MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-Seventh Session
February 7, 2013

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:03 a.m. on Thursday, February 7, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Tick Segerblom, Chair
Senator Ruben J. Kihuen, Vice Chair
Senator Aaron D. Ford
Senator Justin C. Jones
Senator Greg Brower
Senator Scott Hammond
Senator Mark Hutchison

STAFF MEMBERS PRESENT:

Mindy Martini, Policy Analyst
Nick Anthony, Counsel
Lindsay Wheeler, Committee Secretary

OTHERS PRESENT:

Scott Anderson, Deputy for Commercial Recordings, Office of the Secretary of State
Diana J. Foley, Securities Administrator, Securities Division, Office of the Secretary of State
Kristin Erickson, Nevada District Attorneys Association
Matthew A. Taylor, President, Nevada Registered Agent Association
Bryan Wachter, Retail Association of Nevada

Chair Segerblom:
We are going to discuss Senate Bill (S.B.) 60 and Senate Bill 28.

SENATE BILL 60: Revises various provisions relating to businesses. (BDR 7-380)

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

Scott Anderson (Deputy for Commercial Recordings, Office of the Secretary of State):
The amendment to S.B. 60 (Exhibit C) has three provisions that affect every chapter in Title 7 of the *Nevada Revised Statutes* (NRS). Diane Foley, Securities Administrator, has some interest in this bill as well as her bill, which will be heard after this one.

I will read from my written testimony (Exhibit D).

Chair Segerblom:
I know in the interim you were able to raise the Business License Fee.

Mr. Anderson:
There are approximately 285,000 entities in active status under Title 7 NRS with an additional 40,000 under the State Business License requirements.

The fees were raised in 2009 from $100 to $200 and again in the interim regarding the home-based business exemption. With that, we have seen a significant increase in revenue.

Chair Segerblom:
Have you seen conversely a substantial drop-off in registrations?

Mr. Anderson:
There have been some drop-offs, but we do not know if they are related to the Business License Fee, the general economic conditions of the Country and State, or other economic factors. We have seen a small decrease in registrations, but our revenue has increased.

The information in a State Business License application is considered confidential if it is non-Title 7 of NRS and is not tied to an annual or initial list. Only the name of a sole proprietor or a partnership and whether such has been issued a State Business License may be disclosed to the public and law enforcement.

Chair Segerblom:
Can you give an example how that would work? Someone fraudulently uses a president or officer's name and is hiding something?

Mr. Anderson:
The Secretary of State does not verify the information on an annual list; therefore, anyone can basically be named as an officer or director without us knowing whether he or she is a valid officer or director. Practices are considered nominee officer practices where someone is named as an officer for the purpose of concealing who actually has control of an entity. There are legitimate reasons to do this, and we have discussed this with the Business Law Section of the State Bar of Nevada, which raised concerns. We feel the amendment clarifies the issue of legitimacy so that we are only looking for those who conceal ownership for unlawful purposes.

Chair Segerblom:
Can a corporation elect anyone it wants to as the president or officer?

Mr. Anderson:
Yes.

Diane J. Foley (Securities Administrator, Securities Division, Office of the Secretary of State):
One of our undercover investigations found that a particular entity would give individuals powers of attorney and pay them for the use of their names on any list for any directorship or any officer. These persons may have zero connection with the corporation and have no idea what is going on with the entity. This practice is fraudulent and hides who actually operates the entity. It makes it difficult when investigating a crime and trying to determine who is behind an entity if the names on the annual list are fake.

Chair Segerblom:
Would you have to prove the intent—that the entity wanted the person identified as the president, but he or she had no interest in the company other than just their name?

Ms. Foley:
The entity is naming that person in furtherance of an unlawful activity.

Chair Segerblom:
Would there be some power of attorney or something to prove that? If the board of directors voted to make someone president, how would you show that was fraudulent?

Ms. Foley:
I would question whether you would even find a written consent nominating that person as an officer.

Senator Brower:
Following up on Chair Segerblom's question, how would you show that a private corporation fraudulently voted to name someone? I am troubled by the State deciding who can be named as directors or officers. I think Chair Segerblom makes a good point. Is it not the prerogative of the corporation to pick whomever it wants?

Mr. Anderson:
We are trying to eliminate fraudulent intent in creating and naming those officers for unlawful purposes, such as intending to defraud the public through money-laundering, terrorist activities or using these entities as fronts for unlawful activities. Nevada has come under significant scrutiny because these practices have been allowed to occur. We are trying to address unlawful activities. We are not telling entities they cannot hire or name officers for lawful purposes. We are saying that they cannot name those persons for any furtherance of unlawful activity. We are going after the fraudsters and the fraud. We are not going after legitimate naming of officers for legitimate purposes.

Senator Brower:
I will listen to the rest of the testimony, but I cannot tell if this is an overreach or if this is a potential proof problem for an eventual prosecution.

Ms. Foley:
The problem is: when you identify a person as a director of your entity, you are identifying the person who operates the business on a daily basis. You are also identifying those who have the power and control of the corporation. In fraudulent situations, individuals are being identified who have no day-to-day interaction with the business.

Senator Hutchison:
People and businesses come to Nevada because we have confidentiality in terms of ownership and who actually controls companies. The idea that you have to disclose who controls the company means you have to disclose the shareholders and the partners. By operation of corporate law, the owners control the company. They are the ones who hire and fire the officers and directors. They are the ones who determine the direction of the company and, in fact, they really do decide who is going to run the company. They can be very active in running the company. Shareholders and a president and vice president have the functions that the shareholders or partners direct them to have. So the idea that we have to disclose who is really running the company means that, de facto, we have to disclose the owners.

Mr. Anderson:
We are not intending to target those directors, officers or owners who are doing lawful business.

Senator Hutchison:
Suppose a company is involved in an investigation, and it is determined later that the company did not properly file taxes or the IRS determined it was evading taxes. That is after-the-fact unlawful conduct. Are you going to go back with the statute and say, after the fact, that you did not disclose the real owners of this company? This is a wide practice right now. Are you going to come back to the company and say the entity operated with the intent to conduct unlawful activity, namely not paying taxes? Are you not only going to let the IRS go after the company, but are we going to go after the company under this statute?

In effect, any time a corporation or officers would be determined to be involved in unlawful action, you could come back and say the reason this corporation was formed and did not disclose the officers was because the company was formed with the intent to engage in fraudulent activity—by not disclosing those owners. It seems that every time a corporation, officers or directors become entangled in any kind of unlawful activity, whether rightfully or wrongfully determined, you could come after them under this statute. I find that troublesome.

Ms. Foley:
If I understood your example correctly: if there is an issue with a tax return, that would not typically have anything to do with who the owners were?

Senator Hutchison:
It is unlawful conduct, and I have not disclosed the owners. Let us say the owners control the company, which most do, and I have not disclosed that fact. Your statute says that I have to disclose who is running the company. But that does not happen in Nevada all the time. I am saying this is a radical departure from Nevada law. Nevada allows owners to operate businesses without being disclosed in terms of the shareholder status.

Ms. Foley:
We are stating that you have to identify the officers and directors.

Senator Hutchison:
Which you have to do now?

Ms. Foley:
Yes.

Senator Hutchison:
Say the directors and officers run part of the day-to-day business and the owners control other parts. Are you telling me you have to disclose them because those owners control other parts of the business? Your bill states that you have to disclose those who are really running the business.

Ms. Foley:
There is no requirement to identify shareholders. If they are not directors or officers, they do not have to be identified.

Senator Hutchison:
Not the way your statement reads. The bill prohibits naming officers and directors on the annual list with the fraudulent intent of concealing the identity of any person exercising the power or authority of an officer and a director. It does not say disclose the officer or director. It says any person who is exercising power. Someone gets to decide whether an owner, for example, is actually exercising the power and authority of an officer or director. Perhaps

I am reading the testimony incorrectly. Maybe the statutory language does not reflect what the testimony shows.

Mr. Anderson:
The bill is looking at intent as well. Proof would be on those investigating to prove that intent. We worked with the State Bar of Nevada to craft language for the amendment to address those concerns.

Chair Segerblom:
Can you give us a real-life example of when a corporation used fraudulent intent?

Mr. Anderson:
There are a number of examples in news reports and from news sources, such as CNBC, describing entities that created and named corporate officers who were not actually in control. The owners were concealed and were ultimately convicted of tax evasion, money-laundering and other fraudulent, unlawful activity. This is what we are trying to address in this bill. We are not trying to prohibit the legitimate actions of a corporation and the naming of the corporate officers and directors. We are trying to prohibit those who intend to file and create entities with the intent to defraud the public and/or evade taxes.

Chair Segerblom:
Are you aware of similar language in other states?

Mr. Anderson:
Yes, Delaware and Wyoming have similar language. I would have to check other state's laws which address the naming of officers.

Ms. Foley:
Nevada has become known as the state where you can identify nominee officers and directors and never identify the individuals who are actually acting as officers and directors. We are trying to prevent attaching that connotation to Nevada.

Mr. Anderson:
We worked with the Business Law Section of the State Bar to craft the narrowing language in the amendment.

Senator Brower:
Can you identify who you worked with at the State Bar?

Mr. Anderson:
We worked with Rob Kim and Ellen Schulhofer.

Nevada is under intense federal, international and media scrutiny for our practices and for the information that we have on file. News writers identified three registered agent companies with principals who had been convicted of felonies, including money-laundering and wire fraud. It was alleged that the entities their clients created were used for financial fraud, stock fraud and tax evasion. And CNBC recently reported that Nevada has questionable registered agent practices and entities easily filed with anonymity.

A recent report ranked Nevada as the easiest jurisdiction to set up a shell corporation or shell entity with no customer verification at the creation, service or registered agent level. A multijurisdictional task force identified the creation of shell corporations as a major issue when investigating major financial crimes. Law enforcement is unable to obtain information necessary for criminal investigations.

We need to take steps to weed out fraudulent shell companies and illegally registered agents by passing this bill. Otherwise, Nevada will continue to be labeled nationally and internationally as a jurisdiction that welcomes scammers and fraudsters. This legislation is narrowly tailored to target the individuals responsible for fraudulently concealing the identity of corporate officers to further illegal activity. It also prohibits those who have already been convicted of fraudulent activity from perpetrating further fraud. This is a question of whether you want companies to hide the identity of their officers for fraudulent purposes.

This bill is a result of numerous discussions with law enforcement officials who have been frustrated in their efforts to target criminal activity of Nevada-based companies. Business law attorneys who are dedicated to ensuring Nevada's status as a pro-business filing jurisdiction are also concerned. If we want to be pro business, we need to weed out the fraudsters. We see no reason why law-abiding businesses would oppose this bill.

Senator Jones:
In section 7 of the bill, there is reference to noncommercial registered agents who may serve in the State as agents for service of process. It further states that anyone who has been convicted of a felony or a crime which involves crimes of dishonesty, fraud or moral turpitude may not serve as a registered agent. I do not see that Nevada defines crimes of moral turpitude.

Mr. Anderson:
That language has not been changed in the amendment. The intent of the bill is to prohibit those registered agents who have perpetrated fraud, have been convicted of felonies and not had their civil rights restored from serving as registered agents and thus being able to perpetrate similar frauds.

Senator Jones:
I agree with the intent of the bill. My concern is with the section relating to noncommercial registered agents. That is anyone who forms a business. That is me. I have a business. I am the registered agent for my own business. For example, say I got picked up for petty shoplifting as a kid. The way the section is written, I would be subject under this bill. Not that I ever was for the record, but I am concerned with the language.

Mr. Anderson:
The intent is not to go after someone for some petty crime but to target fraud.

Senator Jones:
I understand the intent and agree with it. I am concerned that the language as drafted may potentially capture more than your intent with this bill.

Ms. Foley:
You are concerned about moral turpitude. That term is defined by Nevada caselaw. It is a common term used in licensing provisions. If you do a search of the statutes, you will find it in escrow agent licensing, mortgage licensing—I have even seen it where a person cannot work for a licensed dog handler if the person has been convicted of a crime of moral turpitude. Moral turpitude is defined in the Nevada Supreme Court case *State ex rel. Conklin v. Buckingham*, 59 Nev. 36, 84 P.2d 49 (1938) as anything contrary to justice, honesty, principle or good morals. It is not a negligent-type conduct but is intentional conduct that is particularly base.

Senator Jones:
Shoplifting is intent crime, is it not?

Ms. Foley:
Yes.

Senator Jones:
If I was picked up for shoplifting as a kid, then I would not be able to serve as a registered agent for my own business for the rest of my life.

Ms. Foley:
I am not familiar with a time limit on that. I am not sure that shoplifting would be a crime of moral turpitude. Larceny and embezzlement clearly are. If you shoplifted a candy bar as a child, I am not sure the Nevada Supreme Court would say you committed a crime of moral turpitude.

Senator Jones:
How does the average person who forms a home-based business or simple business know? I am a lawyer; you are a lawyer; we can look up that information in statute or caselaw to determine what a crime of moral turpitude is. How is the average person who is filing online with the Secretary of State supposed to know he or she is violating a new statute?

Mr. Anderson:
I do not have an answer for you. It is something to take into consideration.

Ms. Foley:
If you have been convicted of several crimes, you would identify those crimes on your application.

Senator Jones:
Why not identify them in the statute? For example, the Secretary of State's Website could have something pop up that says do not register a new business or a registered agent if you committed any of the following crimes.

Ms. Foley:
One of the problems is the interpretation by the Nevada Supreme Court.

Senator Jones:
Can we not leave it out of the statute and identify what those crimes are?

Ms. Foley:
If a new crime develops that involves moral turpitude, we would be prevented from using it, and that would be a concern.

Mr. Anderson:
We would be happy to work on that concern.

Chair Segerblom:
Obviously, a juvenile conviction would not apply. In Nevada, a person is free to have things sealed after a certain amount of time and then take it off his or her record.

Mr. Anderson:
We are not trying to get people with petty crimes, such as shoplifting. We are trying to get at those who are committing offenses that are fraudulent and deceive and defraud the public.

Senator Brower:
In section 2, the bill contains the improper inclusion of the word "instruct" that is found in various sections of *Nevada Revised Statutes*. I am working on a bill regarding that particular language. In section 2, the Secretary of State's Office is instructing the district attorney. Would you agree that the NRS should be changed wherever it says the Secretary of State can instruct the district attorney to do something?

Mr. Anderson:
As far as Title 7 of NRS commercial recordings are concerned, we take out that language. The amendment removes it from all chapters. It changes "instruct" throughout Title 7 of NRS to "may request" based on prosecutors discretion. I am not prepared to answer for other divisions.

Senator Brower:
District attorneys are uncomfortable with the idea of someone else instructing them on how to exercise their prosecutorial discretion. In this context, it appears we are on the same page.

Mr. Anderson:
We will consult with the Attorney General or the district attorney before we would request such an action or move forward with such an action.

Senator Hutchison:
I embrace the intent of this bill, but there is still some confusion. As I read section 2, if a business forgets—which is similar to neglect—to file for a State Business License, it can be fined up to $10,000. That seems pretty harsh.

Mr. Anderson:
We give businesses numerous opportunities to correct their deficiencies. When a business is identified as being deficient, it is notified of the deficiency and given ample opportunity to correct or rectify it. If the deficiency gets outside the realm of neglect and becomes willful and the business continues to be noncompliant, we move forward with further investigation and potential referral to the district attorney or Attorney General. I would hope that a prudent businessperson who has ample opportunity to correct the noncompliance, would rectify the oversight by filing with our office. It is a fairly easy procedure. Most of those whom we have been in contact with are becoming compliant. If businesses refuse to comply with the State filing requirements, we refer them to the district attorney.

Senator Hutchison:
That is a reasonable approach; however, the language does not say that. We should clarify that it is not about someone who forgets for the first time. That is how one could read the statute. The fear is that an aggressive prosecutor could take an extreme position and give out a $10,000 fine if someone happened to forget to file a Business License. This language would allow that. In practice, that is not how it is done, and the language needs to be worked.

Senator Ford:
The question has become willfully fails or neglects. The statutory language could be construed as "willfully fails" or "willfully neglects," which would negate the opportunity of one who accidentally forgets to file. Maybe we can clarify whether we are talking about willfully failing and/or neglecting, which would be an accident, or willfully failing or willfully neglecting. I have seen that in several statutes. I would like to see statutory language that would detail what we are talking about here.

Mr. Anderson:
We will take that into consideration in drafting additional language.

Senator Brower:
There are some concerns on this bill, and it appears there needs to be work done.

Chair Segerblom:
We all agree on the intent, which is to raise the standards and to get this State to be the Delaware of the West. We want to be sure that we are discouraging unlawful activity and encouraging lawful activity. The intent is there. We may have some changes, but S.B. 60 is a great bill and we will bring it back for a work session.

Kristen Erickson (Nevada District Attorneys Association):
We did have several initial concerns, but those concerns have been addressed in the amendment to change the "instruct" language to "request." We are now fine with the bill.

Matthew Taylor (President, Nevada Registered Agent Association):
We share many of the same concerns. I am here in opposition to S.B. 60 and the proposed amendment. Our main concern is the proposed nominee officer language to be added to NRS 78.150. We feel the managers, officers, directors and shareholders of a company are already liable for any criminal or intentional wrongdoings. That is specifically addressed under NRS 78.138. *Nevada Revised Statute* 78.138 removes any protection or corporate veil protection for officers and directors if they are engaging in any knowing violation, misconduct or fraud. This does not need to be duplicated in this bill. Even with the changes in the amendments, the language only serves to place the officers in jeopardy for the actions of the owners.

Senator Ford:
Statutory language holds a director liable and removes the corporate veil, but that is not the intent of this bill. The bill's authors are trying to get at those who fraudulently are putting up someone else's name as a director or operator. This bill would not allow that to occur.

Mr. Taylor:
Our concern is that if there is intentional wrongdoing by an officer, director or shareholder per NRS 78.138, any intentional misconduct, fraud or knowing misconduct removes that protection from the corporation.

Senator Ford:
Do you mean the person named on the document as the director?

Mr. Taylor:
Of anyone acting in that capacity.

Senator Ford:
Do you mean assuming we can find the other persons who are behind that type of conduct?

Mr. Taylor:
Usually those would be acquired by the due process of law through subpoena of corporate records. It is not that the information does not exist. The concern is who reported on the public record.

Senator Ford:
The concern is what is listed on the documentation. The testimony seems to say that our State has become known as a state where people can fraudulently use someone else's name on a document as the owner of a company when in fact they are the owners of the company and are committing fraud. We are unable to find the perpetrators because their names are not listed as the owners or directors.

Mr. Taylor:
We may be misunderstanding the language. Owners may have hired officers with fraudulent intent, but those officers may not have known they were hired with fraudulent intent. This serves to place in jeopardy the officers who signed the list of officers, partners or managers and threatens them with a Category C felony and/or a $10,000 fine for filing a list of officers that is otherwise correct. We are concerned that this language is being referenced to NRS 225.084, which specifically addresses fraudulent filings and documents.

If shareholders have appointed an officer, director or manager for an LLC, they must file an accurate listing. A fraudulent conveyance means that if you put

other people's names on a company or corporate document without their knowledge, try to put your name on someone else's company or appoint Donald Duck as the officer or director of your corporation, you have a fraudulent document. In this case, the officers and directors are simply listing the names as required by statute and filing that with the Secretary of State's Office. For no other reason than following the statute, they are now at risk.

The filing list does not ask who controls or has the authority over the company. It does not ask who the owners are or who handles the day-to-day operations. It just asks who is listed on the corporate documents as the president, secretary, treasurer or equivalent positions in a corporation or LLC. Our concern is that someone now can be charged with fraud for filing an accurate list of officers. This language does not accomplish the stated intent of the bill. There are already laws in place that accomplish the stated intent. We support that stated intent. We have no interest in supporting wrongdoers. Our industry takes a lot of heat for promoting the benefits of doing business in Nevada.

Sections 7 and 8 deal with who can act as a registered agent. Our concern is with these new requirements. A commercial or noncommercial registered agent, officer or agent cannot act as a registered agent if he or she has been convicted of any felony or any crime which contains an element of dishonesty, fraud or moral turpitude and has not had his or her civil rights restored.

Senator Jones brought up this concern. It is not narrowed to felonies. It has a very wide-reaching application that could preclude people from being self-employed, representing their own companies or even taking jobs with registered agent firms for things as trivial as misdemeanors. The language of the bill indicates that even if people's crimes took place several years in the past and had nothing to do with the nature of their business, they would be precluded.

We brought our concern to Deputy Anderson. We would respectfully request that the language be amended to more appropriate standards, such as, "have been convicted of a felony," "intended or likely to deceive or defraud the public." This is similar to other language contained later in the bill. Language should be narrowed to a felony related to someone intending to defraud or deceive the public. The nominee language should be stricken from the bill. We can propose a formal amendment. We did not have enough time to do so today. We would like to participate in any work sessions on this.

Chair Segerblom:
If we have a work session, I think it would be a good idea to bring your proposed amendment.

Bryan Wachter (Retail Association of Nevada):
We share a lot of the same concerns of the Committee members and Mr. Taylor regarding section 2 and the fines. We like the work the Secretary of State has done regarding the Nevada Business Portal. The process of moving the Business License to the Secretary of State's Office has been good but has come with unexpected consequences. We want to make sure someone is not subject to a fine for failure to register and/or file a State Business License. We do not want to get to the point where people could be fined $20,000 because they did not intend or understand the process and now are subject to two different fines from two different chapters. The Secretary of State assured us that is not the intent of the bill. However, we would rather hear bill language that would spell that out specifically. We would like to work on that as well.

Chair Segerblom:
We will now close the hearing on S.B. 60 until further work is done. We will now introduce Senate Bill 28.

Ms. Foley:
The Security Division is a division of the Secretary of State's Office that enforces Nevada laws which regulate the sale and offering of securities. Specifically, we regulate the investment products and the individuals who sell them. The main responsibilities of the agency are the licensing of broker-dealers, sales agents, investment advisors and investment advisor representatives. We are responsible for the registration of securities to the extent that Nevada is not preempted by federal law. We have a unit of compliance investigators who conduct unannounced inspections of licensees and also investigate civil and regulatory matters. Finally, we have a unit of criminal investigators who are peace officers and investigate criminal complaints.

Once the criminal investigators feel they have evidence of a crime, we usually provide that information to the Attorney General, who acts as prosecutor. The Security Division's responsibilities are found in NRS 90 on securities and NRS 91 on commodities. This bill is not addressing any issues on commodities statutes. Senate Bill 28 is aimed to accomplish four goals: strengthen the regulations and the Division's ability to address certain deceptive or prohibitive

conduct; make certain housekeeping corrections due to changes in the industry; seek more flexibility in licensing considerations regarding bad acts; and clear up inconsistencies and ambiguities between NRS 90 and other statutes.

Substantial parts of this bill are from A.B. No. 72 of the 76th Session. There was a fiscal note on that bill because of fee increase. That is why it did not pass. Those fee increases are not part of this bill. Section 1 is a request for a provision to define certain conduct as unethical or dishonest. The provision addresses the use of a certification or a professional designation that does not exist or is made up. It also addresses certifications that were not obtained from an organization that utilizes reasonable standards or procedures for assuring competency. This section is geared primarily toward protecting the senior population. It prohibits people from calling themselves senior specialists or retirement specialists unless they actually hold those specialties from a certified agency. The language is basically the model rule adopted by the North American Securities Administrators Association (NASAA), which is comprised of all regulators in the United States as well as Canadian provincial and territorial regulators. It also includes the securities regulators from Mexico, the Virgin Islands and Puerto Rico. Although the impetus for this section was to protect the senior population, it extends to all investors who may practice various kinds of unethical conduct.

An example is from Utah. A Utah investigator was investigating a business card printed with a lot of designations and initials. The investigator asked the card owner what the initials CHSG stood for. The answer was "certified high school graduate." We are hoping to prohibit all designations that imply a level of expertise that is dishonest or nonexistent. Thirty states have adopted this model rule. Two states already had such a rule. If Nevada adopts this model rule, we may be able to apply for a federal grant under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Sections 2 and 4 are cleanup. Section 2 identifies the specific conduct the Securities Division requires regarding the notice given by a sales agent who ceases to act on behalf of a broker-dealer or issuer. Section 4 changes the names of certain stock markets because of mergers, acquisitions and name changes. Section 3 allows the Securities Division more flexibility in determining whether a person's license should be denied, revoked or limited. We requested a change that would allow the Division to consider felonies older than 10 years and request that the crime of moral turpitude be added to that section. This will

allow us flexibility and does not require the Division to deny a license. The impetus for this section was a violent sex offender who applied for a license. Because many licensees have their offices in their homes, the investigators were not able to consider that particular crime. Additionally, a lot of defendants in this area are older. We have an applicant who is 70 years old and faces securities fraud. We would like the ability to look back farther into an applicant's lifetime.

We are able to consider many crimes if they relate to the securities industry, but many crimes go back farther than 10 years. An example is a person who stole from a client's trust account and was convicted of a felony and disbarred. The person could come back after waiting 10 years and apply for a securities license. We could not consider the prior conduct in the current licensing scheme.

Section 5 proposes an amendment to NRS 90.580, which deals with certain prohibited conduct regarding manipulation of the market. The conduct identified in NRS 90.580 deals with creating a false appearance in the market, such as making it appear there is a lot of sales activity or quoting a false premise. We request that the amendment add conduct which is specifically prohibited by NRS 205.440 and make it clear that that conduct is governed by NRS 90.580. That conduct is probably already covered by NRS 90.570, but because NRS 205.440 specifically identifies that conduct, we would like it to be part of the manipulation-of-market statute. This conduct is sometimes called a pump-and-dump scheme. False information is put out which artificially inflates the stock. The schemers dump the stock when it reaches a high price. We want to put the security violations in the security statute.

Section 6 will allow the Division to charge an offense or violation for making material false statements to an investigator. The investigators talk to the defendants, respondents and victims as well as the complainants. This is a tool of the federal government. If we have this tool, we could stop wasting resources on false complaints. It would give us an added tool when dealing with a defendant who gives us false information.

An example: last year, a convicted felon filed a baseless complaint. The person was trying to improperly recoup his losses on an investment. Under statute, we could not charge him with any violation because we had not introduced his statements into a hearing or proceeding.

Within several provisions of NRS 90 and NRS 91, we are empowered to cooperate with other jurisdictions and agencies, including the Canadian provinces, the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission. The ability to share information and promote multijurisdictional investigations is very helpful. In a world with the Internet and ease of travel, it is not uncommon to see a company in Nevada fraudulently sell to a Canadian investor and send those proceeds to Florida. The subpoena power in NRS 90 is worded slightly different than it is in NRS 91, which governs commodities. Under NRS 90.620, there is no ability to act at the request of non-state agencies. We seek subpoena power for the ability to cooperate with foreign jurisdictions. The Uniform Securities Act allows for foreign jurisdictions to request subpoenas. It is a matter of cooperating in the investigations. Finally, certain conduct is a violation of both NRS 90 and NRS 205.435. Section 8 clarifies that a greater penalty applies.

Senator Hammond:
I had a difficult time getting through section 1, subsection 1, paragraph (a). It appears you have attempted to define the words that are used to defraud someone. Can you define and explain why these words are being used?

Ms. Foley:
Subsection 3 of section 1 identifies the words that constitute a special certification and how they are used, resulting in a violation of section 1, subsection 1, paragraph (a). It does not apply to every portion of this section. The NASAA determined as early as 2003 that many people were calling themselves senior specialists. These people claim to have special training in providing investments to seniors. In reality, this is a sales tool to get in the door, and in many cases, they try to sell improper products. If people have not gone through any special training, they should not be allowed to claim they have.

Senator Hammond:
If you do have that special training, then you should be able to claim it. If not, it should not be legal to use that title?

Ms. Foley:
We are not prohibiting using the title if you do in fact possess one. If you do use it even though you have not been trained, you should be prohibited from using it. Section 1, subsection 2 identifies three accepted areas of accreditation: the

American National Standards Institute, the National Commission for Certifying Agencies and an organization on a list that is provided by the United States Department of Education entitled "Accrediting Agencies Recognized for Title IV Purposes."

Senator Hutchison:
Is section 1 the model act?

Ms. Foley:
Yes, section 1 was taken from the NASAA Model Rule on the use of Senior Specific Certifications and Professional Designations.

Senator Hutchison:
Has it been adopted in 30 states?

Ms. Foley:
Yes, a form of the model rule proposed by NASAA has been adopted in 30 states. The NASAA spent a lot of time developing this rule.

Senator Hutchison:
Has there been any caselaw developed from this rule?

Ms. Foley:
I am not aware of any caselaw. We are gathering statistics on the use of the rule, such as how the other states have used the rule to fine someone or issue a cease-and-desist order.

Senator Hutchison:
The organizations listed in section 1, subsection 2 are the gold standard of certifications. Are there other legitimate groups that are not included in these three?

Ms. Foley:
Section 2 is a rebuttable presumption. We recognize those specific entities, but that does not mean there are not other entities.

Senator Hutchison:
Someone can come forward with a legitimate certification, and you would consider that? Are you just trying to limit the sham certifications?

Ms. Foley:
Yes.

Senator Brower:
I have the same reaction as Senator Hammond with section 1. I will take a look at the model language and see where section 1 deviates. Often, the model language is clear because it has been vetted so much. I found this language to be very difficult to follow. It seems to me that something as simple as "thou shalt not mislead the investing public" may get at the laudable goal of this change. I will look at it again and try to make sense of it.

Ms. Foley:
I will provide the model rule for the Committee to review.

Chair Segerblom:
Any questions or testimony from the public? We will end the session on S.B. 28 and will have a work session later. We are adjourned at 10:29 a.m.

RESPECTFULLY SUBMITTED:

Lindsay Wheeler,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE:

EXHIBITS				
Bill	**Exhibit**		**Witness / Agency**	**Description**
	A	1		Agenda
	B	2		Attendance Roster
S.B. 60	C	6	Office of the Secretary of State	Amendment to SB 60
	D	4	Scott Anderson	Written Testimony