MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Seventh Session
April 26, 2013

The Committee on Judiciary was called to order by Chairman Jason Frierson at 9:08 a.m. on Friday, April 26, 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 Greg Brower, Washoe County Senatorial District No. 15

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Karyn Werner, Committee Secretary
Colter Thomas, Committee Assistant

OTHERS PRESENT:

Diana J. Foley, Securities Administrator, Securities Division, Office of the Secretary of State
Terry Care, Commissioner, Uniform Law Commission
Bill Uffelman, President and CEO, Nevada Bankers Association
John Wagner, Chairman, Independent American Party
Nicole Lamboley, Chief Deputy, Office of the Secretary of State

Chairman Frierson:
[Roll was taken. Committee protocol and rules were explained.] I want to start today with a brief presentation from the Securities Division of the Office of the Secretary of State.

Diana J. Foley, Securities Administrator, Securities Division, Office of the Secretary of State:
The Securities Division is responsible for the enforcement of Nevada's blue sky laws, which means we regulate the investment products that are sold in Nevada and the individuals who sell them. As a fun fact, blue sky terminology refers to the states' regulation of securities. It is a term that was founded in the early 1900s. There was an early 1917 Supreme Court case that referred to the regulation of securities laws as the attempt to regulate the "speculative schemes which have no more basis than so many feet of 'blue sky'." State regulation of securities actually predates, in many states, the federal laws. Kansas first adopted securities laws in 1911. Our federal laws were adopted in 1933 and 1934. [See (Exhibit C).] In Nevada, the Uniform Securities Act was adopted in 1987. It was based on the Uniform Securities Act, which was promulgated by the U.S. Securities and Exchange Commission (SEC). There are approximately 37 jurisdictions which have adopted a version of this bill. The purpose of these regulations is to protect the investing public and the capital markets, and to promote the responsible capital formation.

The Securities Division is also responsible for *Nevada Revised Statutes* (NRS) Chapter 91, which deals with commodities. We also regulate and license athletes' agents, which is an interesting part of our job.

Primarily, the Division is split into three sections, and I will tell you a little bit about each. We have a licensing and registration section. If you sell a security in Nevada, or you are charging a fee for your investment advice, you must be licensed with our Division or be exempt from that licensing. Currently, there are approximately 1,850 broker-dealer firms that are licensed; 144,000 sales agents; 4,200 investment adviser representatives that are licensed; and 1,400 adviser firms. We also register stockbroker branches, of which there are about 1,200. In addition, the licensing and registration section also registers securities to the extent that we are not preempted by federal law. We also review and regulate exemptions. During the last two fiscal years, there were about 212 securities offerings that the Division registered, and over 18,000 exemptions that were filed with our office. Through licensing and registrations over the last two fiscal years, we have brought in over $24 million in revenue to the state.

Part of that revenue comes from compliance, which is another section of our Division. The compliance section is made up of four investigators. They are, by law under NRS 90.410, allowed to make unannounced inspections of the investment professionals. What the investigators do is to appear regularly at investment professionals' offices and go through their books and records. They look at the products they sell, and their policies and procedures, to ensure they are in compliance with Nevada law. If they do not comply, the Division has the ability to try to get them to comply. We have various tools, such as a cease and desist. We are allowed to do summary orders to revoke licensees. We may enter into agreements with them and request they hire outside compliance counsel. We may also ask that a firm supervise an individual agent more closely than they have been. Through these inspections, we find violations like selling unregistered securities, individuals who are not licensed to sell, and individuals who are not complying with the books and records requirements of our law.

On occasion, we also find criminal violations, which leads me to the third area of the Securities Division. It is our criminal investigation section. We have seven criminal investigators who are sworn peace officers. In addition to subpoena powers, they also execute search warrants and arrest warrants. If they determine through their investigation that facts are sufficient to show a crime has occurred, we screen that information with the Office of the Attorney General and they prosecute the crimes. The individuals who commit these crimes come in a wide variety of ages, and come from many different walks of life. This last fiscal year, we convicted a business developer who was selling promissory notes promising that he would pay off in excess of 25 percent. That individual has recently pled guilty to federal wire fraud. He has been sentenced to 21 months in jail and has been ordered to pay

$1.8 million in restitution. This last year we filed charges against a former police officer who had become an investment professional. That individual used his standing as a former police officer to make his investors feel that he was an honest person. He has now pled guilty to securities fraud and has been ordered to pay back over $400,000 in restitution.

Finally, as a state regulator, we are impacted by federal law. There are many federal laws that change the way we regulate securities in Nevada. By way of example, I am sure you are all familiar with the Dodd-Frank Wall Street Reform and Consumer Protection Act—which was adopted in 2010—that changed which advisers the states license. Previously, the investment advisers that we licensed were those with $25 million or less in assets under management. Now we license and inspect a larger number of investment advisers: those advisers who have up to $100 million in assets under management. Another federal law that recently changed was the Jumpstart Our Business Startups Act, which is also called the JOBS Act. That is going to allow for crowdfunding, which is basically capital formation over the Internet. That will also allow for Regulation Ds, which are a federally exempt security to be sold through advertising. These are two huge changes to our law and will increase our areas of regulation.

We remain committed to aggressively investigating securities fraud and enforcing the blue sky laws for the protection of the investors in the state.

Chairman Frierson:
Having worked in securities briefly for the Attorney General's Office, I recognize this can be an entirely complex area.

Assemblywoman Diaz:
I am not clear what "exemptions" mean for your Division when you say you review exemptions. Could you add some clarification for me?

Diana Foley:
I am referring to exemptions from registration. If a security is sold in this state, it has to be registered with our Division, or it has to be exempt. There are a lot of federal exemptions that we are required to comply with, and some state exemptions. We also have some exemptions from licensing. It is basically state or federal law that sets forth factual situations in which we will not license an investment professional. If a stockbroker is selling to only one client in the state and they do not have a physical office in Nevada, they are exempt from licensing.

Assemblywoman Spiegel:
Would you please speak more to what is going to happen with crowdfunding.

Diana Foley:
Crowdfunding, as I stated, is now being allowed by this new federal law. It is currently not legal to crowdfund on the Internet, but the SEC is in the process of promulgating some rules and regulations for crowdfunding. What will happen is that individuals will be able to find a licensed intermediary, or a stockbroker, on the Internet and buy securities through that intermediary. That is a huge change for the securities industry.

Assemblywoman Cohen:
On average each year, how many arrests are the criminal investigators making? How many trials does that lead to?

Diana Foley:
In the last two fiscal years, there were 15 convictions representing about 53 charges. Convictions, of course, are different from arrests. It depends on the type of investigations we do. Some are clear-cut and easy, while some involve multiple jurisdictions and multiple investors. It is hard to give a specific per-year number.

Assemblywoman Dondero Loop:
I am concerned about the out-of-state professionals not having to register. Tell me why, and how many that might impact.

Diana Foley:
First of all, there is a federal law that has a minimum number that we cannot go above. If an individual has fewer than five clients in this state, and they do not have a physical presence here, we are not able to license that individual. Generally, if they have a physical presence here, we are able to license them. I cannot give you a number. There are other exemptions too. For example, an investment professional, who only sells to institutional investors and does not have an office here, may be exempt from our licensing scheme.

Assemblywoman Dondero Loop:
I am confused. I understand the federal law with the five clients, but do we have people who exceed that five threshold and are still not licensed here?

Diana Foley:
If we find them, we request that they become licensed.

Assemblyman Thompson:
When you were talking about the compliance section, you said they generate revenue. Can you give us an approximation of how much they are able to bring in? To where do you redirect those funds?

Diana Foley:
The funds that we receive are split into sections. The licensing and registration fees, and the cost for the actual inspections, all go to the state. We earmark and set aside the funds that we receive as penalties, and the funds we receive for recouping investigation costs are used to pay the state back for the cost of operating our Division. In the last two fiscal years, we brought in over $3 million. A lot of that money was from multijurisdictional settlements, which we do not often see.

Chairman Frierson:
I thought it would be good to have a presentation of an overview of the Securities Division because of the bills we have coming up.

Since there are no more questions, we will go on to the bills. I will open the hearing on Senate Bill 28.

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

Diana J. Foley, Securities Administrator, Securities Division, Office of the Secretary of State:
With Senate Bill 28, we are trying to accomplish four basic goals: to strengthen the regulations and the Division's ability to address certain deceptive or prohibitive conduct; housekeeping corrections partly due to changes in the industry; seeking more flexibility in licensing considerations regarding bad acts; and to clear up inconsistencies and ambiguities between NRS Chapter 90 and other statutes.

For those of you who are returning, some portions of the bill may look familiar. A lot of this was contained in Assembly Bill No. 72 of the 76th Session. I understand the only reason that bill did not pass is that it had fee increases. Of course, all of the fee increases have been stripped from this bill.

I would like to quickly address each section and give you background on why we are requesting these changes. Section 1 is a provision for certain conduct to be defined as unethical or dishonest. Specifically, if a person uses a certification or professional designation that they do not really have—is made up and is nonexistent—or was not obtained from an organization that utilizes

reasonable standards or procedures for compliance, we would like them to be found to have committed dishonest or unethical conduct. This section is largely geared toward protecting the older population of Nevada, and came about to prohibit individuals from holding themselves out as senior specialists, or retirement specialists, unless they actually hold that designation through a certified agency. The language is largely based on a model rule proposed by the North American Securities Administrators Association, which I will refer to as NASAA. It is made up of all 50 states, the Canadian provinces, Puerto Rico, the Virgin Islands, and Mexico. It is my understanding through talking with NASAA counsel that a version of this model rule has been adopted by 30 states (Exhibit D).

To give you an example of what we see in the securities industry, the regulator in Utah questioned an individual who had a huge number of designations after his name on his business card. One of those designations was "CHSG." The regulator did not know what that stood for, so he asked the individual what it meant; he said it meant "Certified High School Graduate." That is a funny example, but there are a lot of individuals who hold themselves out as having certifications that are nothing more than a marketing tool—something they may have purchased over the internet.

Sections 2 and 3 are basically technical cleanup. Section 2 specifically identifies the conduct of an individual when an agent ceases to work for a broker-dealer.

Section 3 will allow the Securities Division more flexibility in deciding whether a person's license should be denied or revoked. We have requested that the Division be allowed to consider a felony conviction that occurred longer than ten years ago. We are also requesting the crime of moral turpitude be added to the list of crimes that may be considered. As you may know, a crime involving moral turpitude is often found in our licensing statutes. The impetus for this requested change came a few years ago when an individual who had been convicted of a violent sex offense applied to be an investment professional. The concern of the Division was that approximately one-third of our investment professionals work from their homes, and they go to investors' homes themselves. Unfortunately, the Division was not allowed to consider that prior conviction to limit that individual's license. We are also asking to be allowed to consider felonies that are over ten years old. Sometimes these felonies are serious and of such a nature that we think it is appropriate that we consider them. I will give you an example: I am a lawyer, as a lot of you are. If I commit the crime of stealing from my clients and taking money from their trust funds and I am convicted of a felony, ten years later I can apply to be an investment professional in Nevada, and the Division cannot consider that prior

conviction because it is over ten years old. That is the serious type of conviction that we might want to consider when we are considering licensing an individual.

Section 4 simply changes the names of the stock markets which have occurred due to mergers and other changes in the industry.

In section 5, we are proposing an amendment to NRS 90.580 which deals with certain prohibited conduct regarding the manipulation of the market. Conduct currently identified deals with creating a false appearance in the market, such as making it appear that there is active trading, or quoting false prices. We are requesting an amendment to this section to add conduct related to a security currently prohibited by NRS 205.440. That statute was adopted long before the Securities Act was adopted. We would like to make it clear that conduct is governed by NRS Chapter 90. Section 5, subsection 1, paragraph (f) will make the specific conduct of circulating false or misleading information about a security prohibited. This conduct is sometimes part of what we call a "pump-and-dump scheme," which is a scheme to artificially inflate the price of stock by putting out false information so those behind the scheme can dump their stock when the prices are high. This specific conduct is consistent with the prohibitions found in NRS 90.580. The conduct is also generally prohibited by NRS 90.570, but since that specific statute exists, we would like to move it into the security statutes.

Section 6 will allow the Division to charge an offense or violation for making a material false statement to an investigator during an investigation. Of course, our investigators talk to both victims and those we are investigating. This is a tool the federal authorities currently use that is a great help. We are allowed to charge violations if an individual testifies during a hearing and makes a false or material statement, but we are not allowed to charge them with a violation in the investigation process. An example happened recently: we had an individual who filed a complaint alleging securities violations. We found the complaint to be totally unfounded. We also found out the complainant was a convicted felon, and we believe he was improperly trying to recoup some investment losses. This is an example of where we would be able to use this particular type of violation.

In section 7, we are seeking to change our subpoena power. In several provisions in NRS Chapters 90 and 91, you will see that the Division is empowered with the ability to cooperate with other jurisdictions and agencies, including Canadian provinces, the Commodities and Futures Trading Commission (CFTC), and the Securities and Exchange Commission (SEC). In fact, these multijurisdictional investigations and cooperations are very

important to us in today's world of technical advances. An individual can sell from Canada to investors in Nevada, and they will ask that the money be wire transferred to an account in Florida. It is really important that the States and Canadian jurisdictions are able to cooperate in these investigations. We are seeking to make it clear that, when we are allowed to issue subpoenas at the request of other jurisdictions, it includes the Canadian provinces, the SEC, and the CFTC.

Finally, in section 8, we are seeking an amendment to NRS Chapter 205 which would clarify that, if there is a greater penalty for that same conduct found in NRS Chapter 90, the greater penalty applies. Both statutes consider some of the same or similar conduct, and we are trying to remove the argument that the lesser penalty would apply.

Assemblywoman Spiegel:
On page 6, line 26, would you explain "involves moral turpitude"? As I read that and thought about it—I looked at dictionaries and read the definition, but it did not help enough—I wondered if someone who was convicted of pandering and was able to get away to start a new life, would this clause mean that they could not go into financial services?

Diana Foley:
Moral turpitude is a difficult definition to wrap your arms around. These are crimes that the court system has identified as having moral turpitude that involve justice, honesty, and principles. I think crimes concerning certain sexual violations should be crimes of moral turpitude. We are asking, with this change, to be able to consider it. It would not be a black-and-white prohibition. Again, in the example I gave, the consideration was what ways could we limit that person's license to protect individuals if that person still had some issues. We are not forced to deny a license; we are allowed to consider it.

Chairman Frierson:
Are there crimes of moral turpitude that have absolutely nothing to do with finances or such, like the example Ms. Spiegel gave that could arguably be completely irrelevant to working in this area? I wonder if other language would target what we are trying to prevent exposing the public to and that is, rather than moral turpitude, something dealing specifically with fraud or other areas that have similar language dealing with crimes of fraud or theft.

Diana Foley:
There are references to crimes already built into the statutes that violate the securities laws. It is in section 3, but there is another general section. I cannot think of a crime that we would not want to consider, because a lot of the time

moral turpitude involves theft, embezzlement, larceny, and that type of crime. We are not saying because it is a crime of moral turpitude, we will automatically deny a license; it just allows us to consider it.

Chairman Frierson:
You did give an example in the presentation about an individual who had a criminal background.

Diana Foley:
He is a violent sex offender.

Assemblywoman Fiore:
How do you go from a gross misdemeanor to a category B felony? I am really stuck on the moral turpitude because it is so broad that it makes me hesitant on this bill.

Diana Foley:
I am not sure what you mean by "go from a gross misdemeanor to a felony." What we are seeking in the licensing process is the ability to consider felonies no matter what the age, and to consider whether we should modify or deny a license based on that. If we deny a license, an individual has a right to have the decision reviewed.

Moral turpitude is a broad category and is designed to focus on those items that we, as a society, find reprehensible. We are licensing an individual who is responsible for, and has custody of, funds; and makes significant decisions for the investing public. We are concerned that those individuals apply their fiduciary duty. These are some of the crimes we feel are appropriate for us to consider.

Assemblywoman Fiore:
Are you open to amendments on your bill?

Diana Foley:
I am happy to discuss this issue.

Assemblyman Ohrenschall:
My question has to do with current prosecutions versus future prosecutions under S.B. 28 if it is codified in the NRS. If you have employees who are on the bottom rung of a business, such as phone solicitors, and the Attorney General prosecutes the head of the company, are those employees working the phones subject to the felony prosecution that we are looking at? Have they been in the past?

Diana Foley:
First, a violation of the securities laws is currently a category B felony. If an individual knowingly violates—knowingly violates is the key—one of the statutes, we prosecute those individuals, and those who misrepresent the sale of a security, and securities thefts. I will be honest with you. We have a difficult time getting our theft cases—where an individual has stolen money from investors—before a court and having a felony conviction applied. If you are talking about an individual who is periphery, who has not knowingly made a violation, they may not be prosecuted. I am unsure of the specific language you are looking at.

Assemblyman Ohrenschall:
How broad is the net and does it catch those periphery people? I am worried that folks such as telemarketers, who do not know much about the business, will face prosecution.

Diana Foley:
Again, there is a knowing component to the violation. We should not have telemarketers in the securities industry; this is a highly regulated industry. You do not sell securities over the phone. If you know of one of those situations, I would like you to let me know.

Assemblyman Ohrenschall:
On page 14, sections 8 and 9, section 8 contemplates a category C felony. Section 9 seems to do away with the gross misdemeanor penalty. As you said earlier, NRS Chapter 90 also contemplates a category B felony for any violation. What would be the interplay between losing the gross misdemeanor, the category C felony in section 8, and the category B felony that is already in law for violations of NRS Chapter 90 if S.B. 28 passes?

Diana Foley:
It is clear in our statutory schemes that the Legislature has decided that those who commit securities fraud have committed a serious crime. What we are seeing is that individuals who are losing their investments are financially impacted for the rest of their lives, but often will also have physical consequences. Starting off, we have viewed securities fraud in Nevada as a very serious crime. As I stated, sections of NRS Chapter 205 were adopted much earlier than the Uniform Securities Act. There is conduct in both of these that may not refer to the securities section. We are trying to take the securities violations and put them in the Uniform Securities Act, and leave the other violations that do not involve the sale of securities in NRS Chapter 205 as a category C felony and a gross misdemeanor.

Assemblyman Ohrenschall:
If S.B. 28 passes into law as it is, when do you foresee a category C felony being charged versus the category B that is already in NRS Chapter 90? I know the category B felonies are the more severe ones. I have some concerns.

Diana Foley:
First of all, the Securities Division is not going to be charging a category C felony, which you know. *Nevada Revised Statute* 205.435 deals with encumbrances of real property that may have nothing to do with securities. Also, promissory notes are identified as a security under our securities laws. Case law defines promissory notes as not always being a security. It is possible that a sale of a promissory note may fit NRS 205.435 and not be a security; therefore, this prohibition would be a category C felony.

Assemblywoman Spiegel:
Someone who is not certified and does not have any additional designations writes an article for a newsletter, blog, or something. He talks about generally accepted financial planning principles—such as when you get older you should invest in things that have less risk—or generally known principles that are taught in schools. He does not put any designations after his name other than something he actually has, which is not a senior specialty. According to section 1, subsection 1, paragraph (a), would that person be indirectly guilty having written an article?

Diana Foley:
This section tries to define unethical and dishonest practices in securities sales. If the individual was not holding himself out as having a particular designation, I do not think this section would apply based on your scenario. This section tries to identify those individuals who hold themselves out as having a phony certificate, or something they bought over the Internet. They tell their clients who are seniors that they are certified senior planners. In reality, it does not mean they have any additional training or oversight. That is the conduct that we are trying to target. We are not targeting the publication; we are targeting the designations and certificates.

Assemblyman Martin:
I served as a compliance officer for a small securities firm. We were constantly under scrutiny for the concepts of churning and suitability. I am curious where Nevada is on these issues, because I am not seeing anything directly in the bill, but the bill alludes to punishments. Would you please comment on detection and prevention of churning, and the scope of the problem as your office sees it.

Diana Foley:
Although you do not see a specific designation for churning or suitability, under Nevada law, we primarily adopt the Financial Industry Regulatory Authority's conduct rules—which used to be the National Association of Securities Dealers' conduct rules—which prohibit that conduct. Generally, that type of conduct would be found through our inspection process. As I mentioned earlier about the compliance inspectors, you may have had the experience of state or federal regulators coming to the office and making an inspection. Part of what they do is spot-check clients' accounts for that type of activity. I would not say that we, as a whole, have found that to be a huge problem. I believe employers are the first stopgap to that issue in Nevada; we do look for that, however.

Assemblyman Martin:
What I am hearing is that you know churning when you see it. I would respectfully disagree on suitability. I think it is a huge problem. I prepare tax returns and see seniors who are constantly put in wrong types of investments. Ensuring seniors were in suitable investments is what I did as a compliance officer. I hope we can work together on a clear definition of what suitable is. Our seniors are experiencing problems with that. I believe it is more widespread than you may be aware.

Diana Foley:
I do not mean to belittle that there are individuals who sell products that are not suitable to seniors. Obviously, suitability is one of the major conduct rules for a sales agent. It is an area where we receive a lot of complaints from the seniors—that they have purchased a product that was not suitable for them, they were not liquid, and they did not understand the product. They had to pay a charge to sell their old investment and buy into a new investment, and did not get a different product. We do see that. I am not minimizing that. It is one of many issues that we see when we are out there.

Chairman Frierson:
Going through the bill from the beginning, section 1, subsection 1 addresses a person engaged in unethical or dishonest practice. The word "dishonest" seems to be somewhat subjective, and I do not know that I have seen it elsewhere in statute, although it may be a term of art in securities. I wonder if "misleading" would be a better word to put in statute than "dishonest." I am concerned about the subjectivity of the use of that word. Is "dishonest" used elsewhere in securities statutes?

Diana Foley:
I apologize, but I am trying to think of a situation where we used "dishonesty." That is the backbone of securities fraud that someone is not honest in their offering, that they make a material misstatement. If I was given some time, I could probably point to other references to "dishonest practice." We are also alluding to ethical constraints over broker-dealer and investment advisor, which are to be honest and ethical with their clients.

Chairman Frierson:
You are using some terms of art, but "unethical" is already there. You mentioned material misrepresentation. Those are the types of phrases that I am used to seeing in statute. I was concerned about the use of "dishonest" and how broad that might be used. Can you point to some other areas where it is used in this statute or similar statutes?

Diana Foley:
If you give me some time to look at the statutes, I may be able to find some. The other things I am thinking about are the conduct rules, or the particular ethical rules that apply to investment advisors. Can I provide those to you after the hearing?

Chairman Frierson:
Absolutely, you can get back to me with that. Rules and regulations are different and use broader language than we do in statute. I want to make sure that what we do in drafting, we do cleanly.

Section 1, subsection 1, paragraph (f), subparagraph (1) says, "Is primarily engaged . . . ," but throughout the rest of that section it uses "reasonable standards," "reasonable requirements," et cetera. I was also wondering if that is a term of art in securities that is used elsewhere. It seems to be somewhat subjective and open. I do not know what "reasonable standards" are, if we are putting that in statute, if we are cross-referencing to something else where we talk about standards, or what is considered reasonable. Please get back to me on whether those terms are commonly used in securities laws from a drafting standpoint.

Diana Foley:
If you would like, I can provide you with the model rule on which this particular section of the bill is based.

Chairman Frierson:
That would be great. My last area of concern is along the same lines as Mr. Ohrenschall's, and that was jumping from a gross misdemeanor to a category B felony. In section 9, in that statute—that has been in existence since 1911—if we are getting rid of "security or," it seems to me we might as well get rid of the entire statute. I do not know what else would fall under NRS 205.440. It seems to me that is the point of the statute. There is no reason to keep the statute.

Diana Foley:
In a general sense, the conduct that is identified in NRS 205.440 could be found to be violative of our other provisions of the securities law. I would suggest that, if an individual had an intent to affect the market price of real property and published some false sales data, or some information that led people to believe that there was going to be a new commercial project across from some property that was for sale, NRS 205.440 might still apply. I do not have an objection if you want to delete NRS 205.440 and put this issue in the securities statutes. I am just suggesting that there may be some other provisions.

Chairman Frierson:
I would imagine that, in the range of behavior, there are lesser actors and greater actors. To some extent, this gives an option of charging a different statute for less egregious behavior. I recognize that it might appear to be a conflict to those who work in securities, but it seems to me by increasing the penalty, it takes away an option for the state to charge.

Diana Foley:
We would not charge less than a category B. I am talking about someone who willfully violated our law. When I say that we would not charge, I am talking about the Attorney General, since it is not our decision on what charges to file. This would not prohibit them from agreeing that an individual could be charged with a misdemeanor, or plead to a misdemeanor, if their conduct was not as egregious as some other major player. That would not prohibit anything like that from occurring.

Chairman Frierson:
You mean as far as negotiations go?

Diana Foley:
Right.

Chairman Frierson:
Can you think of some examples where a category C felony was insufficient, and where someone was maxed out or had received the maximum on a category C? If people are not being sentenced to the maximum under the existing law, I do not know why we would increase the sentence.

Diana Foley:
We are asking for the change in NRS 205.435 so we do not have to do battle in litigation when that charge is filed. Currently, we have the argument that the greater penalty applies to the specific conduct that is covered by the securities laws. We are trying to remove the legal battle and litigation.

Assemblyman Ohrenschall:
Of course our Committee takes seriously any violation of Chapter 90, but we also look at the cost of incarceration. We have been cognizant of that in recent sessions. Of the cases that have been prosecuted, has anyone been convicted of a category B or C felony? Are you finding that many of the people who have been in violation of Chapter 90 are serving prison time, or do they routinely receive probation?

Diana Foley:
I will start out by saying that I have been in the Securities Division for over 1 1/2 years, so I will give you that caveat. My understanding is, however, that most often even though prison time may be ordered, it is seldom served.

Assemblyman Ohrenschall:
If prison time is seldom being served, I wonder if the bump up to the category B felony is warranted. We are not exhausting the provision of the category C felony, so I wonder if it is needed from a policy point of view.

Diana Foley:
The individuals whom we proceed against in a criminal nature have committed very serious crimes against other individuals. They have taken people's life savings. They have forever altered that person's way of life. Even though restitution is almost always ordered, it is often very difficult to get it paid. From a policy standpoint, a category B felony for a securities violation is completely appropriate.

Chairman Frierson:
Since the Attorney General is the one who actually conducts the prosecution, I am not sure if you would know if anyone is arguing about what type of sentence is warranted. Philosophically, why would we increase the existing penalty for something that people are not being sentenced under now? It may

be a frustration of the court system; judges may be unwilling to max out folks or give them prison time. If they are looking at a 1- to 5-year category C felony and they are not getting time, making it a 1- to 10-year category B felony is not going to result in any greater protection for the public. That is where we are coming from. Why increase the penalty?

Diana Foley:
I understand that question. I have not explained it very clearly, but this conduct is already in our statute. It just conflicts with NRS Chapter 205. We would like it to be clear that our statute applies if it involves securities fraud.

Chairman Frierson:
I will invite those who have testimony in support of S.B. 28, both here and in Las Vegas, to come forward. I see no one, so I will invite anyone who has testimony in opposition to come forward. There is no one, so I will invite anyone who is neutral to testify. Seeing no one, I will close the hearing on S.B. 28. We will now open the hearing on Senate Bill 110.

Senate Bill 110: Revises provisions relating to the Uniform Commercial Code. (BDR 8-873)

Terry Care, Commissioner, Uniform Law Commission:
I have appeared before this Committee previously to explain the Uniform Law Act, so I will not go into that. You heard the testimony from Ms. Foley from the Office of the Secretary of State, and the adoption by this state of the Uniform Securities Act in 1987. She made reference to regulation registration of athletes' agents. That is also a product of the Uniform Law Commission. That bill was adopted in 2001. It is a big exercise that the Uniform Law Commission goes through. The idea is to have the rules be the same in as many states as we can get enactment, so everyone knows the game is the same when you cross state lines.

Nevada Revised Statutes (NRS) Chapters 104 and 104A are in excess of 400 pages. Nevada has eight of the nine articles in the Uniform Commercial Code (U.C.C.). Under Chapter 104A, we have two additional articles, including one on funds transfers.

You heard reference from Ms. Foley to the Dodd-Frank Wall Street Reform and Consumer Protection Act, which arose out of the collapse of the equities markets and the housing markets (Exhibit E). You have all heard the terms about mortgage-backed securities, but this was the big reform act that came out of Washington, D.C. following the collapse of the economy.

The purpose for this bill is that, as the result of that act, there is an amendment that will take place later this year in what is known as the federal Electronic Fund Transfer Act (Exhibit F). That amendment will have an impact on the scope of U.C.C. Article 4A as it is currently written, which could result in legal uncertainty to a class of transactions currently governed by U.C.C. Article 4A, unless we have the amendment that is before you contained in S.B. 110. The Uniform Law Commission has recommended this change to the law. It did not come from the bankers, although the bankers support it. Mr. Uffelman is here to answer any questions.

To give the Committee some comfort, last year the first two states to adopt the amendment were California and New York, which makes sense because of the financial centers in New York City, San Francisco, and Los Angeles. Since that time, 21 states have adopted this act so far, and there have been 16 additional introductions so far this year, including Nevada (Exhibit G). Currently, U.C.C. Article 4A does not govern any part of a funds transfer that is governed by the Electronic Fund Transfer Act.

What is a funds transfer? There is a statutory definition, but basically it is a series of transactions made for the purpose of making payment to the beneficiary of a payment order. When the Electronic Fund Transfer Act amendment goes into effect, that act will govern so called "remittance transfers" whether the remittance transfer is also an electronic fund transfer governed by the Electronic Fund Transfer Act. What is a remittance transfer? That is generally a transfer of funds made by a foreign worker back to his or her home country. What is an electronic fund transfer? It is what you would think it was: transfers from one account to another within the same institution, or multiple institutions, through computer-based systems.

What all of this means is that, when the amendment to the Electronic Fund Transfer Act goes into effect, a fund transfer initiated by a remittance transfer will be entirely outside the scope of U.C.C. Article 4A even if the remittance transfer is not an electronic fund transfer. The amendment to the Electronic Fund Transfer Act would exclude fund transfers that are not remittance transfers from the scope of U.C.C. Article 4A, leaving the rights and responsibilities of those parties unregulated by both U.C.C. Article 4A and the Electronic Fund Transfer Act.

Senate Bill 110 would ensure that U.C.C. Article 4A would apply to fund transfers that are remittance transfers, but not an electronic fund transfer. In fact, if you look at section 1 without the change in the law—what current law is—you can see that this article does not apply to fund transfers, any part of which is governed by the Electronic Fund Transfer Act of 1978. If you look

at subsection 2, it would now say that this article applies to a fund transfer that is a remittance transfer unless the remittance transfer is an electronic fund transfer as defined in the Electronic Fund Transfer Act. This is a necessary bill.

Finally, subsection 3 says that, in a funds transfer to which this article applies, federal law would control it if there is some question or inconsistency.

Assemblywoman Spiegel:
If I get an e-invoice from someone and I go to pay it on line by putting in my routing and checking account information, when I remit that payment, is that considered a remittance transfer?

Bill Uffelman, President and CEO, Nevada Bankers Association:
You threw in a word you should not have. Leave "remittance" out of it. The Electronic Fund Transfer Act is basically for the consumer. The U.C.C. is on the commercial side. You said you received an e-invoice, which puts you on the U.C.C. side. Yes, you were remitting payment, but the remittance they were talking about is transferring money to your home country for the benefit of your family. This goes back to the notion of where the money is going. Is it an illegal activity? How is it being funded? The crossover between the Electronic Fund Transfer Act, which is primarily intended for the consumer, and the U.C.C. is like a donut hole. This is the belt-and-suspenders approach. If we do not get you one way, we will get you the other. This means that the entire spectrum of transfers that take place via the Internet electronic payment systems would be covered. Absent this, there is a category of transfers that are not subject to law. This comes from the Dodd-Frank Act.

Terry Care:
I should have explained that we were talking about the world of commercial commerce. It largely comes down to when you get into commercial transactions, like letters of credit, negotiable instruments, and all of the things that we remembered when we prepared for the Bar exam. We are talking about the commercial world.

Chairman Frierson:
What are we fixing and what is going on now that we are unable to address? Or is it simply a matter of wanting to have as similar language as possible across the country?

Terry Care:
The best known product of the Uniform Law Commission is unquestionably the U.C.C. All 50 states, and the other three jurisdictions—Puerto Rico, the Virgin Islands, and the District of Columbia—have adopted it. We think it is extremely critical for this case that we have uniformity in that world. So much has changed; things happen quickly. So much is done by electronic means. In this case, the problem has not arisen yet, but it is because of the amendment that will take effect later this year in the federal Electronic Fund Transfer Act that this is intended to address. As I pointed out, 21 states have already adopted it after California and New York took the lead last year.

Chairman Frierson:
I see no other questions. I will now invite those here to offer testimony in support of S.B. 110 to come forward, both here and in Las Vegas. I see no one. Is there anyone who wishes to offer testimony in opposition? There is no one. Is there anyone wishing to offer testimony in the neutral position? Seeing no one, I will close the hearing on Senate Bill 110. I will open the hearing on Senate Bill 279.

Senate Bill 279: Revises provisions relating to the Secretary of State. (BDR 7-461)

Senator Greg Brower, Washoe County Senatorial District No. 15:
Senate Bill 279 is a very simple bill: what you might call a cleanup measure, as you can probably tell if you have looked through it. Essentially, the bill recognizes that, throughout the *Nevada Revised Statutes* (NRS), there is what we have concluded as a factually, legally incorrect term: "instruct." This term is used with respect to the Office of the Secretary of State's ability to refer matters to the various prosecuting agencies around the state—the district attorneys (DA) and Attorneys General. The proper term, as any DA or Attorney General will say, is "refer." As many of us know, the Office of the Secretary of State does a lot of great investigatory work, but regardless of its findings cannot force or instruct a prosecutor in the state to actually prosecute a case. The actual practice is that the Secretary of State's Office, upon believing it has discovered facts that warrant prosecution, refers the matter to the prosecuting office, which then makes the discretionary decision whether to pursue the matter. This bill attempts to clean up the NRS and replace the term "instruct" with the phrase "refer the matter to," which more accurately reflects what actually happens and what legal reality is.

Chairman Frierson:
Has the existing language given rise to litigation or any problems with the carrying out of what it is trying to do? Did someone just happen to catch it and thought it needed to be fixed?

Senator Brower:
As I understand it, this is not a matter of any dispute between the Office of the Secretary of State and a prosecuting office. Instead, it came up in the interim and the District Attorneys' Association approached me about a potential legislative fix to clarify and conform the statute to actual practice.

Chairman Frierson:
I see no other questions. I will now invite those who wish to offer testimony in support of S.B. 279 to come forward, both here and in Las Vegas.

John Wagner, Chairman, Independent American Party:
We support this bill, particularly section 19. We have had some of our people make the mistake of not filing properly. Some of it was done on bad advice, and some was done because of ignorance, which is not an excuse. We would like to see the prosecuting people have discretion, so we changed the word from "shall" to "may." To me, this is a big deal for some of our people. Most of the things that happened to our party members happened before my tenure as state chairman, and it happened under the previous administration of the Secretary of State's Office. We support the bill.

Chairman Frierson:
I am reviewing section 19 again. Is this regarding voter activity, or is it voter registration?

John Wagner:
Some of our people who were candidates for office made some big mistakes. Unfortunately, it cost them dearly. It cost one lady $20,000 and almost cost her her marriage. It was because they did not know they had to file. They should have known since they received papers from the Secretary of State's Office that specifically stated what they had to do. There is reporting that you must submit; however, some of our people figured they did not have to file since there was no money involved—they did not take any money in, they raised no money, and spent no money. Unfortunately, they do have to file. It has been my policy as the state chairman when the filing notices come out, we send out emails not to forget to file.

Nicole Lamboley, Chief Deputy, Office of the Secretary of State:
The section to which Mr. Wagner was referring deals with Title 24, specifically NRS Chapter 294A, which governs the filing of campaign contributions and expense forms, the ability of the Secretary of State to enforce current campaign practices, and to refer those matters to the Attorney General for determination as to whether further action should be taken.

Chairman Frierson:
Are there any questions? I see none. Is there anyone who wishes to offer testimony in opposition? [There was no one.] Is there anyone wishing to offer testimony in the neutral position? Seeing no one, I will close the hearing on Senate Bill 279. I will open it briefly for any public comment. Seeing no one, today's Assembly Committee on Judiciary is adjourned [at 10:24 a.m.].

RESPECTFULLY SUBMITTED:

_____
Karyn Werner
Committee Secretary

APPROVED BY:

_____
Assemblyman Jason Frierson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 26, 2013 **Time of Meeting: 9:08 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Diana Foley	Overview Presentation of the Securities Division of the Office of the Secretary of State
S.B. 28	D	Diana Foley	NASAA Model Rule
S.B. 110	E	Terry Care	UCC Article 4A Amendment
S.B. 110	F	Terry Care	Why States Should Adopt the Amendment
S.B. 110	G	Terry Care	Legislative Fact Sheet