foreclosed, and until we get that excessive inventory cleared out, we are going to never get out of this mess. The reality is that we have to let the marketplace do its work. While I do want to minimize the pain as much as we can, I think we are going overboard and are going to end up making things worse. I am going to vote no on this.

Chairman Frierson:

Thank you, Mr. Hansen. Nevada let the market do what it did and it made us number one in foreclosures. I think that Nevada is uniquely situated in how the crisis has impacted us. I do not believe, and I clarify this every time it comes up, that Assembly Bill No. 284 of the 76th Session, in any way, did what its opponents claim it did. I think that banks could have moved properties and this was an impediment that was relied upon to reflect what was difficult with inventory to adjust to a unique situation. I refuse to believe that Assembly Bill No. 284 of the 76th Session was the cause of this crisis.

My reading of this proposed amendment with respect to the CFPB rule says, in layman's terms, if the CFPB is there and adequately protects homeowners if somebody is in compliance with it, then they are fine. If either CFPB goes away or it changes in a way that does not adequately protect Nevada homeowners, we have a backup that adequately protects Nevada homeowners. That is my reading of the amendment in that particular section. It sounds to me like a tremendous issue here comes down to terminology and that we are all saying, if there is CFPB there, CFPB controls, and if CFPB somehow changes or goes away, we have a backup.

Assemblyman Thompson:

Mr. Uffelman, under the Nevada Bankers Association, when you use the word "all," does that mean all banks, excluding credit unions, are under your association?

Bill Uffelman:

The Nevada Bankers Association represents the banks insured by the Federal Deposit Insurance Corporation (FDIC). The Credit Union National Association represents the credit unions that are insured via two different mechanisms, so we are not the same.

Assemblyman Thompson:

Does that automatically mean that all banks will not work with homeowners?

Bill Uffelman:

The banks will confirm with the law whether it is S.B. 321 (R1), CFPB, or the National Mortgage Settlement. The national settlement impacted the signatories of that settlement, a limited group of banks. The Homeowner's Bill of Rights, as crafted in California, was initially crafted to bring in financial institutions and servicers that were not part of the national settlement. It was ultimately amended that they excluded smaller institutions so it went back on the same people who were part of the national settlement. This bill is an attempt to encompass terms of the national settlement; it is not exactly like it and that was why the initial exclusion was written into the bill from the very beginning.

The question of the CFPB final serving rule which was promulgated earlier this year then arises because it covers all of its terms for all institutions that have 5,000 or more mortgages out there so there is a whole group of institutions that do not have that. The big issue though is the role of the CFPB rule. As Senator Jones has done his amendment, the CFPB rule exclusion dies in 2015 when the national settlement, by its own terms, expires. My amendment is saying the CFPB rule prevails going forward upon expiration of the national settlement.

Chairman Frierson:

If I may paraphrase your question, Mr. Thompson, there are banks that are not subject to the national settlement that would not be part of Mr. Uffelman's client base. They are not subject to it so this would certainly pertain to them. Mr. Uffelman, along the same lines, when the national settlement expires, what is the enforcement mechanism for CFPB?

Bill Uffelman:

The enforcement mechanism is within the final servicing rules that were promulgated in January 2013 so it is all encompassing, over 700 pages.

Assemblyman Hansen:

I just wanted to clarify. I did not say that Assembly Bill No. 284 of the 76th Session caused the mortgage crisis. I think it may have helped delay the recovery, but I will say if you look at the federal policies going back to the 1980s and 1990s, especially with the subprime mortgage and the guarantees on loans basically providing government guarantees to remove the risk from loaning money, that is where you really trace out the root of our problem in Nevada. When you look at the state of Arizona, which is currently having a rapid recovery, they did so with the absence of a lot of what we are trying to do.

Assemblyman Duncan:

I think the conflict of law problem after the national settlement expires in 2015 could present problems. If you have CFPB rules that have been followed and inevitably, with courts, judges, and lawyers arguing different things, the conflict of laws may exist at that level. The practical effect is that we continue to have a shrinking inventory and folks who are middle-class families, who may have a down payment and may even qualify for a loan, are unable to get into their first home because of a shrinking, finite amount of inventory that is bought up by investors that are here.

I commend Senator Jones. I know he has worked very, very hard with all parties and I certainly do not think he is intending to try to do something that is going to hurt Nevada. He is doing something that he feels is going to help Nevadans. We really have to think about the long-term effects of this. When you look at other states that have not intervened and their markets have stabilized, that is telling us that maybe we can learn a lesson. As difficult to vote against something that says bill of rights, I think, down the road, we need to consider everything. Thank you.

Cheryl Blomstrom, representing United Trustees Association:

I am sorry that what I presented to you last night was late. When I realized you were going to hear the bill this morning, it occurred to me to resend this in the format of an amendment. I presented all of these ideas when we first heard the bill on May 2, 2013. I have been in constant contact with Senator Jones talking through the various ideas. He graciously accepted the vast majority of what we proposed in terms of technical fixes and for that, I am grateful.

On the first page of my proposed amendment, we would propose changing the 9 months and 90 days because I think they are not long enough time periods. [Ms. Blomstrom continued to read from ([Exhibit L](#)).]

We echo Mr. Uffelman's concerns about CFPB and like the way he has created the flow-through of authorities from the national settlement to CFPB and then to S.B. 321 (R1).

Chairman Frierson:

Is there any follow-up for Ms. Blomstrom? [There was none.] It is the inclination of the Chair to entertain a motion to amend and do pass with the amendment provided by Senator Jones.

ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO
PASS SENATE BILL 321 (1ST REPRINT).

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN DUNCAN, FIORE,
HANSEN, AND WHEELER VOTED NO.)

This bill will be assigned to Mr. Ohrenschall. That will conclude our work session for today. We will go into our hearings and open the first hearing on Assembly Bill 499 which is the clean-up bill that we have to make every year, primarily, technical adjustments throughout the *Nevada Revised Statutes*.

Assembly Bill 499: Ratifies certain technical corrections made to NRS and Statutes of Nevada. (BDR S-522)

Brad Wilkinson, Committee Counsel:

Assembly Bill 499 is the Legislative Counsel's ratification bill. This is the bill we do every session following codification of the previous session's legislative enactments. It ratifies all the changes we made during codification when we discovered technical errors. I will not go into the specifics of the bill. You can

look in the digest and see our description of the various corrections that we made. Unless there are any questions, that is all I have.

Chairman Frierson:

Are there any questions from the Committee?

Assemblyman Ohrenschall:

Is this sometimes called the reviser's bill?

Brad Wilkinson:

No, that is the other one. This one is the ratification bill that just makes all the technical corrections. The reviser's bill is other types of issues that we have identified since last session or that might have been hanging around that we think should be clarified or fixed.

Assemblyman Ohrenschall:

Thank you for clarifying that.

Chairman Frierson:

Are there other questions? [There were none.] Is there anyone wishing to offer testimony in support? [There was no one.] Opposition? [There was no one.] Neutral? [There was no one.] I will close the hearing on A.B. 499. Before we open the next hearing, I need to refer back to Senate Bill 383 (1st Reprint) from the work session. I believe that should have been an amend and do pass, rather than a do pass. Mr. Ziegler, do you recall who moved and seconded it?

Dave Ziegler:

The motion was made by Assemblywoman Spiegel and seconded by Mr. Martin.

Chairman Frierson:

I am going to go ahead and entertain it again if it is okay with Mrs. Spiegel and Mr. Martin that the motion be for amend and do pass on S.B. 383 (R1). Is that correct? Both indicated that is correct.

ASSEMBLYWOMAN SPIEGEL MOVED TO AMEND AND DO PASS
SENATE BILL 383 (1ST REPRINT).

ASSEMBLYMAN MARTIN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Thank you. Referring back to our hearings, we will now move to Senate Bill 111 (1st Reprint).

Senate Bill 111 (1st Reprint): Requires production of certain evidence under certain circumstances. (BDR 3-771)

Senator Justin Jones, Clark County Senatorial District No. 9:

I am presenting Senate Bill 111 (1st Reprint) which I believe is a positive step in reducing frivolous lawsuits. We have all heard of the situation where a plaintiff asserts that he or she was injured while walking into a Walmart and allegedly slipped and fell only to find after costly discovery that it was the person's own carelessness or the actions of a third party that caused the injury. Senate Bill 111 (R1) creates a mechanism for an attorney presented with a client claiming injury to seek any videotape evidence before filing suit to ensure the claim is not frivolous.

Under section 1 of the bill, an injured party, or his or her attorney can send a written request for visual evidence with an affidavit stating the facts surrounding the injury that occurred including location and time. The party that receives the written request may respond by providing the visual evidence to the requestor or alternatively may petition the court to quash the request. The visual evidence may not be used for any other purpose than to investigate the injured party's claim. The party requesting the video evidence must also pay the cost of the video evidence. This saves time and money all around. If the request does not lead to a suit, the business does not have to put its liability insurer on notice and does not have to spend money defending a frivolous claim. The courts do not waste time on frivolous cases and the attorney hired by the plaintiff does not waste time and money pursuing a losing claim. If the video evidence shows a legitimate claim, there is no harm to the business because the evidence would come out in discovery anyway.

To address some of the concerns raised on the Senate side, we include a sunset date of the legislation in June 2015. We also included a request that the Nevada Supreme Court consider amending the rules of civil procedure to authorize presuit discovery under *Nevada Rules of Civil Procedure* (NRCP) 27. I think this is really a win-win for all involved. I understand there have been concerns raised by some parties and that was the intent of the amendment that was included in the Senate and I really think it provides the procedural safeguards that were not included in the original bill.

Graham Galloway, representing Nevada Justice Association:

Let me begin by saying the purpose of this bill, notwithstanding anything the opponents may represent to you, is to eliminate or decrease unnecessary litigation. What I mean by that, eliminate or decrease cases where there is a lack of merit, no merit, or eliminate cases that are so clear-cut that they should be settled and resolved without litigation. As personal injury lawyers, we are

often asked to evaluate the viability of premises liability cases. That is where an occurrence happens on somebody's property, somebody's premise. Because it happens on property, there is often videotape. As lawyers, we then do our due diligence investigating the viability of a claim and we ask for the videotape. Every once in a while, some forethought allows us to look at the videotape and then we can accurately assess whether our client is being accurate, whether there is a legitimate case. More often than not, we are politely told to take a hike and then we are left with the choice of either not taking the case, or filing a lawsuit to see what the videotape discloses. What we are talking about is documentation videotape, as well as photographs, that we would normally get in the course of standard litigation.

What we are trying to do here is to front load the process so we are not filing lawsuits. I, personally, have filed a number of lawsuits, got the videotape, determined that the videotape shows my client has not done something wrong or they contributed to their downfall, literally, and then we have had to dismiss the lawsuit. So this is going to save everybody.

The main opposition is that this is going to benefit lawyers, that we are going to be fishing for new cases. In the 30 years that I have been a personal injury lawyer, I have yet to see videotape that shows more than one incident. It shows my client's incident or occurrence. I have never seen videotape where there is a second incident. Even if that occurs, which has never occurred, unless that person in the second incident has their name and phone number stenciled on their back, there is no way we can obtain that person's case. We cannot fish. A second point of opposition is legislation that is end-running the Supreme Court process somehow or another. That is not the case. The bill provides for contact with the Supreme Court and for our organization that already has been in the works. A letter to the Chief Justice has already been drafted and so we are going down that road and dealing with the Supreme Court but, realistically, 99.9 percent of the rules of civil procedure are based on litigation issues. There are some minor exceptions but that requires the court to be involved. This bill would eliminate court process unless somebody makes an objection to the request, and it would just be the production of the videotape and photographs by operation of law without the courts being involved.

Another opposition point is that nobody else does this and that is true. There is no other state that has a bill or provision like this, but it is innovative. The irony is that, as trial lawyers, we get accused of filing tons of frivolous litigations and everybody complains about it. Here is a bill that is designed to help eliminate and decrease litigation. It will also help foster early resolution cases without litigation.

Assemblywoman Spiegel:

For those of us who are not attorneys, I have two technical questions. Does the term "person" also include a governmental entity or is that just a natural person and a business?

Graham Galloway:

That is a question that I do not think anyone addressed. I think you could read that broadly. The intent is to cover everybody who owns property and that would be governmental entities or individuals.

Brad Wilkinson:

The definition of "person" in the preliminary chapter of *Nevada Revised Statutes* (NRS) 0.039 provides the term does not include a governmental agency or political subdivision of government unless a statute specifically provides that it does include that. If there were a desire to do so, it would need to be amended to provide that.

Senator Jones:

That issue actually did come up. Clark County had offered an amendment the first time around and the point was made that under NRS 0.039 they are not persons so they are not included; therefore, there was no need for their amendment.

Assemblywoman Spiegel:

Is there a technical definition of premise and would that include things like an automobile or a recreational vehicle (RV)?

[Vice Chairman Ohrenschall assumed the Chair.]

Graham Galloway:

The intent of this statute deals with real property, not personal property, which would be vehicles and RVs. This is not designed to encompass claims arising from motor vehicles or RVs unless that occurs on somebody's real property. An example would be if you backed an RV out of a parking lot and ran somebody over, then this statute would cover that situation if there was videotape.

Assemblywoman Spiegel:

Given that if somebody was in their RV at a campsite, and somebody else backed into the RV, and somebody was injured while they were inside their RV, that also would not be covered.

Graham Galloway:

That would cover that, if there was videotape, because that happened on somebody's premises, or their real property.

Vice Chairman Ohrenschall:

Are there any other questions?

Assemblyman Wheeler:

I am trying to get the intent of this bill. What you are asking for is before you file a suit, just by an affidavit from someone, you can go to any business and say you want their personal property which is the videotape, without any adjudication, without any attorney involvement on their side and if they do not do this, they are going to be held criminally liable. Is that correct?

Graham Galloway:

That is not correct. There are no criminal penalties involved here. There might be some civil penalties in the sense that if you do file a lawsuit and you determine to have improperly ignored a proper request under this bill, there might be some kind of sanctions in place through a court proceeding. There is no enforcement provision in this bill. I suspect that if somebody really wanted to push the issue, they could have the Attorney General get involved.

Senator Jones:

I will want to make clear that the bill does not require any business, or anyone for that matter, to install videotape. There is no requirement. If do not have videotape, you do not have to put them in. Frankly, if you do not like the bill, you can take out the videotape surveillance in your business.

Assemblyman Wheeler:

Thank you. I did not read that in here that anyone would have to install them. The fact is there is no criminal penalty and that is great. It looks to me like instead of going to court and spending that money to get a subpoena, we could just do it now by making an end run around the process.

Graham Galloway:

You could look at it that way, but the way I look at it is that if I file a lawsuit, then the individual business has to hire a lawyer, has to have their insurance company involved, who then hire a lawyer. Instead of resolving a case, perhaps without litigation, you have three sets of lawyers involved and you are incurring a tremendous amount of expense when something could be dealt with beforehand. When I indicated earlier that some businesses do provide me with videotape, 90 to 95 percent of those cases have been resolved without litigation. When I am not provided videotape, 90 to 95 percent of those cases

involve litigation. You may think that it is a benefit just to plaintiff lawyers, but it is a benefit to everybody. If I file this lawsuit that ultimately is determined to be without evidentiary support or merit, everybody has wasted time and money, not just us.

Assemblyman Wheeler:

As a former business owner, I have been sued as probably every business owner has. I do not always go out and hire an attorney. Usually I will sit down and find out what the problem is and see if we can make some kind of settlement on it. As far as the cost, that is up to the business owner, but what I believe you are saying here is you are going to require a business owner to do something that may actually be detrimental to him.

Graham Galloway:

If the videotape shows that the property owner has done something negligent, it is what it is. Why should it be withheld because that ultimately is going to be presented in the litigation. In the litigation, you are going to have to give it up anyhow. Why not present it before litigation, come to a reasonable term as a reasonable businessperson, determine that yes, maybe my employees did something wrong or yes, maybe I did something wrong. Let us just resolve this case without the necessity of litigation. Is that not the goal that I hear from everybody, that we need less litigation?

Vice Chairman Ohrenschall:

Is it your experience under the current law that the video footage does not last as long to help the injured party? It somehow gets taped over or it is just not held in the database?

Graham Galloway:

This bill does not address the retention. I would love to see a retention provision in here but I understand that would create an affirmative duty on behalf of the property owner that a lot of people would object to. In reality, by the time we get involved the videotape has been taped over, or it does not exist anymore.

Senator Jones:

Under current case law, a party is under an obligation to preserve evidence at the moment that they receive notice that litigation is either filed or is pending. They are under that duty regardless of this bill.

Vice Chairman Ohrenschall:

Are there any other questions from the Committee?

Assemblyman Thompson:

I have a question about section 1, subsection 2, paragraph (b), where it talks about the claimant or the claimant's attorney shall reimburse the person for the reasonable costs of providing such copies of visual evidence. If you go to the 7-Eleven and they ask, what is it worth to you, is that what reasonable cost would be since there are no set costs for the company that would provide you the evidence?

Graham Galloway:

No. What normally happens in these situations is if somebody has videotape, I ask just to look at. I go to their security department or their store or wherever it may be; I look at. If I determine that I like what I see on the videotape, then I request a copy. This is just reasonable charges of copying.

Assemblyman Thompson:

If I am a franchise owner of a 7-Eleven, this is my question to you. Before I show the videotape to you, do I have the right to charge you? I am not going to let you look for free. In other words, because they know it is something important for you.

Graham Galloway:

If somebody told me they wanted to charge me \$100 or \$50 for their time, I would probably not object to that. That is not totally the intent of this provision, but if somebody made the argument that you are now going to cost \$100 of my employee's time, I do not think anyone would object on this side. Now if you said \$5,000, obviously, that would be objectionable or there might be an issue there.

Assemblyman Thompson:

Who does this bill benefit, ultimately? Is this just a tool for lawyers to determine who are the better clients to take?

Graham Galloway:

A lot of people misunderstand or do not think that we, as lawyers, are businesspersons, too. We are not in the business of taking cases we are not going to win, or cases that are not justified by the evidence. This is a process where we do eliminate cases.

Assemblywoman Cohen:

Can you address the timeline of the 15 judicial days? I have found it odd that if you are a litigant, you get 30 whole days to produce, but if you are someone outside of litigation and you get a subpoena, you get only 15 days? I am wondering if there are some flexibilities since these are people who are not in a

lawsuit but they are kind of helping out with this. Maybe we could get them a couple of extra weeks on this?

Graham Galloway:

I think there would be substantial flexibility here. The 15 days, I think, was a compromise. The short answer to your questions is yes, there is flexibility.

Senator Jones:

This language was not in the original bill. This was our attempt to accommodate some of the issues that the business community had with the original language to ensure that there was a process. This language was adopted directly from NRCP 45, but I do not have any problem with providing a longer time frame.

[Chairman Frierson reassumed the Chair.]

Assemblyman Hansen:

If this videotape exonerates the person being accused, why do we need the law to force them to give it to you? It seems to me the only time they are going to want to deny giving the tape to you is if, in fact, there may be some damaging things in it.

Graham Galloway:

You are entirely correct. Why would a person not give something over that is exculpatory, that exonerates them? The other area is the situation I outlined earlier where my client is walking through the parking lot at a Walmart and somebody backs into her. We get sideways with the insurance company for the driver and when we ask Walmart for the videotape, Walmart says no, that we have to obtain it through the litigation process because they do not want to be involved and they have a corporate policy. Oftentimes, corporate policy dictates decisions in these situations that really are against the interest of the corporation.

Assemblyman Hansen:

Perhaps if they are a Walmart that has very excellent legal counsel they would advise them in these situations. I am thinking of local mom-and-pop businesses who understand and would be highly uncomfortable if a lawyer, out of the blue, makes a request that they turn over the video evidence before consulting possibly with legal counsel.

Chairman Frierson:

It seems to me that the existence of a video is inevitably discoverable, so we can either give it up on the front end and even have a chance of mitigating

some claims, or we leave it as status quo and create billable hours for attorneys fighting the inevitable.

Graham Galloway:

Mr. Chairman, you are so correct.

Chairman Frierson:

So you either get the video on the front end and make a decision about whether or not to file a claim, or you do not get the video in the front end and you file a claim in every single instance so that you can decide whether or not to continue pursuing a claim.

Graham Galloway:

I could not say it any clearer.

Chairman Frierson:

Are there any other questions?

Assemblyman Duncan:

What are the safeguards for doctoring the evidence? Has there been any thought to that because of the extra judicial nature of it? Have you seen that in businesses that actually give you the videotape up front rather than filing suit?

Graham Galloway:

No, I have not seen any evidence that somebody has doctored the videotape. More often than not, what happens by the time we get involved, the videotape is gone because it has been taped over. The extra judicial nature of it would just be by operation of law and that, I think, is the goal. Going back to the comment about the mom-and-pop business people, they are still business people and they know how to deal with letters from the lawyers.

Assemblywoman Dondero Loop:

When you request a videotape from whoever it may be and you go through that legal process, can they still refuse it?

Graham Galloway:

Under the current law, yes, and that is the problem. Under this law, they would not be able to unless they had an objection and the objection then would be under the process provided by this bill.

Assemblyman Wheeler:

There is something you said, Mr. Galloway, that struck me. If nine times out of ten the tape has been taped over and they get this letter from you, if this

becomes law, and they do not have the tape, are they still open for civil penalties?

Graham Galloway:

No, unless there would be a unique situation where they have actively, affirmatively begun a way to destroy evidence after being placed on notice. If the evidence is taped over, destroyed, or lost prior to being put on notice by a claimant, then no. It is not there; they do not have the evidence. If you do something after notice, then that creates problems for the property owner and the person with the tape.

Senator Jones:

Under section 1, subsection 4, it states that nothing in this section shall be construed to create an affirmative duty or obligation to retain any visual evidence except for the rights provided by law. So that gets at that issue, Mr. Wheeler, that if a business has a 24-hour loop and the plaintiff's attorney is not put on notice and does not send a lawyer within the 24 hours which is usually unlikely, then that is the end of it. The business just says that they do not have anything.

Assemblyman Hansen:

Okay, so what you said is, once the discovery process is in place, I am, by law, required to give you what the judge says I have to give you.

Senator Jones:

Correct.

Assemblywoman Diaz:

Is there recourse for the individuals that you might be requesting video from? In reading section 1, subsection 3, for the person that is requested to produce the visual evidence after they receive the request, is there a mechanism by which they can refute this request?

Graham Galloway:

You are entirely correct. It is a rare day that I come across a business that does not have insurance. The first thing that happens when we send a letter is they contact their insurance people to get advice. They have their own insurance company and lawyers involved immediately.

Senator Jones:

The process that is laid out in section 1, subsection 3, is the exact same process under NRCP 45. If a party were to get a third-party subpoena and

7-Eleven gets a third-party subpoena, it is the exact same protections they would get.

Assemblywoman Diaz:

I felt like this was being missed in the whole conversation and I wanted to bring it to light. Thank you.

Assemblyman Hansen:

One of the things that I have learned is, seemingly innocent requests for information that you would provide can come back in a negative way. I think most mom-and-pop people, frankly, have not had a lot of experience with lawyers or letters from lawyers and their instinct would be to turn over information prior to talking to their insurance company or a lawyer on the assumption that they understand what the law could be. That is why I have a real problem with this. I just do not think for the ordinary person being forced, basically, to do this, is in their best interest. When you provide something that you think is okay, in some cases, it definitely is not okay when you get in court and find out what the laws are.

I am having a hard time seeing that this is beneficial. The system we have currently seems beneficial. This seems to provide a disadvantage to the ordinary person.

Senator Jones:

The mom-and-pop shop or Walmart is going to end up with a request regardless. It is whether they want to be an intended party; they are going to end up in a lawsuit. If they are a third party, they are going to end up with subpoena.

Chairman Frierson:

Plaintiffs' attorneys, in these cases, get paid if and when they prevail, correct?

Graham Galloway:

That is correct.

Chairman Frierson:

A mom-and-pop shop's or a Walmart's attorneys get paid hourly regardless of whether they win or not. So would this current system require mom-and-pops, Walmart, or anybody in between to pay hourly to respond to these pleadings as opposed to having given it up front in the first place with the exact same result at the end?

Graham Galloway:

Mr. Chairman, I think yes and no. If you want to hire an attorney to respond to the letter I sent you, then yes. You could end up incurring expenses but, I think if you had insurance, and I would be the first person to point out that you should contact your insurance company, the insurance company takes on that charge. You could also just provide the evidence to me and the evidence is what it is. If it shows that you did something wrong, you can hide it initially, but when I file a lawsuit, I am going to get it anyhow. So the concern that somehow or another this is going to disadvantage an individual, I do not see that because the videotape tells a thousand words.

Senator Jones:

In the original bill, it was that you send a letter and you get the tape. This provides the protection so that the plaintiff has to sign an affidavit that spells out, for the person receiving the request, the facts that give rise to the request. If the affidavit says this person was in the parking lot and somebody backed into her, the person receiving the request is going to see that the target of the request is not Walmart, but rather they need the tape so they can see who the person who backed into them was.

Assemblywoman Fiore:

As a businesswoman who has a company with a front with no video camera, this bill will definitely deter me not to get one. What I am hearing is you are advocating for business owners to talk with a plaintiff's attorney without an attorney, and as soon as I get a letter from another attorney, that letter automatically goes to one of my attorneys depending on what the issue is, and then I have to come up with a retainer. This is a very tricky bill for the typical layman who, like myself, is not an attorney, gets a letter from you.

Graham Galloway:

What do you have to hide? That is my question. Why do you need to go to an attorney to produce a photograph or videotape? What is there to hide? There are two choices. We can keep it the way we have it and we file lots of lawsuits. Some of those are meritless because the videotape discloses that the individual claimant is not being accurate or is mistaken as to what happened, or you could be innovative here and do something different and try to eliminate unnecessary litigation.

Assemblywoman Cohen:

Let us say you get the videotape and you have that hour timeline but it looks like you need something prior to that hour. You do not get to go back for another one. You either file a lawsuit or they let you have it voluntarily, but this will not force them to go back before the hour time.

Graham Galloway:

Correct.

Chairman Frierson:

Thank you. I invite those wishing to provide testimony in support of S.B. 111 (R1) to come forward now both in Carson City and in Las Vegas. Seeing none, I invite those here or in Las Vegas wishing to offer testimony in opposition to come forward.

Peter Krueger, representing Nevada Petroleum Marketers & Convenience Store Association:

This bill was defeated last year, slightly different but nevertheless a request for, in my case, convenience stores to provide videotapes before a lawsuit is filed. As far as costs are concerned, this is fraught with cost for business owners. The term mom-and-pop is a misleading term. Small business owners generally do not have attorneys on retention. In talking with my clients, receiving a letter from an attorney, even one that admonishes the owner to see their insurance company first, which I find interesting as a way to provide for deep pocket coverage of this, that you get the letter. If I want to stop that, I have to go and spend money with an attorney to start the process. In talking to my membership, in general, our tapes, although they vary, are retained for one week and then they are recorded over. Should I simply say that I do not have the evidence? This bill is silent on that, but according to Mr. Graham's testimony, he will accept that. I think that is a stretch and find that there is no protection for the business short of some legal remedies through the courts.

This bill costs small business money and does not save business. The current system is working and the idea that the trial lawyers would sit here again this session and tell you that this is all about saving money I think is a misstatement. This does not save anybody any money and whether the degree that small businesses have to defend themselves up front, short of a lawsuit or a subpoena, is wrong and we would ask that this bill not be processed.

Chairman Frierson:

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

Erin McMullen, representing the Las Vegas Metropolitan Chamber of Commerce:

I did want to thank Senator Jones for amending the bill because he did try to address some of our concerns in section 1. As it stands, we still have some serious concerns about the safeguards and the protections that are missing and some vagueness in the process and how this could be enforced. As I sat here and listened, I wanted to run through just a few of those.

First, what has gotten lost in the discussion is everyone keeps talking about this would come as a letter, an affidavit from an attorney. As it is written, it could just come from a claimant. That is any average person who wants to represent themselves pro se or pro per. If you get an affidavit from a person who is not an attorney, maybe you would not think it is serious and then you have now not complied with the law. You do not respond to it. That is something that concerns me and our members. Also, I have concerns about the enforcement provisions in section 1, subsection 5, paragraph (b), that says visual evidence must not be given to a third party or that the information you have provided is protected. Under the judicial system, that would be protected because it is under the legal and litigation process here.

In response to Assemblywoman Diaz's question on recourse, section 1, subsection 3 does provide recourse but the way I see it for business, the only way to get recourse is to hire a lawyer, to file your motion to quash, and argue why you should not have to reply instead of the current system which just allows you to say no. That is definitely an increased cost to business.

Everyone keeps saying there is no penalty for not complying with this which automatically makes me a little suspicious. Why do we need it in statute if it is being done now and people are saying no. As I understand it, there is NRS 193.170 which says that if an act is prohibited by law or something is prohibited in statute and there is no penalty expressly stated, then it is automatically a misdemeanor. And as I read section 1, subsection 1, the prohibited act here would be not responding because there is a "shall" so I would argue that there is a penalty.

My last comments would be that we do support section 2. I think this could be done properly through the Supreme Court to get visual evidence or books and things of that nature included in the rules of civil procedure under NRCP 27. I appreciate the sunset date or anything obviously opposing the bill that shortens it but I am not sure if that is to encourage and allow the Supreme Court to have time to shorten it. To contrast the arguments of the proponents of the bill, if the idea is to eliminate frivolous lawsuits or things of that nature, I would argue they are only worried about frivolous lawsuits for the next two years. What about after that if that is, indeed, the case? I would be happy to answer any questions.

Chairman Frierson:

I think Legal has confirmed with me that there is no criminal consequence, if that was a concern.

Erin McMullen:

I can see your line of thinking but in our line of thinking, if it were me and my business and they are going to get it one way or another, I would rather be within the protections of the judicial system and give it up that way.

Tray Abney, representing The Chamber:

When I associate myself with a comment that Mr. Krueger and Ms. McMullen had made, we do believe this is an invasion of privacy and private property rights. This bill basically states that an attorney can send a letter to a business owner and demand that he or she turn over video recording. Ms. McMullen made this point, but I want to reiterate that it is one thing to get a letter on Galloway & Jensen letterhead from a law firm; it is another thing when anybody can send a letter and sign an affidavit saying they want to see the tape.

We believe it eliminates due process. We do think it causes confusion to the small business owner. They are going to have to hire their lawyer anyway. This may save trial lawyers money but I do not think it will save business owners any money. The last thing is that this exempts government entities. This is only for private parties. If this is supposed to save money, why would we not include government entities?

Chairman Frierson:

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

Lee Tauchen, representing Retail Association of Nevada:

We are also testifying in opposition. As our members share their concerns, they believe this does compromise procedural fairness by changing current due process. I echo the concerns about the cost incurred by the business owner, especially the small business owner. I will reiterate, from our members' perspectives, they typically do not have legal departments and they certainly do not have experience with civil claims. Without the resources to understand the legal implications of this, they will face challenges. I will then also add that the point had been made earlier but we believe this bill will force businesses to weigh the pros and cons of having surveillance on their premises. That may be another unintended consequence. Thank you.

Assemblyman Wheeler:

In dealing with some of your clients, I am wondering if the subject of lawyer fishing comes up in relation to this bill where they just start writing letters.

Lee Tauchen:

In the other house, the term "fishing expedition" did come up and we were concerned very much with the ability for someone maybe looking for something

other than a legitimate purpose, that could be either proprietary secrets of the business or even like a stalking case. The bill sponsor then worked extensively with our industry in trying to resolve that and we do think that this current version of the bill does address that.

Chairman Frierson:

Are there any other questions? [There were none.]

Terry K. Graves, representing Henderson Chamber of Commerce:

I endorse the comments made by the previous folks who opposed the bill. We do have an attorney on our legislative committee and, in spite of Senator Jones's efforts, and we do appreciate his efforts to be attuned to the issues that we had, we are still not comfortable with the bill. I, myself, have been involved in a lawsuit and understand that, in spite of the fact you think you are right, it still costs you a lot of money to actually get that decision in a court of law. I conclude my comments. Thank you.

Chairman Frierson:

Are there any questions from the Committee? Seeing none, is there anyone else wishing to offer testimony in opposition either in Carson City or in Las Vegas? Is there anyone wishing to offer testimony in a neutral position either in Carson City or in Las Vegas? Seeing none, I would invite Senator Jones up for any closing remarks

Senator Jones:

I appreciate your consideration of this bill. With regard to Ms. McMullen's and Mr. Abney's concerns with section 1, subsection 1, as it may relate to receiving correspondence from someone who is not a lawyer, we are happy to work with that and have the letter be from the lawyer as opposed to from a claimant to avoid a potential pro se person antagonizing a business owner.

As to Mr. Krueger's assertion that this is the same bill as was brought last time, I think it is not the same bill that was brought in the Senate. It is a substantial revision that was a result of two meetings with all of the opponents to the bill and my efforts to accommodate their concerns. I appreciate the Committee's consideration of this bill and I believe it will reduce frivolous litigation in our state.

Chairman Frierson:

Thank you, Senator. With that, I will close the hearing on S.B. 111 (R1). We have Senate Bill 107 (1st Reprint) but I do not think I would be doing it justice by trying to rush through it. If there is anyone here, however, who is not able to be here tomorrow, I would like to possibly accommodate them but,

I think, to give it justice and time, I would prefer rolling it until tomorrow. I apologize for the inconvenience. We will roll S.B. 107 (R1) until tomorrow. With that, I will open it up briefly for public comment. There being none, today's Assembly Committee on Judiciary is now adjourned [at 11:01 a.m.].

RESPECTFULLY SUBMITTED:

Thelma Reindollar
Committee Secretary

APPROVED BY:

Assemblyman Jason Frierson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 16, 2013

Time of Meeting: 8:31 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 38 (R2)	C	Dave Ziegler, Committee Policy Analyst	Work Session Document
S.B. 76	D	Dave Ziegler, Committee Policy Analyst	Work Session Document
S.B. 136	E	Dave Ziegler, Committee Policy Analyst	Work Session Document
S.B. 356	F	Dave Ziegler, Committee Policy Analyst	Work Session Document
S.B. 421 (R1)	G	Dave Ziegler, Committee Policy Analyst	Work Session Document
S.B. 478 (R1)	H	Dave Ziegler, Committee Policy Analyst	Work Session Document
S.B. 130 (R1)	I	Dave Ziegler, Committee Policy Analyst	Work Session Document
S.B. 383 (R1)	J	Dave Ziegler, Committee Policy Analyst	Work Session Document
S.B. 321 (R1)	K	Dave Ziegler, Committee Policy Analyst	Work Session Document
S.B. 321 (R1)	L	Cheryl Blomstrom, representing United Trustees Association	Amendment